

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEE GARVIN,

APPELLANT

APPELLATE CASE NO. 2014-002205

RECORD ON APPEAL

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1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

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4 Case No.: 2012GS0700962

5 State of South Carolina,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Albert Lee Garvin,

9 Defendant(s).

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15 March 17, 2014

16 Beaufort, South Carolina

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21 BEFORE:

22 The Honorable Brooks Goldsmith

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MS. LEMPESIS: Your Honor, the State is ready to go forward with Lee Albert Garvin's case. I do have a few things that I want to mention, and I would like to pass up my witness list to Your Honor for the jury selection. And I think that Defense has some things that they would like to take up prior to juror selection. May I approach, Your Honor?

THE COURT: Sure.

MS. LEMPESIS: I have provided a copy to the Defense.

MR. BELL: Thank you, Your Honor. May it please the Court, just as a preliminary matter Mr. Garvin has a motion for continuance. He tells me that he has a pending matter in Jasper County in April regarding a land inheritance that he and his family has come into, some 180 acres that is to be divided up. And of course he would like to be in attendance at that hearing and be heard if possible. So for that reason he's asking for a continuance.

He has a job now, and that's just for a short period of time. He wanted me to relate to the Court, and he can speak to this if I'm not fully fleshing it out. But wants an opportunity to hire a lawyer of his

COLLOQUY

1 own choosing. And just now I have heard that he has a
2 motion to have me relieved, which would be his motion.

3 THE COURT: All right. Mr. Garvin, tell me about
4 the motion to relieve your attorneys. Do you want them
5 both relieved? You have two attorneys.

6 THE DEFENDANT: I thought that I had one but now I
7 have two. I don't know how I got two lawyers.

8 MR. BELL: Judge, it is the ordinary practice of
9 our office to have someone assist us in his defense.

10 THE COURT: Tell me about that, Mr. Garvin. You
11 want Mr. Bell and the office of public defender
12 relieved; is that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You don't have another attorney,
15 though, now?

16 THE DEFENDANT: Nope. But I have a job and I have
17 got to talk to my boss later on today. He told me to
18 find out what is going on today. I asked him if he
19 knew how much it costs to represent me. So I'll be
20 making plans to get an attorney, pay an attorney.

21 THE COURT: You said that you did ask?

22 THE DEFENDANT: No, I asked Mr. Newman this
23 morning how much he would charge.

24 THE COURT: Did he tell you?

25 THE DEFENDANT: Yes, sir.

COLLOQUY

1 THE COURT: Can you afford it?

2 THE DEFENDANT: Yes, sir, I can.

3 THE COURT: When would you be able to pay it?

4 THE DEFENDANT: Next month.

5 THE COURT: Now, is that the reason that you want
6 Mr. Bell relieved as your attorney?

7 THE DEFENDANT: No, that is not the reason. The
8 reason that I want him is that he talked to me like he
9 don't know nothing about the case, and I keep telling
10 him things about the case and he has to go and look it
11 up. And I feel that he don't have the education to
12 represent me on this case. Therefore, Your Honor, I
13 will seek other legal advice. So I'm going to make
14 plans on getting a lawyer.

15 THE COURT: Well, let me hear what the State has
16 to say about that.

17 MS. LEMPESIS: Thank you, Your Honor.

18 Mr. Garvin was charged on April 19th, 2012. That
19 is when this incident occurred. The case is 697 days
20 old. I believe that Mr. Bell has been his attorney
21 throughout that entire time frame. Mr. Garvin did
22 spend a bit of time in Jasper County where he was
23 represented by the public defender there, Steve
24 Plexico. I believe that, based on my conversations
25 with Jerry Henderson who is in our office in Jasper,

COLLOQUY

1 they had the same sort of difficulty in Jasper County
2 regarding Mr. Plexico's representation of Mr. Garvin.
3 And they at that point went to trial. And Mr. Garvin
4 was -- it was first a mistrial, and then it was a not
5 guilty verdict.

6 So, Judge, I think I have to say that Mr. Garvin
7 has been represented by Mr. Bell this whole time. He's
8 also been represented by the public defender in Jasper
9 County. However, I know that he'd like to hire
10 Mr. Newman or somebody from the private bar. I have
11 serious concerns about whether or not that would
12 actually occur and further delay this case that's
13 almost two years old.

14 And on top of that, Your Honor, there's a letter
15 that I can admit as a Court exhibit if you would like,
16 July 21st, where Mr. Garvin himself wrote to the
17 Solicitor's office asking for a speedy trial. So I
18 would say that he's requested a speedy trial, we are
19 trying to honor that request.

20 Obviously, his situation may be a little different
21 now. I believe he wrote this when he was detained at
22 the Jasper County detention center.

23 But we are ready to go forward in this case. It's
24 two years old, it needs to be heard. All of our
25 witnesses are lined up to be here tomorrow morning to

COLLOQUY

1 testify. It probably won't take more than a day, I
2 imagine, and we would be opposed to any sort of
3 continuance to allow Mr. Garvin any more time to hire
4 an attorney. He has certainly had that time to hire a
5 private attorney if he wanted to.

6 And I also know that I've worked with Mr. Bell
7 throughout the course of this case, and that Mr. Bell
8 and I have had multiple conversations about it. And I
9 know that Mr. Bell knows about this case. So, I
10 certainly have dealt with him a good bit and I know
11 that he's prepared and we have talked about the case.

12 THE DEFENDANT: He's not prepared. He's not
13 prepared.

14 MR. BELL: Judge, if I might respond.

15 Any motion for a speedy trial would normally come
16 from the attorney. I did not discuss this matter with
17 Mr. Garvin when he filed it. His situation is
18 different now, and my position would be that I want him
19 to be happy with his lawyer. And if he has the
20 opportunity to hire Mr. Newman within a discrete period
21 of time I really don't see the harm. Because
22 apparently his circumstances have changed. You know,
23 there was a period of incarceration in between, that
24 they were -- he was apparently found not guilty of.
25 So, that matter is sort of neither here nor there,

COLLOQUY

1 other than the fact that it delayed the process here
2 through the ordinary process there, which did not
3 result in a conviction.

4 So, I would -- I would join in his motion because
5 I would like him to be satisfied.

6 THE COURT: Well, let me ask this question. I'm
7 not sure that I fully understand. Does Mr. Garvin plan
8 on getting the moneys to hire a lawyer from this
9 land --

10 MR. BELL: That may be part of -- he did mention
11 that that is part of what he'd be able -- what he'd
12 consider if he's not able to come up with the funds on
13 his job.

14 Is that correct?

15 THE DEFENDANT: Right, sell an acre of land.

16 THE COURT: So, he's going to inherit how much
17 land?

18 MR. BELL: I don't know how it's to be parceled
19 up, but it's apparently some 150 acres. It is a
20 sizable plot. So it's not unreasonable to think that
21 if he were -- unless he's receiving just a fraction of
22 that, that it would have some value.

23 THE COURT: But of course there is no telling when
24 that interest could be realized.

25 MR. BELL: Not for me to tell.

COLLOQUY

1 THE COURT: Yeah.

2 MS. LEMPESIS: Your Honor, may I add one more
3 thing that I forgot to mention? Mr. Garvin has also
4 been noticed for trial December of last year. And just
5 as recent as of last month, February of this year.
6 This was the third time that he's been noticed for
7 trial.

8 THE DEFENDANT: I was incarcerated.

9 MS. LEMPESIS: I don't believe that he was
10 incarcerated in December of 2013 or in February of this
11 year, February 2014.

12 THE COURT: All right. Mr. Bell, Mr. Garvin, as
13 to the motion of continuance, I'm going to be compelled
14 to deny that, as well as the motion to relieve
15 attorneys. Any other motions, Mr. Bell?

16 THE DEFENDANT: What did he say, the motion to
17 compel?

18 MR. BELL: Judge, the only other matter that I see
19 would be under Neil V Biggers, any identification
20 witnesses would fall under the auspices of that test,
21 and we can take that up at the Court's pleasure. We
22 can do -- it's not a long motion, but at any rate we
23 can do that now or at such time as the Court --

24 MS. LEMPESIS: I would suggest maybe if we could
25 do it right after we pick the jury this afternoon. If

COLLOQUY

1 that works for Mr. Bell and Your Honor.

2 THE COURT: Wait a minute. Is there a reason that
3 we couldn't do it now?

4 MS. LEMPESIS: We can do it now. I wasn't sure
5 what the status is next door, if they are in fact
6 picking that jury next door.

7 THE COURT: That is a good question.

8 THE CLERK: I think that they are doing a plea
9 next door. I was just in there.

10 MS. LEMPESIS: I think that the Defendant may have
11 changed his mind and decided to plead guilty.

12 THE DEFENDANT: You ain't talking about my case.
13 I call you to your office, you never answer the phone.
14 You ain't talked to me about no case, how you going to
15 represent me?

16 MS. LEMPESIS: Judge, I understand that the
17 defendant next door is pleading guilty, so I would
18 suggest that we do the ID hearing after we pick our
19 jury, so as to not hold up the jury too much longer.

20 THE COURT: Let me ask this question. I'm going
21 to ask the plaintiff -- the State to begin with. How
22 long would you estimate that the trial would last?

23 MS. LEMPESIS: Judge, I have six witnesses. I
24 think that it would take just the day tomorrow.

25 THE COURT: Any idea -- any thoughts different

COLLOQUY

1 than that, Mr. Bell?

2 MR. BELL: No, Your Honor.

3 THE COURT: If we could start picking the jury
4 within the hour.

5 MR. BELL: I don't have any witnesses, other than
6 potentially Mr. Garvin who would have the right to take
7 the stand if he wanted to.

8 THE COURT: All right. Let's think about this.
9 Where are we going to put the jury if they don't pick a
10 jury?

11 THE BAILIFF: We can't put them all in here.

12 THE COURT: We have to move to another courtroom.

13 We are at ease. We will work out some
14 arrangements for us to move to the other courtroom when
15 they make it available.

16 MS. LEMPESIS: Judge, may I mention one other
17 thing before you stand down?

18 The indictment in this case was originally
19 drafted, shoplifting enhancements and it mentions on
20 the front of the indictment that in the body of the
21 indictment itself at several points it says enhancement
22 for third or subsequent offense. I have -- as we are
23 going to be trying this case we won't make a reference
24 to any prior convictions for shoplifting. That would
25 only come in if Mr. Garvin was found guilty.

COLLOQUY

1 So, in an effort to make it easier for Your Honor
2 when you are reading the indictment, I have a copy
3 where I have blacked out any reference to enhancement.
4 I was going to pass those to Your Honor when we call
5 the case for trial. If that's okay with you.

6 THE COURT: Sure.

7 MS. LEMPESIS: And one other thing was that
8 Samantha Prinsen is sitting in the second chair with
9 me, but Mary Concannon is sitting second chair with me
10 right now. Samantha has a case on the docket that will
11 go next, a bench trial of Pernell Byas, so I plan on
12 Pernell Byas going forward with Judge Brown probably
13 tomorrow as well. In which case, Mary Concannon will
14 come over and sit with me. I hope that all makes
15 sense.

16 I just say that to say if Mary is not up here when
17 I pick the jury I would like to mention her name when
18 we are going through the people that are assisting the
19 State for the trial so we make sure that there's no
20 issues with the jury pool.

21 THE COURT: Okay.

22 MS. LEMPESIS: Thank you.

23 THE COURT: Mr. Bell.

24 MR. BELL: Your Honor, of course, Ms. Lempesis has
25 anticipated our motion to redact portions of the prior

COLLOQUY

1 convictions. And as long as the Court has no problem
2 with that.

3 I think that Mr. Garvin wants to address the
4 Court.

5 THE DEFENDANT: Don't the defendant have a right
6 to know all of the witnesses who were testifying
7 against him? I was not notified of all of the
8 witnesses testifying against me. The Court hadn't let
9 me know nothing about it. Neither my lawyer.

10 THE COURT: You need to discuss that with your
11 attorney.

12 THE DEFENDANT: This is the first time that I'm
13 talking to him.

14 THE COURT: I have already made the ruling, he is
15 your attorney.

16 THE DEFENDANT: Well, I'll represent myself, your
17 Honor. I'll plead under Rule 16 then, try me in my
18 absence.

19 MS. LEMPESIS: We would be happy to, Your Honor.

20 THE DEFENDANT: He ain't ever talked to me about
21 my case. I ain't going to let him sit here and take my
22 case.

23 THE COURT: Mr. Garvin, don't say another word.

24 Now, I need to tell you a couple of things. I
25 have already ruled on the issue of whether this case is

COLLOQUY

1 going to be continued, I have ruled that it's not going
2 to be continued. Which means sometime within the next
3 30 to 45 minutes we are going to select a jury in your
4 case.

5 And I've already ruled, also, on whether your
6 attorneys will be relieved, which means this: Unless
7 you have a motion, you don't address the Court. You
8 don't talk to the Court. You talk to your attorney.
9 You have him address the Court. If you have any other
10 motions that you want to make, you tell your attorney
11 what the motion is, he will make the motion and then we
12 will decide how to handle the motion, okay. Any
13 questions about that?

14 (No audible response.)

15 All right. No questions apparently.

16 All right. We will be at ease until we hear from
17 the other courtroom about the -- Mr. Garvin, let me
18 mention one other thing to you.

19 Mr. Garvin.

20 THE DEFENDANT: Sir.

21 THE COURT: One other thing. I heard that you
22 said something a minute ago about being tried in the
23 absence. Now, if the State, if the State requests --
24 if you don't show up, it is highly likely that you
25 would be in fact tried in your absence, do you

COLLOQUY

1 understand that?

2 THE DEFENDANT: Yes, sir, I understand.

3 THE COURT: Okay.

4 (The defendant leaves the courtroom.)

5 THE COURT: We will be at ease.

6 MS. LEMPESIS: Thank you, Your Honor.

7 MR. BELL: Judge, I guess last things first here.

8 I want to make a motion for a mistrial based on the
9 possibility that the jury pool was tainted by some of
10 the conduct of Mr. Garvin in the jury selection. I'm
11 afraid that it may have caused a negative impression
12 of -- you know, of his demeanor and possibly of his
13 character as a result. I have no way of knowing that
14 for sure, but it was disruptive and could affect
15 Mr. Garvin getting a fair trial in this case. And
16 although he's responsible for it, that taint may
17 persist all the way through this trial. And that is
18 really my concern, that he receive a fair trial.

19 THE COURT: All right. State, what is your
20 position?

21 MS. LEMPESIS: Your Honor, the State would be
22 opposed to a mistrial granted, to be granted at this
23 point. Mr. Garvin, obviously, he has control of his
24 own behavior. He has acted out to some extent in front
25 of the jury already. But I think his goal may be that

COLLOQUY

1 he be granted a mistrial. Perhaps that is why he did
2 it. I think that you have cautioned Mr. Garvin now. I
3 hope that he will heed those remarks from Your Honor,
4 and we ask to move forward in this trial of this case.
5 I think Mr. Garvin is obviously trying everything that
6 he can to get his case continued.

7 THE COURT: Okay. Let me -- for the record, let
8 me for the record state, Mr. Bell, what I observed is
9 what I guess could be called an appearance of hostility
10 on behalf of the defendant towards his lawyers. If
11 it's -- if I need to characterize it differently, you
12 all tell me, but you could see that he was unhappy. If
13 I were a juror sitting out there in the pool, I would
14 have an impression that he was unhappy with, perhaps,
15 the Court's rulings in the case, but also unhappy with
16 the way that his lawyers were handling the case. And
17 he raised his voice some towards his attorneys. He
18 grabbed something from one of his attorneys.

19 Now, is there something different than that?
20 Because I think that I need to put on the record what
21 it was.

22 MR. BELL: I think it was more, as the Court
23 stated, behavioral and not necessarily anything
24 substantively said. But certainly they could hear some
25 of his outburst and statements.

COLLOQUY

1 MR. BAX: And Your Honor, I know that generally
2 you do want to hear from one lawyer, so I do apologize
3 by adding, but I add it because I was closer physically
4 to the incident than Mr. Bell. And I will also add
5 that a lot of the discussion or comments made by
6 Mr. Garvin were clearly audible to the jurors behind
7 us, including his desire to strike certain jurors that
8 got on the jury, and also comments being made to the
9 jury. And I do believe that the contents of those
10 comments were heard by a good number of the jurors, if
11 not all. Thank you.

12 THE COURT: I perhaps agree with some of that,
13 that I did notice that he voiced his personal opinion
14 that he should have more say-so in who was going to
15 be -- who the strikes were going to be used on. And he
16 voiced an objection, I think, to a specific one or more
17 of the jurors.

18 But all in all it is his conduct, it is what he
19 has created. And I mean, I would consider it if you
20 wanted it but I'm not sure that I would want me to
21 instruct the jury that they are not to consider his
22 conduct during jury selection. I mean, it would be up
23 to you as to whether you want to ask for a charge like
24 that, but I can't grant a continuance or a mistrial
25 based on that, based on his conduct. That I still see

COLLOQUY

1 as being more a disagreement with his lawyer, and that
2 happens. People disagree with their lawyers.

3 Mr. Bell.

4 MR. BELL: Thank you, Your Honor. And if we can
5 just wait until the morning on whether we want any kind
6 of curative instruction. Could you make that decision
7 then?

8 THE COURT: Absolutely. Any other motions before
9 we resume the trial in the morning?

10 MR. BAX: Your Honor, I'll be handling the Neil v
11 Biggers motion. There wasn't -- we understand that
12 there will be an ID of our client that the State would
13 seek to introduce before the jury involving Officer
14 Erdel, who is here, as the chief officer in this case.

15 My understanding is, and this would be what I
16 would expect to be proffered, that he would be making
17 an ID or testifying about an ID that he made shortly
18 after the incident when Mr. Garvin was detained by law
19 enforcement officers. So, we would be moving to
20 exclude that identification.

21 THE COURT: All right. Solicitor.

22 MS. LEMPESIS: Thank you, Your Honor. And I'm
23 prepared to call Investigator George Erdel from the
24 Beaufort Police Department.

25 Thereupon,

EXAMINATION OF GEORGE ERDEL

1 GEORGE ERDEL

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows.

4 THE CLERK: If you will have a seat.

5 If you will state and spell your name, for the
6 record, please.

7 THE WITNESS: My name is George Erdel. First name
8 George, the common spelling. Last name is E-R-D-E-L.
9 One L.

10 DIRECT EXAMINATION

11 BY MS. LEMPESIS:

12 Q Thank you, Investigator Erdel.

13 Investigator Erdel, who do you work for?

14 A Beaufort Police Department.

15 Q How long have you worked there?

16 A About ten years.

17 Q And your current title?

18 A An investigator.

19 Q And what are your duties included as an
20 investigator for the Beaufort Police Department?

21 A Crime scene processing, investigation -- criminal
22 investigation of both misdemeanor, felonies, on-call
23 response to any serious incident like felonies or violent
24 incidents.

25 Q Thank you. Investigator Erdel, were you working

EXAMINATION OF GEORGE ERDEL

1 on April 19th of 2012?

2 A Yes.

3 Q Did you respond to a call of a shoplifting
4 incident at Lowe's in Beaufort that day?

5 A Yes, I did.

6 Q Investigator Erdel, can you tell me what you did
7 once you heard this call come out?

8 A Well, I heard the call -- I just happened to be
9 sort of in the area and I heard the call go out over the
10 radio that officers were looking for a subject reported to
11 have been shoplifting, possibly coming from Lowe's. While I
12 was in route I was going to actually assist in looking for
13 that person when I heard over the radio that Officer Day had
14 stopped somebody matching that description. I had not heard
15 at that time anybody go out to Lowe's. So I didn't hear any
16 patrol officers or anybody sign out at Lowe's so nobody was
17 at Lowe's at that point, everybody was focused on looking
18 for this person. So I went to Lowe's and made contact with
19 the loss prevention gentleman there who had actually filmed
20 the incident so that I could review the footage.

21 Q Do you recall about what time approximately you
22 responded to the call?

23 A Can I refer to the report?

24 Q You can.

25 A It would have been contemporaneous with the actual

EXAMINATION OF GEORGE ERDEL

1 report over the radio. Like I say, I was already in the
2 vicinity so -- it says that it happened at 11:12, so it
3 would have been, I mean, within a couple minutes of that.

4 Q Okay. What did you do -- you said that you
5 arrived at Lowe's and met with the loss prevention manager
6 there?

7 A That's correct.

8 Q What did you do once you met with the loss
9 prevention manager?

10 A I asked him to show me the video of the incident
11 to see if we could determine if the person who had been
12 detained was the same person from the incident. And he did
13 show me the video which depicted the incident in its
14 entirety, to include several close-up face shots of the
15 suspect.

16 Q So, did you view the video just one time, multiple
17 times?

18 A I would say that I viewed it one time. However, I
19 viewed the entire length of it. Which, like I said, had
20 multiple angles, shots, close-up views of the suspect.

21 Q Thank you. So, based on your viewing of this
22 video, did you -- well, first, from the video could you tell
23 what this man's race was?

24 A It was African American.

25 Q Could you tell what he was wearing?

EXAMINATION OF GEORGE ERDEL

1 A I could.

2 Q On the video, can you see clearly him concealing
3 some item from Lowe's?

4 A Very clearly.

5 Q Okay. And Investigator Erdel, what did you do
6 after you viewed the video at Lowe's?

7 A I immediately left Lowe's and went to where
8 Officer Day had detained the defendant, and made contact
9 with him there to see if I could physically look at him to
10 see if it was indeed the same person, and it was.

11 Q So, when you viewed -- when you went to where
12 Officer Day was with the suspect, Mr. Garvin, and you saw
13 him and saw that it was the same person in the video, was
14 there anybody else being detained as a suspect in this case?

15 A No.

16 Q Okay. And did you have any question that
17 Mr. Garvin was the same person that was on the video?

18 A No question.

19 Q And you might have mentioned this, but did you go
20 straight from Lowe's to where Mr. Garvin was detained?

21 A That's correct.

22 Q About how far was that?

23 A I don't know how far it would be in distance.

24 Have to be less than half a mile. It was near the fire

25 station on Road. So it was less than a minute

EXAMINATION OF GEORGE ERDEL

1 to get there. It was very close.

2 Q Thank you. And Investigator Erdel, do you see the
3 same person that you saw on the video from Lowe's, and the
4 person that you identified that day with Officer Day; do you
5 see him in the courtroom here today?

6 A Yes, I do.

7 Q Can you point to him or indicate where he's
8 sitting?

9 A Right there at the defense table.

10 Q Thank you.

11 MS. LEMPESIS: Nothing further from the State at
12 the time, Your Honor.

13 MR. BAX: May it please the Court, Your Honor.

14 Thank you.

15 CROSS EXAMINATION

16 BY MR. BAX:

17 Q Good afternoon, Investigator Erdel.

18 A Good afternoon.

19 Q A couple of questions for you. When you arrived
20 at the Lowe's in Beaufort, you identified yourself as a
21 police officer, correct?

22 A Yes, sir.

23 Q Okay. Were you in plain clothes or were you in a
24 uniform at that time?

25 A I was in plain clothes with -- kind of like I am

EXAMINATION OF GEORGE ERDEL

1 today but without the jacket. Shirt, tie, badge, gun.

2 Q Were you driving a marked or unmarked vehicle?

3 A It was unmarked.

4 Q But you showed your identification as an officer
5 to some of the individuals manning the store, or to some of
6 the employees of Lowe's?

7 A I don't know that I showed my identification, my
8 credentials, but I had my badge on and said, hey, I'm from
9 the police department. They were expecting us because they
10 called.

11 Q Did they refer you to the person who had been
12 operating this surveillance system?

13 A Yes.

14 Q Where was he located in the store?

15 A There is an office. I don't know if it's still
16 there, but at the time there was an office located at the
17 front of the store.

18 Q Okay. And you were shown to that office. Who was
19 it that you spoke with again?

20 A I would have to look at the report, I don't recall
21 his name. I want to say it was Mr. Jones.

22 Yes, the report reflects that it's Daniel Jones.

23 Q Daniel Jones. And he indicated that he had all of
24 this on video; is that right?

25 A That's correct.

EXAMINATION OF GEORGE ERDEL

1 Q And he had a way to show you that video right
2 there in that same office?

3 A Yes.

4 Q And before you -- well, at some point, whether it
5 was before or after the video, did you ask him if that was
6 something that could be duplicated? In other words, it
7 could be copied and given to you for evidence.

8 A I don't know if I asked him or not. I probably
9 assumed -- I can't recall specifically, but I probably would
10 have assumed that it would be possible to do it.

11 Q Did Mr. Jones ever indicate that he wouldn't be
12 able to provide it to you?

13 A I don't think that conversation ever came up one
14 way or the other.

15 Q So in viewing this, you were assuming at that time
16 that it could be copied and reproduced and placed in
17 evidence?

18 A Yes, sir.

19 Q Ultimately that was what happened; is that
20 correct?

21 A According to the report, yes.

22 Q Were you the one that took custody of the video,
23 or a copy of the video?

24 A I was not.

25 Q Some other officer with your department did that?

EXAMINATION OF GEORGE ERDEL

1 A Correct.

2 Q You stated in your direct testimony that you
3 watched the entirety of the video; is that correct?

4 A Yes.

5 Q Can you tell us, what was the quality of that
6 video?

7 A Very good.

8 Q Very good. And you also stated that there was
9 several angles. Was it multiple different camera angles, or
10 one continuous video?

11 A It was pan tilt zoom, so in other words, it wasn't
12 a still camera. So as he moved the camera followed with
13 him. So you were able to -- if he walked underneath the
14 camera -- as he moved, the camera moved. So it would
15 provide different angles.

16 Q That was based on the operator -- was the operator
17 in control, making sure that video camera followed that one
18 focus?

19 A Yes, it appeared to be that the operator was
20 tracking him with pan tilt zoom, yes.

21 Q You testified there were several points during
22 that video where there were close-up shots of the
23 individual's face?

24 A That's correct.

25 Q Were there shots of the whole overall body?

EXAMINATION OF GEORGE ERDEL

1 A Yes.

2 Q Was it in color or in black and white?

3 A In color.

4 Q In color, okay. Now, you indicated that you
5 watched it through one full time, and was it right after
6 that that you drove to where you thought that the suspect
7 was detained at the time?

8 A Where I heard they were at on the radio, yes.

9 Q You knew going into the store that they had
10 someone detained at that time, correct?

11 A Yes.

12 Q Were you able to print out any stills or anything
13 at that time when you went to see the suspect?

14 A No.

15 Q Okay. Do you have any reason to believe right
16 here, right now today that that video isn't available?

17 A No.

18 MR. BAX: A moment of indulgence, Your Honor.

19 BY MR. BAX:

20 Q Real briefly after consulting with co-counsel,
21 Officer Erdel, after the incident, after the date that this
22 happened and when Mr. Garvin had been detained, since that
23 time have you had the opportunity to view that video again?

24 A Yes.

25 Q How did that come about?

EXAMINATION OF GEORGE ERDEL

1 A When we were preparing for one of the times before
2 when it was scheduled to go to the trial I was getting with
3 the solicitor to say here is what we have and look at it
4 again.

5 Q So, that was based on either your department or
6 the Solicitor's office having a copy of that video; is that
7 correct?

8 A Yes.

9 Q Did it appear to be the same video that you saw
10 that day at the Lowe's store?

11 A It did.

12 Q Did it have any drop in quality?

13 A No.

14 Q Still the same quality that you recall watching at
15 the Lowe's store?

16 A Yes.

17 Q Was it or has it in any way that you have seen
18 been altered, changed, anything done to it?

19 A Not that I have seen.

20 Q Since your viewing at that time, it appeared to be
21 the same video that you watched that day from the Lowe's
22 store?

23 A Absolutely.

24 MR. BAX: No further questions at this time, Your
25 Honor. Thank you.

EXAMINATION OF GEORGE ERDEL

1 MS. LEMPESIS: No further questions.

2 THE COURT: Thank you. You may step down.

3 MS. LEMPESIS: Thank you, Your Honor. Would you
4 like me to go ahead with my argument as to why the
5 identification is admissible?

6 THE COURT: Well, unless you want to tell us why
7 it's not.

8 MR. BAX: Your Honor, whichever you would like to
9 hear from first is fine with me. I know it's our
10 motion, but I have no problem with ladies first.

11 MS. LEMPESIS: Judge, as you know, this is a
12 hearing pursuant to the Niel v Biggers. That's a
13 Supreme Court case from 1972. The factors that we look
14 at to determine whether or not identification is
15 reliable under the totality of the circumstances, and
16 this is even if the procedure used was unduly
17 suggestive. There's five different factors, Judge, and
18 if I may I'll just go through them.

19 First, the witness' opportunity to view the
20 subject at the time of the crime. Obviously, Mr. Erdel
21 was not there at the time that the shoplifting was
22 committed from Lowe's, but he went, as you heard,
23 immediately when the call came out. He went directly
24 to Lowe's and viewed the video, which, as he testified,
25 was good quality, and clearly saw Mr. Garvin on this

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1 video from several different angles, and watched the
2 video in its entirety. And then reported directly to
3 where Mr. Garvin was detained by the other officers of
4 Beaufort Police Department. So, he certainly had the
5 opportunity to view Mr. Garvin at the time that the
6 crime was committed, which was just moments later from
7 the time that the crime was committed.

8 His degree of attention, Your Honor, is the second
9 factor. Obviously Officer Erdel is an extremely
10 thorough investigator. He went to Lowe's that day for
11 the sole purpose of watching the video. He knew that
12 he needed to go to determine what the person looked
13 like that had committed the shoplifting at Lowe's. So
14 his degree of attention, I imagine, was quite astute.
15 And he went straight from Lowe's, again, to where
16 Mr. Garvin was detained after viewing this video.

17 The third factor, Your Honor, is the accuracy of
18 the witness' prior description of the criminal act.
19 Again, we are relying on just a very few facts here.
20 But again, he viewed the video at Lowe's, got a clear
21 description of Mr. Garvin at that time. And then went
22 and based his description on that video.

23 His level of certainty, that's a complication that
24 is the fourth factor. He said that he was certain that
25 it was Mr. Garvin. And he also identified Mr. Garvin's

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1 face and clothing on the video as being the same man
2 that we saw in that video.

3 And the length of time is the final factor. The
4 length of time between the time he testified that it
5 was just minutes after he left Lowe's, viewing the
6 video, responded to where Officer Day was holding
7 Mr. Garvin and identified him as the same person who
8 was clearly shoplifting a nail gun from Lowe's on
9 Parkway.

10 Judge, there was no unduly suggested procedure in
11 this case. Investigator Erdel did exactly what he's
12 been trained to do, went to view the video, compared
13 Mr. Garvin in person to the person on the video, and
14 without question he was one and the same.

15 We didn't show the video for pretrial purposes,
16 but we plan on presenting that video at trial. And the
17 jury will be able to see and determine how reliable
18 Investigator Erdel's identification of the defendant
19 was. Thank you, Your Honor.

20 MR. BAX: May it please the Court, Your Honor. I
21 think really the last comment by the State was the crux
22 here. I think there's a step that's being missed by
23 the State as they look at this case. It is a step that
24 I don't think that we can skip because really this
25 isn't a show-up ID at all.

COLLOQUY

1 Both cases that are on point in South Carolina,
2 and in fact, these are cases that I've cited to Your
3 Honor in the last case that I was in front of you on.
4 The test generally is cited as a Mansfield case.
5 That's State versus Mansfield M-A-N-S-F-I-E-L-D, court
6 of appeals opinion, and the cite on that case, Your
7 Honor, is 2000 South Carolina appellate 163 or 343
8 South Carolina 66. And that was decided, I believe, in
9 2000.

10 Additionally, Your Honor, in 2003 there was State
11 versus Anthony Brown. That was heard and decided in
12 2003. And that is cited at 356 South Carolina 496.

13 Both cases cite those five elements that the
14 solicitor has just gone over with this Court. However,
15 in both of those cases and in every case that you can
16 find it talked about a witness to the crime, not a
17 witness to the witness of the crime. Because, Your
18 Honor, the witness in this case is the video. The
19 witness is the video.

20 Officer Erdel went and watched a really great
21 video and then went and made this ID. It's absolutely
22 unnecessary. It's cumulative and it's bolstering to
23 introduce an ID from a video which we have. He's
24 testified that it's high quality, he has testified that
25 a copy was obtained, he's testified that it's the same

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1 as what he watched. The solicitor has said they are
2 going to introduce this. The jury doesn't need to
3 judge whether the credibility of Officer Erdel's
4 identification is in question, all they have to do is
5 determine whether the person on the video is
6 Mr. Garvin. That is it.

7 The whole purpose behind the case law having to do
8 with show-up IDs has to do with someone who is a
9 witness and/or a victim to a crime who witnessed an
10 individual do something that they think was wrong or
11 that they have given a story that they are wrong, and
12 then identify that person as being individual X or
13 individual Y. There was -- in those situations we
14 cannot take that individual witness's mind and play it
15 back for the jury on the video screen. In this case,
16 we can.

17 That is the good thing to some degree about things
18 like video cameras. There doesn't need to be cross
19 examination of the video camera. It is what it is.

20 And other than authentication and making sure that
21 they laid the foundation that that video is what it
22 purports to be, Officer Erdel here today has stated
23 that it's the same video, there's been no alterations.

24 So I don't think that we should get to these
25 elements because they don't apply to Officer Erdel. He

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1 is not the witness, quote/unquote, as it is addressed
2 in these cases. The witness that they are talking
3 about is someone who saw something. The fact that
4 there's a video camera that follows the purported
5 criminal in this case throughout the commission of the
6 crime, and that that video is available for the jury to
7 see, means that no ID by some third party that didn't
8 actually witness the crime itself is necessary. Thank
9 you.

10 THE COURT: All right. Thank you.

11 MS. LEMPESIS: Judge, I guess what I understand
12 Mr. Bax is arguing is that putting up Investigator
13 Erdel to talk about his identification would be
14 bolstering and not the best evidence. I think that the
15 jury will need to hear from Investigator Erdel to
16 understand how that link was made up, that it wasn't
17 just that the police ran -- you know, stopped this man
18 on Road and arrested him for shoplifting.

19 They need to hear that Investigator Erdel, you know,
20 went to Lowe's to view the video and then went to the
21 scene to ensure that they had the right person. They
22 need to know that the police didn't skip that step.

23 I don't think that it's improper for the State to
24 put Investigator Erdel up on the stand to explain that
25 they didn't skip a step. He went, he was thorough, he

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1 made sure to view the video himself and make sure that
2 they had arrested the right person. I anticipate that
3 Mr. Garvin's defense is that they got the wrong guy,
4 and this shows that they didn't just rely on a witness
5 description. You will hear from a witness tomorrow who
6 did see Mr. Garvin run across the street from Lowe's,
7 and called the police. That is how they started
8 tracking Mr. Garvin as soon as he left Lowe's.

9 But they do need to connect the dots, Your Honor.
10 And whether or not Investigator Erdel's testimony is
11 duplicative, I would suggest that it's up to the jury
12 to decide. But his testimony is necessary to make that
13 connection, and his ID is necessary as well. Thank
14 you, Your Honor.

15 THE COURT: I am going to deny defense motion to
16 suppress the identification testimony of Mr. Erdel.
17 The method used is certainly reliable. I see him
18 looking at the video almost as though he was there at
19 the scene. He is -- his identification of the
20 defendant being in custody a few minutes after the
21 event as being the same person that he just saw in the
22 video, I think he is in fact connecting the dots. It
23 paints the entire picture and it is not merely
24 bolstering or duplicative testimony. And for all of
25 those reasons I'm going to deny the motion.

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1 MS. LEMPESIS: Thank you, Your Honor.

2 THE COURT: Is there other testimony, other
3 identification testimony that is in question? I'm
4 asking, I don't know.

5 MS. LEMPESIS: Judge, I can address that.

6 I spoke with the defense attorneys briefly
7 about -- we have Daniel Jones, who is the loss
8 prevention manager. He is the one who was watching
9 Mr. Garvin on the video. But they did not take
10 Mr. Jones to the scene to where Mr. Garvin had been
11 apprehended to have him personally ID him in person.
12 So, Mr. Jones would not -- there wasn't that final step
13 done by Mr. Jones. He watched the video, called the
14 police, one of the people that called the police, and
15 then did make a copy of the video for the police.

16 So it may be that when he's called to testify -- I
17 have spoken with Mr. Jones, he's not sure that he will
18 recognize Mr. Garvin when he sees him in person. So I
19 want to make sure that it's clear, I don't know if
20 he'll be able to identify Mr. Garvin in the courtroom.
21 But he didn't see him at the scene in person.

22 MR. BAX: Our understanding is that there's not
23 going to be any other IDs. Because if there's going to
24 be any other IDs, we would like to know ahead of time
25 for the purposes of whether there needs to be other

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1 pretrial or in-camera hearings.

2 MS. LEMPESIS: The only other thing that makes me
3 pause is Bill Roucoulet, William Roucoulet. He is
4 another witness, Your Honor. He is the man who worked
5 for Beaufort County and was driving down
6 Parkway and just randomly saw Mr. Garvin running across
7 the street with something tucked under his shirt. He
8 called the police, thought something looked suspicious,
9 and then he followed Mr. Garvin from that point all the
10 way almost to the road where he was eventually detained
11 by the police.

12 There was -- once the police detained Mr. Garvin,
13 Mr. Roucoulet then drove his work van around and
14 stopped in that area where they had detained
15 Mr. Garvin. He didn't get out of his car, they didn't
16 do a show-up. I mean, they didn't stand Mr. Garvin up
17 in front of Mr. Roucoulet. He just sort of went to
18 that area just to make sure that he followed through
19 with his call to the police.

20 I'm hesitant, and I apologize for stumbling, but I
21 don't think that he -- from what I saw in the report,
22 there was no actual show-up identification there.
23 Again, one, that it's been two years, he didn't know if
24 he would recognize Mr. Garvin in the courtroom or not.
25 But he is an important witness that followed Mr. Garvin

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1 from Lowe's to all the way to where he was obtained.

2 MR. BAX: Our concern, Your Honor, is that he
3 didn't actually witness a crime. Maybe he is a good
4 Samaritan who felt like he needed to assist local law
5 enforcement, but he didn't witness a crime.

6 We don't think that it would be permissible for
7 him to make some kind of an in-court identification.
8 Of course he can testify he saw somebody and he called
9 law enforcement and followed, but since they stated
10 that there's not a show-up ID that they wish to
11 introduce, the defense's position is that he would not
12 be allowed to do some sort of in-court identification.
13 Especially if he doesn't -- if he's saying, I don't
14 really remember that individual. The problem with the
15 idea of identifying him now is most likely because he
16 sees an individual sitting in the defense chair next to
17 the defense attorneys. Which it's not hard when you
18 only have one choice in the multiple test to figure out
19 what the answer is. When A is the only answer that you
20 have got.

21 THE COURT: Let me ask you this: Do you believe,
22 Solicitor, that if that witness were here and we were
23 having an in-camera, he would say that he saw a
24 suspicious person -- let's see if I have got it
25 right -- running across the highway, apparently trying

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1 to conceal something under a shirt that he was wearing,
2 blah blah blah, something like that, and that he called
3 law enforcement and that he later, or shortly
4 thereafter he saw law enforcement take somebody into
5 custody, and that is the person that -- the same person
6 that he saw running suspiciously?

7 MS. LEMPESIS: Yes, and in fact -- yes, Your
8 Honor. It's not that he just saw him running
9 suspiciously across the street, he also followed him as
10 he went behind a shopping center. Mr. Garvin, you
11 know, they saw -- he followed him behind the shopping
12 center and went into the wood line. He stayed there
13 and watched because he thought that was suspicious as
14 well. Watched as he went into the wood line and came
15 back out of the wood line and had stripped off a layer
16 of clothing and no longer had the nail gun. And so he
17 stayed on the phone with the dispatcher the entire
18 time. A sort of moment by moment account of what
19 Mr. Garvin was doing.

20 And then he did take -- he followed Mr. Garvin in
21 the van until it got to the point that Mr. Roucoulet
22 couldn't follow him any more on the street. And then
23 he went back around to Road and saw where
24 the officers had arrested someone.

25 THE COURT: How close was he at any point in time

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1 to the defendant? Because he could have done all that
2 at some distance.

3 MS. LEMPESIS: I think he would say the closest he
4 came to Mr. Roucoulet was when he was behind in the
5 parking lot of the shopping center, and he saw
6 Mr. Garvin there. I think he would testify that that
7 is the closest that he came to him. But he gave an
8 accurate -- he gave the description, again, from the
9 moment that he saw Mr. Garvin running across the street
10 until the end when he checked in with the officers that
11 had detained Mr. Garvin.

12 THE COURT: I guess the point that I'm trying to
13 make is that I'm trying to anticipate what the defense
14 is saying, is that would he have been able to -- did he
15 have an opportunity to see the defendant so that he
16 could have identified him in a photo or line-up.. See?
17 If he couldn't, if he didn't see him well enough to be
18 able to do that, how could he come in here and say, you
19 know.

20 MS. LEMPESIS: I don't know the answer to that,
21 Judge. He will be here in the morning, I could
22 certainly -- I could ask him that very question in the
23 morning and find out whether or not we need to do
24 another -- another quick pretrial hearing on the
25 matter.

COLLOQUY

1 THE COURT: Okay.

2 MR. BELL: Your Honor, the problem with both the
3 Jones and the Roucoulet testimony is that the State has
4 had every opportunity if they wanted them to be ID
5 witnesses, or thought that they were credible ID
6 witnesses. And I hear the State saying that both are
7 not credible ID witnesses in the representations that
8 they are making to the Solicitor's office.

9 So, the idea that we don't get to discover any
10 type of positive ID information, like via a six pack or
11 a line-up, or some rigorous means, possibly even double
12 blind type of identification, which would be sound, it
13 is just simply not in the discovery. And to now be
14 confronted with perhaps two other identity witnesses
15 when that's our whole defense essentially, or part of
16 our defense, a large part of our defense, is just a
17 violation of the discovery rules.

18 And also to permit this person to basically do
19 everything but identify him because he could never see
20 him. And evidently there's a period of time where he
21 does not do -- apparently he drives around, and then
22 they have got Mr. Garvin in handcuffs. But I think
23 that he's trying to jump to that conclusion that that's
24 the same person. I think that it's all a little bit
25 suggestive if he's not able to identify Mr. Garvin

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1 prior to that, and he doesn't do it at the scene. So I
2 think that it's --

3 THE COURT: Well, might he not, though, say that
4 the person that I saw them put in handcuffs was the
5 same height, build or the same clothing and all as I
6 had last reported?

7 MR. BELL: If I had that statement in my
8 discovery, no, it wouldn't be a problem. But the
9 problem is that I haven't been introduced to any other
10 person who is going to identify Mr. Garvin other than
11 Officer Erdel. As I think -- in order to -- for my
12 client to be advised fully of what witnesses are going
13 to -- to say what about identifying him, I would need
14 to know that beforehand so he can make an informed
15 decision about what he wants to do. And I just think
16 that we are a little late and that is kind of -- that
17 has already flown out the window.

18 THE COURT: Solicitor.

19 MS. LEMPESIS: First, I think Daniel Jones and
20 Bill Roucoulet are completely credible witnesses. You
21 know, if we get down to the question is, were they
22 shown a photo line-up after the fact? No. Was a
23 show-up done with the two of them? No, it wasn't.
24 Investigator Erdel is the one who will have the most
25 direct testimony of his identification of Mr. Garvin,

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1 based on his viewing of the Lowe's video, and then
2 Mr. Garvin at the scene.

3 Daniel Jones and Bill Roucoulet, I would like to
4 not be precluded from asking them if they recognize --
5 did they see that man, the man that Bill Roucoulet
6 followed for several minutes and recounted to dispatch
7 exactly what he looked like. I would like to ask Bill
8 Roucoulet if he sees that man in the courtroom. I
9 don't know the answer to that, but I would like to be
10 able to ask it.

11 The same thing with Daniel Jones. He viewed him
12 as he was shoplifting from the store, and again, I
13 don't know if he will be able to recognize him two
14 years later, and I would like to ask that question.
15 But no, a photo line-up wasn't done with either Mr.
16 Jones or Mr. Roucoulet.

17 Now, Mr. Bell mentioned that Investigator Erdel
18 would be the only one to ID Mr. Garvin. Jason Day
19 obviously is the one who stopped Mr. Garvin and made
20 the arrest, and he will be identifying Mr. Garvin as
21 the person that he arrested that day and charged with
22 shoplifting.

23 So, on behalf of the State's position, we should
24 be allowed to ask those two witnesses whether or not
25 they recognize the defendant or see the defendant in

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1 the courtroom.

2 MR. BELL: Judge, we have heard the Solicitor say
3 that she doesn't believe that either one of these
4 witnesses will be able to recognize Mr. Garvin. And
5 here we are a year and a half later, or whatever it
6 might be, and now they are saying, well, we don't
7 think, but, you know, now that we are in trial and the
8 defense is unaware of these identification witnesses
9 and it's something that they failed to do on that day
10 when it would have been fresh in their memory, it is
11 simply very suggestive, a violation of discovery rules,
12 and being contradicted by what the Solicitor is saying
13 that she believes their testimony to be.

14 So, they want to have it both ways. They want to
15 say, well, they don't -- may not remember, but we will
16 wait and see. When they get in the courtroom I would
17 like to be able to ask the question and have two more
18 people identify Mr. Garvin, which is in none of the
19 discovery I've received.

20 MS. LEMPESIS: Your Honor, the information is
21 implied in the discovery. Mr. Bell had the contact
22 information for Bill Roucoulet and for David Jones.
23 The information is right there in discovery. There's
24 been no discovery withheld.

25 There's been no -- I've discussed -- you know, I

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1 have obviously prepared for trial, but if there were
2 any supplemental discovery I would have given it to
3 Mr. Bell. And I think that he understands that he has
4 everything that I have. But I want to make that very
5 clear.

6 MR. BELL: Judge, that's fine. I just want to be
7 limited by what I have. And there is no ID information
8 from either of those men in what I have.

9 THE COURT: Well, I'm not sure that I agree with
10 the defense statement that it's a violation of
11 discovery requirements. Everything has been disclosed
12 that they have. And the fact that they haven't asked
13 the question doesn't necessarily mean that they can't
14 ask the question.

15 As far as Jones, yeah, if he testifies that he
16 did -- that he was the one operating, and that he --
17 which I guess means he had the same view that the video
18 showed, I assume that, then he is seeing the same thing
19 that they will see. I mean, they saw the same thing.
20 He had a -- he had an opportunity, if I understand the
21 testimony correctly, to in fact view close-ups of the
22 Defendant's face, from what I just heard a few minutes
23 ago. The video does. So, I assume that Jones had that
24 same opportunity, and did. So, I would be inclined to
25 say that he could be asked questions.

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1 I'm not sure, though, about the other witness.
2 Because if he were -- was never any closer, and I'm
3 just going to pick, just, you know, he could have done
4 everything that I heard that he did and still not be
5 within a hundred feet of the defendant.

6 I'm speculating when I say that he could. But he
7 also could have been 10 feet away from him, I don't
8 know. But if somebody is as close as they ever got to
9 another person was a hundred feet, you know, I mean,
10 what kind of -- how are you going to be able to get a
11 facial identification of somebody that you have never
12 seen before? I don't know. That would be much more --
13 I would be much more concerned about that testimony.

14 But I think that we have got to find out what he's
15 going to say about, first of all, his opportunity to
16 view. I don't -- if he never got close enough, I don't
17 see how he could possibly make identification. Those
18 are my thoughts.

19 What else?

20 MR. BELL: That is all for the defense, your
21 Honor. Beg the Court's indulgence.

22 THE COURT: All right. Wasn't that one of the
23 issues in My Cousin Vinny?

24 MR. BELL: Sorry, what was that?

25 MR. BAX: Opportunity to view the witnesses, dirty

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1 windows and trees?

2 THE COURT: Right.

3 MR. BAX: Yeah.

4 MR. BELL: That is all from the Defense, Your
5 Honor.

6 MS. LEMPESIS: Nothing further from the State,
7 Your Honor.

8 THE COURT: Let's try 9:15 in the morning so we
9 can have a chance to see about our witnesses.

10 MR. BAX: Yes, Your Honor.

11 THE COURT: All right. The Court is adjourned
12 until 9:15.

13 (Trial adjourned.)

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COLLOQUY

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 31st day of January, 2015.

9

10

11

12

MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBER 2012-GS-07-00962

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

MARCH 17, 2014

VOIR DIRE AND JUROR SELECTION

BEAUFORT, SOUTH CAROLINA

LEE ALBERT GARVIN

DEFENDANT

B E F O R E:

HON. BROOKS P. GOLDSMITH, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF THE STATE:

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HON. MARY CONCANNON
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EXHIBITS

No exhibits were admitted.

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VOIR DIRE AND JUROR SELECTION

1 MONDAY, MARCH 17, 2014

2 BEGINNING 2:16 P.M.

3 BY THE COURT:

4 BAILIFF: All rise. Court is now in session.

5 THE COURT: Please be seated. Good afternoon,
6 ladies and gentlemen.

7 BAILIFF: I need to get a count, your Honor, and
8 make sure everybody's here. All present, your Honor.

9 THE COURT: Ladies and gentlemen, as you may have
10 noticed, I'm not Judge Brown. My name is Brooks
11 Goldsmith. I'm a circuit judge. Up until about six
12 months ago, I was a circuit judge in Lancaster County,
13 South Carolina, and I was a resident judge for the Sixth
14 Judicial Circuit. Six months ago, I retired. I went to
15 semi-retirement status, moved to Edisto, and now I'm
16 only working three weeks a month. It's my pleasure to
17 be with you today.

18 I believe that we are ready to begin the selection
19 of a jury. Solicitor?

20 MS. CONCANNON: State's ready, your Honor.

21 MR. BELL: Yes, your Honor.

22 THE COURT: And?

23 MS. LEMPESIS: Thank you, your Honor. The State
24 calls Lee Albert Garvin, Indictment Number 2012-GS-07-
25 00962, the charge of shoplifting.

1 THE COURT: As you heard, ladies and gentlemen,
2 we're about to begin the case of the State of South
3 Carolina versus Lee Albert Garvin, who is charged with
4 shoplifting, \$2,000.00 or less in value of property.
5 The indictment alleges, in part, that this event
6 occurred in Beaufort County on or about April the 19th,
7 2012, and that the defendant did take away or conceal,
8 or attempted to do that, property of -- excuse me -- in
9 the nature of a DeWalt nail gun from Lowe's store on
10 Parkway.

11 I tell you that because, in just a few moments,
12 I'll begin asking you some questions concerning your
13 relationship with any of the people involved in this
14 case, including the defendant. Before I do that,
15 though, I'm going to ask the attorneys who are involved
16 in the case if they will identify themselves to you, and
17 identify any potential witnesses that could be called in
18 this case.

19 And after that's done, then I'll ask you questions
20 about your relationship with any of these people, the
21 witnesses, the attorneys, the defendant himself. And
22 we'll begin with the State. Solicitor?

23 MS. LEMPESIS: Thank you, your Honor. Good
24 afternoon. My name is Mary Lempesis. I am an assistant
25 solicitor for Beaufort County and the Fourteenth

1 Judicial Circuit. Sitting with me for this trial is
2 Mary Concannon. She is also assistant solicitor in
3 Beaufort County Solicitor's Office. I have with me, as
4 well, Investigator George Erdel. He works for the
5 Beaufort Police Department here in Beaufort County.

6 Other possible witnesses that we may call to
7 testify at trial include the following names: Mr.
8 William Rogela, Bill Rogela. He resides in Gladsden,
9 South Carolina, formerly of Beaufort -- formerly of
10 Beaufort County.

11 Daniel Jones. He resides in Summerville, South
12 Carolina. George Erdel, who I already mentioned.
13 Officer Jason Day of the Beaufort Police Department.
14 John O'Neill, a former officer at the Beaufort Police
15 Department. Chad Seronka, officer with the Beaufort
16 County Police Sheriff's Office.

17 William or Bill Carter with the Beaufort Police
18 Department. Melanie Smith at the Beaufort County
19 Sheriff's Office. And then, finally, Anthony "Tony" Ray
20 of the Beaufort Police Department. Thank you.

21 THE COURT: Thank you.

22 MR. BELL: Thank you, your Honor. I'm James Bell,
23 and I practice here in Beaufort County, and I'll be
24 representing Lee Albert Garvin. And this is Mr. Ari
25 Bax, also an attorney here in Beaufort County.

1 VOIR DIRE, BY THE COURT:

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

3 The first question I have for you, ladies and
4 gentlemen, is this. Is there any member of the jury
5 panel who has ever been related by blood or related by
6 marriage to any of the attorneys involved in this case,
7 or to any of the witnesses that have been identified to
8 you, or to the defendant himself? If you've ever been
9 related by blood or related by marriage to any of those
10 individuals, please stand.

11 Has any member of the jury panel ever had a close
12 personal or social relationship with any of the
13 attorneys involved in the case, with any of the
14 witnesses that have been identified, or to the defendant
15 himself? If so, please stand. And your name and
16 number? Okay?

17 JUROR NUMBER 196: Michele Mariano, 196.

18 THE COURT: 196. And would you be referring to --
19 let me ask you questions one at a time.

20 JUROR NUMBER 196: Okay.

21 THE COURT: Would you be referring to having a
22 personal relationship with one of the attorneys?

23 JUROR NUMBER 196: No, sir.

24 THE COURT: All right. With one of the witnesses?

25 JUROR NUMBER 196: Yes, sir. One of them used to

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VOIR DIRE AND JUROR SELECTION

1 come into my place of work as a customer.

2 THE COURT: And you think -- which witness is that?

3 JUROR NUMBER 196: Officer O'Neill.

4 THE COURT: He did come into your place of
5 business.

6 JUROR NUMBER 196: Before I left on maternity leave
7 and became a stay-at-home mom.

8 COURT REPORTER: I'm sorry, I didn't hear you.

9 JUROR NUMBER 196: Before I left, as a stay-at-home
10 mom.

11 THE COURT: And how long ago was that?

12 JUROR NUMBER 196: About ten years ago, but I do
13 run into him here and there in Beaufort. So, I don't
14 know if that plays into jeopardy.

15 THE COURT: All right. Now, is that the only
16 connection that you have with him, is that he came into
17 your business?

18 JUROR NUMBER 196: Yes, sir.

19 THE COURT: You ever visit in his home?

20 JUROR NUMBER 196: No, sir.

21 THE COURT: He ever visit in your home?

22 JUROR NUMBER 196: No, sir.

23 THE COURT: You all belong to any organizations?

24 JUROR NUMBER 196: No, sir.

25 THE COURT: Okay. All right. Thank you. Would

1 that fact interfere with your ability to be a fair and
2 impartial juror in this case?

3 JUROR NUMBER 196: No, sir.

4 THE COURT: Okay. Thank you, ma'am. Yes, sir,
5 your name and number.

6 JUROR NUMBER 141: Michael Hodges, 141.

7 THE COURT: 141?

8 JUROR NUMBER 141: 141.

9 THE COURT: All right.

10 JUROR NUMBER 141: I'm the current store manager at
11 Lowe's in Beaufort.

12 THE COURT: Say it one more time.

13 JUROR NUMBER 141: I'm the current store manager at
14 Lowe's of Beaufort, and I've worked with Daniel Jones.

15 THE COURT: Oh.

16 JUROR NUMBER 141: I was the manager. I was the
17 manager on that date, also.

18 MR. BELL: Judge, may we approach?

19 THE COURT: You may.

20 OFF-THE-RECORD BENCH CONFERENCE, OUT
21 OF HEARING OF JURORS. PRESENT: THE
22 COURT, MS. LEMPESIS, MS. CONCANNON,
23 MR. BELL, MR. BAX.

24 END BENCH CONFERENCE.

25 THE COURT: I'm coming right back to you.

1 JUROR NUMBER 141: . Okay.

2 THE COURT: Hang on a second. Before we go any
3 further, let me ask this. Is there any other juror who
4 either is now an employee of Lowe's, or was an employee
5 of Lowe's, on April the 19th, 2012? If you are now an
6 employee or were, please stand. Okay.

7 MR. BELL: Beg the Court's indulgence.

8 THE COURT: Yes.

9 Let me see Mr. Hodges down -- Juror 141 down front
10 just one second.

11 ON-THE-RECORD BENCH CONFERENCE, OUT
12 OF HEARING OF JURORS. PRESENT: THE
13 COURT, JUROR NUMBER 141, MS. LEMPESIS,
14 MS. CONCANNON, MR. BELL, MR. BAX.

15 THE COURT: The question I really need to ask is
16 this, is that, have you discussed the facts of this case
17 with any of these jurors? The facts of the case here.

18 JUROR NUMBER 141: No. No, sir.

19 THE COURT: Do you even know anything about the
20 facts of the case?

21 JUROR NUMBER 141: Not that I can recall about.

22 THE COURT: Okay.

23 JUROR NUMBER 141: And no, I did not discuss it
24 with anyone.

25 THE COURT: You don't recall anything about it, so.

1 JUROR NUMBER 141: No.

2 THE COURT: Okay. Thank you. Thank you for
3 standing. If you'll have a seat, I'll be back with you.

4 JUROR NUMBER 141: Okay.

5 THE COURT: Anything else?

6 MS. LEMPESIS: The other number was -- it was her
7 husband that works at Lowe's in Bluffton, according to
8 my notes. Number 330. It's a different Lowe's store,
9 and her husband is the one who worked there.

10 MR. BELL: It's still a corporate entity, and I
11 think --

12 MS. LEMPESIS: Sure.

13 MR. BELL: I think, the same -- same rationale.

14 MS. LEMPESIS: It's Number 330, Christine Watson.

15 THE COURT: Let me just ask her to step down here.

16 MR. BELL: Okay.

17 END BENCH CONFERENCE.

18 THE COURT: Let me just see one other juror down
19 front, please, Christine Watson, Juror 330.

20 ON-THE-RECORD BENCH CONFERENCE, OUT OF
21 HEARING OF JURORS. PRESENT: THE COURT,
22 JUROR NUMBER 330, MS. LEMPESIS, MS.

23 CONCANNON, MR. BELL, MR. BAX.

24 JUROR NUMBER 330: Hi.

25 THE COURT: Hi. You're Ms. Watson?

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VOIR DIRE AND JUROR SELECTION

1 JUROR NUMBER 330: I am.

2 THE COURT: The jury information sheet indicates
3 that your -- is it your husband that works at a Lowe's?

4 JUROR NUMBER 330: Exactly. In Bluffton. Um-hmm.

5 THE COURT: Okay. But not this Lowe's.

6 JUROR NUMBER 330: No.

7 THE COURT: Okay. Would that interfere with your
8 ability to be fair in this case?

9 JUROR NUMBER 330: I don't think so.

10 THE COURT: Do you know anything about the facts of
11 this case?

12 JUROR NUMBER 330: No.

13 THE COURT: Never heard about it?

14 JUROR NUMBER 330: No.

15 THE COURT: Okay.

16 MR. BELL: Okay.

17 THE COURT: All right. Thank you.

18 JUROR NUMBER 330: Um-hmm.

19 THE COURT: Please be seated. Anybody else you've
20 got?

21 MR. BAX: Our client is back, and he's out in the
22 hall. Unfortunately, he has the right to be present
23 during this process.

24 THE COURT: Sure.

25 MR. BAX: So, I'd like a moment to figure out if

1 he's going to come in or not, so we can seat him. Is
2 that all right?

3 THE COURT: Sure.

4 MR. BAX: Thank you, Judge.

5 END BENCH CONFERENCE.

6 THE COURT: We'll be back with you just in a
7 moment, ladies and gentlemen.

8 MR. BAX AND MR. BELL LEAVE COURTROOM.

9 MR. BAX AND MR. BELL ENTER COURTROOM.

10 MR. BELL: Thank you, your Honor.

11 THE COURT: All right. Next question, ladies and
12 gentlemen. Is any member of the jury panel or member of
13 your immediate family ever been represented by any of
14 the attorneys involved in this case? If so, please
15 stand.

16 DEFENDANT ENTERS COURTROOM 2:30 P.M.

17 THE COURT: Has any member of the jury panel formed
18 or expressed an opinion about any issue or any matter
19 involved in this case? If so, please stand.

20 Is there any member of the jury panel aware of any
21 bias or any prejudice that they may have towards either
22 the State or towards the defendant in this case? If so,
23 please stand.

24 Is there any member of the jury panel who was a
25 member of the grand jury which issued the indictment

1 that I referred to earlier, the indictment in this case?

2 If so, please stand.

3 Is there any member of the jury panel who is a
4 member of a contributor to any group which has as its
5 primary concern the promotion of law enforcement or
6 victims' rights? These groups would include, but would
7 not be limited to, MADD, SADD, CAVE, or such similar
8 organizations. If so, please stand.

9 Does any member of the jury panel know of any
10 reason whatsoever why he or she should not serve as a
11 juror in this case, with particular emphasis being
12 placed on your ability to be fair and impartial to both
13 the State and to the defendant? If so, please stand.

14 Anything else from the State? From the Defense?

15 MS. LEMPESIS: No, your Honor?

16 MR. BELL: No, your Honor.

17 THE COURT: The State is ready to select a jury?

18 MS. LEMPESIS: The State is ready, your Honor.

19 THE COURT: And the Defense?

20 MR. BELL: Judge, I would like to express to the
21 Court that I stated that I do know someone on the panel,
22 but the Solicitor is aware of that.

23 THE COURT: Okay. All right.

24 MS. CONCANNON: Similarly, your Honor, I do, as
25 well, know somebody on the panel. I have expressed that

1 to Mr. Bell and to Mr. Bax.

2 THE COURT: Okay.

3 MR. BELL: And my wife works with this young lady.

4 THE COURT: Okay. I finds disclosure has been
5 made.

6 MR. BELL: Thank you.

7 THE COURT: Ladies and gentlemen, the computer is
8 getting ready to randomly select names that will be
9 drawn, and the attorneys, each side, have a certain
10 number of opportunities to use what are referred to as
11 strikes, meaning, they have the opportunity to exercise
12 these rights to decide not to have someone sit on the
13 jury. They don't get to decide who is going to be on
14 the jury, but they get to decide whether to use their
15 strikes to decide if someone will not be on the jury.
16 And in just a moment, our computer is going to give us
17 the first name. We hope.

18 JUROR SELECTION:

19 THE COURT: Madam Clerk, please give us a jury.

20 MADAM CLERK: Juror Number 196, Michele Mariano.
21 You can just stand. What says the State?

22 MS. LEMPESIS: Please present this juror.

23 MADAM CLERK: What says the Defense?

24 THE COURT: Mr. Bell, what says the Defense?

25 MR. BAX: Your Honor, approach?

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VOIR DIRE AND JUROR SELECTION

1 MR. BELL: Can we take this matter up outside the
2 presence of the jury?

3 THE COURT: Let me see you at side bar. You can
4 have a seat until we resolve this matter.

5 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
6 HEARING OF JURORS. PRESENT: THE COURT,
7 MS. LEMPESIS, MS. CONCANNON, MR. BELL,
8 MR. BAX.

9 END BENCH CONFERENCE.

10 MR. BELL: Please excuse this juror from the trial
11 of the case.

12 MADAM CLERK: Juror Number 330, Christine Watson.
13 What says the State?

14 MS. LEMPESIS: Please present this juror, your
15 Honor.

16 MADAM CLERK: What says the Defense?

17 MR. BELL: Please excuse this juror from the trial
18 of the case.

19 MADAM CLERK: Juror Number 327, Randy Walz. What
20 says the State?

21 MS. LEMPESIS: Please present this juror.

22 MADAM CLERK: What says the Defense?

23 MR. BELL: Please excuse this juror from the trial
24 of this case.

25 MADAM CLERK: Juror Number 57, Mary Carpenter.

1 What says the State?

2 MS. LEMPESIS: Please present this juror.

3 MADAM CLERK: What says the Defense?

4 MR. BELL: Please seat this juror.

5 MADAM CLERK: Juror Number 329, Donna Watkins.

6 What says the State?

7 DEFENDANT: The number?

8 MADAM CLERK: 329, Donna Watkins.

9 MS. LEMPESIS: Please present this juror.

10 MADAM CLERK: 329. What says the Defense?

11 MR. BELL: Please seat this juror.

12 MADAM CLERK: Juror Number 137, Deborah Heverly.

13 What says the State? Juror Number 137.

14 MS. LEMPESIS: Thank you. Please present this
15 juror.

16 MADAM CLERK: What says the Defense?

17 MR. BELL: Please seat this juror.

18 MADAM CLERK: Juror Number 233, DeMille Parker.

19 What says the State?

20 MS. LEMPESIS: Please present this juror.

21 MADAM CLERK: What says the Defense?

22 MR. BELL: Please seat this juror.

23 MADAM CLERK: Juror Number 332, Debra Way. What
24 says the State?

25 MS. LEMPESIS: Please present this juror.

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1 MADAM CLERK: What says the Defense?

2 MR. BELL: Please seat this juror.

3 MADAM CLERK: Juror Number 129, Sally Griffith.

4 What says the State?

5 MS. LEMPESIS: Please present this juror.

6 MADAM CLERK: What says the Defense?

7 MR. BELL: Please seat this juror.

8 MADAM CLERK: Juror Number 140, Michael Hoag. What

9 says the State?

10 MR. BELL: I'm sorry, that number, please?

11 MADAM CLERK: I'm sorry, Juror Number 140.

12 MR. BELL: Thank you.

13 MS. LEMPESIS: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 DEFENDANT: Strike.

16 MR. BELL: Please seat this juror.

17 DEFENDANT: Strike it -- strike.

18 MADAM CLERK: Juror Number 174, Kenneth Krieger.

19 What says the State?

20 MS. LEMPESIS: Please present this juror.

21 MADAM CLERK: What says the Defense? Juror 174.

22 MR. BELL: Please excuse this juror.

23 MADAM CLERK: Juror Number 257, Carl Sampson. What

24 says the State?

25 MS. LEMPESIS: Please present this juror.

1 MADAM CLERK: What says the Defense?

2 MR. BELL: Please -- please seat this juror.

3 MADAM CLERK: Juror 198, Jennifer Matthews. 198.

4 What says the State?

5 MS. LEMPESIS: Please present this juror.

6 MADAM CLERK: What says the Defense?

7 MR. BELL: Please seat this juror.

8 MADAM CLERK: Juror Number 163, Madonna Jordan.

9 What says the State? Juror 163.

10 MS. LEMPESIS: Please present this juror.

11 MADAM CLERK: What says the Defense?

12 MR. BELL: Please seat this juror.

13 MADAM CLERK: Juror Number 213, Walter Montgomery.

14 What says the State?

15 MS. LEMPESIS: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MR. BELL: Please excuse this juror.

18 MADAM CLERK: Juror Number 95, Theresa Drake. What
19 says the State?

20 MS. LEMPESIS: Please present this juror.

21 MADAM CLERK: And for the Defense, strike due to
22 cause?

23 MR. BELL: Please seat this juror.

24 MADAM CLERK: Juror Number 158, William Johnson.

25 What says the State?

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1 MS. LEMPESIS: Please present this juror.

2 MADAM CLERK: And for the Defense?

3 MR. BELL: Please seat this juror.

4 MADAM CLERK: Now, we'll be striking for the
5 alternate. The strikes will be one and two. Juror
6 Number 227, Meghan O'Reilly. What says the State?

7 MS. LEMPESIS: Please present this juror.

8 MADAM CLERK: What says the Defense?

9 MR. BELL: Please seat this juror. Please seat
10 this juror.

11 MR. BAX: Hey, hey, quit. Excuse me?

12 DEFENDANT: I asked you a question, man. Who
13 picking the jury, me or you?

14 MR. BAX: Your Honor?

15 THE COURT: Hold on just a second.

16 MR. BAX: Thank you.

17 THE COURT: Any matters of law the Court needs to
18 consider concerning the composition of selection of the
19 jury from the State?

20 MS. LEMPESIS: None from the State, your Honor.

21 THE COURT: From the Defense?

22 MR. BELL: No, your Honor.

23 THE COURT: Ladies and gentlemen, those of you who
24 are not seated over here, I have what most of you are
25 going to suspect is great news. Not only are you not

1 required to sit on this jury, you're not going to be
2 required to sit on any jury. All of the other jury
3 trials, except for this one, that were scheduled this
4 week, have been resolved.

5 You don't have to call anymore, don't have to come
6 back anymore. But you don't have to leave. You can
7 stay. We're going to be here today and tomorrow. And
8 if you want to come back and observe or watch, you're
9 certainly entitled to do that. I'm getting ready to
10 tell you, thank you very much, but does anybody have a
11 question before we do that? Madam Clerk, anything for
12 the jury?

13 MADAM CLERK: No, your Honor. Thank you for your
14 service.

15 THE COURT: Thank you, ladies and gentlemen.

16 JURORS NOT CHOSEN LEAVE COURTROOM

17 2:45 P.M.

18 THE COURT: And now, ladies and gentlemen, I've got
19 some news for you. I don't know if you're going to
20 think it's good or bad. But at any rate, I'm going to
21 excuse you until 9:30 in the morning.

22 I'm going to ask you to do a couple of things,
23 though. Don't let anybody talk to you about the case.
24 You don't talk to anybody about the case. The only time
25 you can talk or hear, or have anything to do with the

1 case is sitting right there, or when you're deliberating
2 in the jury room.

3 Don't do any research about this case or the people
4 involved in this case. Don't get on the Internet. I
5 don't have any reason to think there is anything on the
6 Internet about it, but I tell you, you can't do that.
7 I'm telling you, you cannot get on the Internet and do
8 anything similar to try to do your own personal research
9 on the people involved in the case or the case itself.

10 The attorneys think we'll finish this case
11 tomorrow. It's a possibility we may not, but they think
12 we will. So, does anyone have a problem with being here
13 at 9:30 in the morning?

14 Ladies and gentlemen, we have some other things we
15 have to do in this case before we can actually begin the
16 trial of this case. We will see you in the morning,
17 ladies and gentlemen, at -- I'll tell you what, we need
18 to be -- just to be certain, does everybody still have
19 the number that you can call? Let's call it at 6:00
20 o'clock this evening, or sometime after 6:00, just in
21 case something were to happen. I've actually had an
22 attorney have a heart attack, and couldn't proceed with
23 the trial. Anything's possible, and you never can tell.
24 Anything's possible, and I wouldn't want you to have to
25 come in tomorrow morning and we tell you, I'm sorry, we

1 can't go forward with the trial.

2 So, call to make sure that you're coming back in,
3 in the morning. You think we're coming at 9:30? We're
4 99 percent sure we're coming back at 9:30? All right.

5 Now, does anybody have a question or a problem?

6 JUROR: So, sir, there will be a message?

7 THE COURT: For the jury.

8 JUROR: All right.

9 THE COURT: The juror message should say report at
10 9:30 tomorrow morning. They're just going to show you
11 the jury room before you leave.

12 Ladies and gentlemen, you're excused 'til 9:30 in
13 the morning, tomorrow morning, unless the message says
14 something else.

15 BAILIFF: Thank you, your Honor.

16 JURORS LEAVE COURTROOM 2:52 P.M.

17 BAILIFF: The jury is clear, your Honor.

18 THE COURT: Please be seated. I understand there
19 are some motions that we -- that need to be heard in
20 this case. Before we do that, though, Mr. Garvin, let
21 me say a couple of things to you.

22 During the selection of the jury, there were
23 apparently some -- it appeared to be some disagreements
24 that you had with your attorneys. All right. Those
25 things happen. You may continue to have disagreements

1 with your attorney, but you can't have disagreements
2 with your attorneys in the presence of the jury that
3 disturbs the trial of the case.

4 DEFENDANT: I understand that, your Honor.

5 THE COURT: Disagreements with your attorneys are
6 fine. And you tell -- write little notes. When we have
7 breaks, you talk to them about it, but you can't raise
8 your voice and interrupt witnesses once we start this
9 trial. The rules change.

10 DEFENDANT: Well, your Honor, I --

11 THE COURT: We'll get tight -- we'll get tight on
12 you if you start speaking out loud while a witness is on
13 the witness stand. Any questions? You understand?

14 DEFENDANT: I understand that.

15 THE COURT: Okay. Motions.

16 MR. BELL: Judge, initially, I --

17 THE COURT: We going to do this next door?

18 MS. LEMPESIS: We had discussed going back next
19 door, Judge, where your court reporter is set up, to do
20 the motions.

21 THE COURT: I think we will. That was the plan.
22 We told everybody we were going next door. All right.
23 We're going to recess to Courtroom Number 2.

24 MS. LEMPESIS: Thank you, your Honor.

25 DEFENDANT: Your Honor, I got a question. Your

1 Honor, this not fair.

2 THE COURT: You need to talk to your attorneys
3 about this during this little break we've got going
4 right now.

5 DEFENDANT: He's the one doing it to me.

6 THE COURT: Talk to your attorney.

OFF THE RECORD 2:53 P.M.

3-17-14 STATE V. GARVIN

VOIR DIRE AND JUROR SELECTION

CERTIFICATE OF REPORTER

MARCH 17, 2014 VOIR DIRE AND JUROR SELECTION

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing March 17, 2014, Voir Dire and Juror Selection is a true, accurate, and complete record of the Voir Dire and Juror Selection had on said date, in the case of State of South Carolina versus Lee Albert Garvin, Beaufort County, Court of General Sessions, Case Number 2012-GS-07-00962; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

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S/Wanda H. Rowe

Wanda H. Rowe, CVR-M
Official Court Reporter

1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2012GS0700962

5 State of South Carolina,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Albert Lee Garvin,

9 Defendant(s).

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15 March 18, 2014

16 Beaufort, South Carolina

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21 BEFORE:

22 The Honorable Brooks Goldsmith

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11	Exhibit No.:	Pages:	
12	Description:	Marked:	Received:
13	1 video CD	45	45
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17	6a T-shirt	99	99
18	6b sweat pants	100	100

19

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21	1-3 sentencing sheets	119
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PROCEEDINGS

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THE COURT: Did we decide there were any pretrial matters to resolve before the jury comes in?

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MR. BELL: Your Honor, I don't think anything additional out of yesterday's conversation, but the State has informed me this morning that they want to introduce a statement made by my client. I think that we need to do a Denno hearing.

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MS. LEMPESIS: Judge, we have -- I do apologize, I didn't bring it up yesterday afternoon.

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Mr. Garvin, when he was with -- when Investigator Erdel was identifying Mr. Garvin he said something to the effect of, You cannot bring someone from the store to ID me. He was in back of the patrol car when Investigator Erdel ID'd him, and this was sort of a spontaneous excited utterance of some sort that Mr. Garvin made when Investigator Erdel was looking at his face, You can't get someone from the store to ID me. And something about knowing his rights.

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It is in the report, Judge. I mean, it's in the report that we gave to Mr. Bell. And then there was also a statement when he was -- when Mr. Garvin was initially stopped by Officer Day on Road. Officer Day stopped him, said, Hey, what are you doing,

1 and he said, I'm just out for a jog. So, those are the
2 two statements made by the Defendant that we would
3 intend to introduce at trial.

4 If Your Honor feels like a Jackson v. Denno is
5 necessary, we could have Investigator Erdel testify.
6 And Officer Day is here as well if you need to hear
7 from him. I'm not sure if it's required for Officer
8 Day's statement, but we are ready to do whatever Your
9 Honor needs.

10 Then in reference to the hearings from yesterday,
11 the identification issue with Mr. Rockalay, we did
12 speak with Mr. Rockalay this morning. We are not going
13 to ask him to try to identify Mr. Garvin in the
14 courtroom. It's just been too long, he doesn't know if
15 he would be able to.

16 MR. BELL: My understanding with every one of
17 those issues you had already ruled that he could, if
18 asked, or at least make an attempt.

19 THE COURT: If asked the question?

20 MS. LEMPESIS: Yes, sir.

21 MR. BELL: Judge, our problem -- our problems with
22 introducing the statements, I'm not sure that -- what
23 the clear meaning of the statement is. He was
24 Mirandized at the time, he's being asked to turn to
25 look at Officer Erdel, and I think that we are entering

1 possibly some sort of interrogative type of area which
2 would be prohibited after he has invoked his Miranda
3 rights and said that he wants a lawyer.

4 We don't know what store he's referring to, we
5 don't know what he's heard from or how many officers
6 are there at the scene where he could have gleaned the
7 type of information that they are investigating.

8 So, to suggest that -- if that is what the State
9 is trying to do, that his reference to you can't get
10 someone from the store is a spontaneous utterance,
11 basically an admission to knowing that there was some
12 sort of criminal activity that happened at Lowe's, and
13 he knows that independent of everything else that is
14 going on around him, is a pretty big leap and really
15 goes to the ultimate issue of who robbed Lowe's. And I
16 just don't think that it -- as an excited utterance, I
17 don't think that it's decipherable in such a way that
18 has the clarity of meaning to be meaningful for a jury
19 in court when balanced against the prejudice that it
20 could have against the defense in this case.

21 Do you understand? I mean, am I --

22 THE COURT: I kind of do, but don't we need to
23 hear the context in which -- don't we need to have a
24 short hearing to see what was said?

25 MS. LEMPESIS: Absolutely, Your Honor.

1 THE COURT: Let me just do this, I note that your
2 client is not here, or not sitting at the table here.

3 MR. BELL: Yes, sir. I've received no contact
4 from him. I do not know whether he's running late or
5 not. It's not our intent to attempt to delay
6 proceedings because he's not here. We would like to
7 have him here certainly, but I imagine the Court would
8 rather proceed as well.

9 THE COURT: Well, do you want to check in the hall
10 to see if he's out there waiting for some unknown
11 reason?

12 MR. BELL: I'd be happy to.

13 THE COURT: Every now and then you find --

14 MS. LEMPESIS: Could we get -- we could ask the
15 deputy perhaps to call his name, Your Honor.

16 THE COURT: Sure.

17 MR. BELL: I don't mind walking out real quick.

18 No, sir.

19 (The attorney and the deputy
20 both go to look for the
21 defendant.)

22 THE COURT: Call your first witness.

23 MS. LEMPESIS: Thank you. The State calls
24 Investigator Erdel.

25 Thereupon,

EXAMINATION OF GEORGE ERDEL

1 GEORGE ERDEL

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 THE CLERK: Thank you. If you would have a seat,
5 please.

6 If you will just state your name, please, for the
7 record.

8 THE WITNESS: George Erdel.

9 DIRECT EXAMINATION

10 BY MS. LEMPESIS:

11 Q Investigator Erdel, we went through some of this
12 yesterday, but who do you work for?

13 A The Beaufort Police Department.

14 Q Thank you. You were working on April 19, 2012?

15 A Correct.

16 Q On that day, did you respond to a report of
17 shoplifting at Lowe's in Beaufort County?

18 A Yes.

19 Q Did you go to the Lowe's store that day and view a
20 video surveillance footage of a shoplifting?

21 A Yes, I did.

22 Q Did you have the occasion to identify the person
23 who shoplifted from Lowe's?

24 A Yes.

25 Q When you were making that identification, where

EXAMINATION OF GEORGE ERDEL

1 were you?

2 A I was leaned into the back seat of Officer Day's
3 patrol car where the defendant was handcuffed and sitting in
4 the car.

5 Q Okay. And your purpose was to see if -- what was
6 your purpose?

7 A My purpose was just to look at his face to see if
8 it was him.

9 Q Okay. Him being?

10 A Being the person that was on the video.

11 Q Okay. And did you determine that it was the same
12 person?

13 A Yes.

14 Q Okay. And Investigator Erdel, as you were doing
15 that did the defendant say anything to you?

16 A Yes, he did. He said words to the effect of, and
17 I don't recall the specific verbiage, but he said that he
18 knew what the law was and that you can't bring someone from
19 the store to come look at me.

20 Q Okay. And did he say anything else?

21 A Pretty much that he knew -- he was kind of just
22 rambling. Like, I know what the law is, you can't bring
23 someone from the store. And after that, I said I'm not from
24 the store, I am the police. And he may have said something
25 after that, but my purpose was accomplished so I just backed

EXAMINATION OF GEORGE ERDEL

1 out of the car and closed the door.

2 Q Okay. Did he -- did you note this in your report?

3 A I did make reference to it in my report, yes.

4 Q Okay. So, do you know, to your knowledge had he
5 already been placed under Miranda or advised of his Miranda
6 rights?

7 A I don't know.

8 Q But you said he was in the back of the patrol car
9 at the time that you identified him, and at the time that
10 the statement was made?

11 A Yes.

12 Q And did you ask him any questions?

13 A I didn't ask him any questions. I had instructed,
14 I said, hey, look at me, and he wouldn't look at me. He
15 kept ducking his face away like he didn't want me to see
16 him.

17 Q Is that when he made his statement?

18 A I believe so. Well, I think that it was
19 immediately after I said, that's him, so that Officer Day
20 could overhear me. And I can't remember specifically. I
21 don't know if it was while I was looking or immediately
22 after, but it was really close in time. If it wasn't
23 simultaneously, it was shortly thereafter that I said that
24 that's him.

25 Q You said Officer Day was there as well?

EXAMINATION OF GEORGE ERDEL

1 A He was.

2 Q Do you remember who else was on the scene?

3 A No, I really don't.

4 Q Okay. Investigator Erdel, did you make any
5 reference to Lowe's or to the store --

6 A No.

7 Q -- before he made the statement?

8 A No.

9 Q Okay. And did you make any reference afterwards,
10 after he made the statement?

11 A No. He was very agitated and so forth, so, my --
12 I just got out of the car immediately.

13 Q Okay.

14 MS. LEMPESIS: No further questions from the State
15 at this time.

16 THE COURT: Mr. Bell.

17 CROSS EXAMINATION

18 BY MR. BELL:

19 Q Officer Erdel, what was the length of time between
20 when you received the initial call to go to Lowe's and the
21 time of your -- and your reviewing of the video, all that
22 time having elapsed, all the way to your arrival at the
23 arrest location?

24 A I would -- to the best of my recollection, I would
25 have to say maybe between five and ten minutes total elapsed

EXAMINATION OF GEORGE ERDEL

1 time. It wasn't very long. I mean, I'm not able to pin it
2 down.

3 Q You were able to watch a ten to 12 minute video in
4 the interim?

5 A Like I said, I don't -- I can't -- it was around
6 that time frame. Basically, like I said -- for example,
7 when I went to watch the video, I saw the defendant stealing
8 the item and running out. I may not have watched the entire
9 video from the moment he came into the store, but the
10 pertinent issue is what I watched.

11 Q How much of the video did you watch?

12 A I watched him walking back and forth, selecting
13 the drill, taking the drill out, hiding the drill and
14 running out. At which point I had seen enough. In other
15 words, I didn't need to see him running farther from the
16 store once he passed the point of sale I understood at that
17 point that he had shoplifted the drill.

18 Q Okay. And you said -- I believe that you just
19 stated that you don't recall the specific language.

20 A I'm certain that he said that he knew what the law
21 was. In other words, his exact words, as far as that went
22 was, I know what the law is and you can't have somebody from
23 the store come look at me. He was saying other stuff in
24 there, but that is all that I really caught. He was very
25 agitated.

EXAMINATION OF GEORGE ERDEL

1 Q Okay. I'm going to ask you about this statement
2 that is part of your supplemental that we are talking about
3 right now. "I did not understand at the time that Garvin
4 had apparently mistaken me for a store employee, due to my
5 plain clothes attire."

6 So, when you say Garvin had apparently
7 mistaken me, you really don't know -- that requires
8 interpretation on your part?

9 A Absolutely, yes. .

10 Q You don't know what he meant by that necessarily,
11 do you?

12 A I couldn't say for certain.

13 Q There is no recording so that we can understand
14 the specific language in context?

15 A Not that I'm aware of.

16 Q Okay. Thanks.

17 But there are other officers in this area
18 canvassing the area?

19 A I believe so. In other words, at the point that I
20 made the identification, I couldn't tell you if all of those
21 officers had basically converged. I know that some did, but
22 I can't say if there were still more out and about. There
23 could have been, there may not, I -- I don't know.

24 Q And because the arrest had been made, some could
25 have left?

EXAMINATION OF GEORGE ERDEL

1 A Possibly.

2 Q And you don't know, because you weren't there,
3 whether or not Mr. Garvin had any interaction with any
4 officer who could have informed him about what all of the
5 hullabaloo was about?

6 A I don't know.

7 Q So he might have known about the investigation of
8 a theft from Lowe's independent of that interaction between
9 you two, right?

10 A I guess. I don't know. I don't know one way or
11 the other. I mean, I guess anything is directly possible,
12 but I couldn't say one way or the other since I wasn't
13 there.

14 Q So since you can't know one way or the other, then
15 you can't necessarily interpret that as an admission?

16 A I just recorded what he said. It's not my
17 assertion that it was one way or another. I just recorded
18 what he said in my report. In my report I did say this is
19 what I think he was talking about. But yes, it could be
20 something else.

21 Q Okay, thank you.

22 I believe that he had been Mirandized at this
23 time, if I'm not mistaken, and you don't dispute that?

24 A I don't know.

25 Q And you asked that he look at you, correct? You

EXAMINATION OF GEORGE ERDEL

1 were asking him --

2 A It was more like a directive, hey, look at me. In
3 other words, I wasn't asking him to speak or say anything, I
4 just wanted him to turn his face so I could make the ID, or
5 not make the ID at that point. I had no idea until I saw
6 his face.

7 Q But that would have been part of your
8 investigation?

9 A Yes.

10 MR. BELL: Thank you.

11 THE COURT: Anything else?

12 MS. LEMPESIS: Nothing further from this witness,
13 Your Honor.

14 THE COURT: Okay. You may step down.

15 MS. LEMPESIS: Your Honor, would you like --
16 should I proceed with calling Officer Jason Day about
17 the statement regarding jogging, and then argue on both
18 statements after that, or what --

19 THE COURT: Let's do it that way.

20 MS. LEMPESIS: Okay, I'll call Officer Jason Day.

21 The State calls Master Sergeant Jason Day.

22 Thereupon,

23 JASON DAY

24 was called as a witness, having been first duly sworn,

25 was examined and testified as follows:

EXAMINATION OF JASON DAY

1 THE CLERK: Thank you.

2 If you will have a seat and spell your name for
3 the record, please.

4 THE WITNESS: Jason Day. J-A-S-O-N D-A-Y.

5 DIRECT EXAMINATION

6 BY MS. LEMPESIS:

7 Q Master Sergeant Day, who do you work for?

8 A Beaufort City Police Department.

9 Q Thank you. Your rank is master sergeant?

10 A Yes, ma'am.

11 Q Were you working on April 19th, 2012?

12 A I was.

13 Q Did you respond to a call of shoplifting from the
14 Lowe's store in Beaufort?

15 A I responded to a call of a suspicious person who
16 was running from Lowe's.

17 Q Thank you. And when you intercepted that
18 suspicious person, on -- where were you?

19 A I was driving down Road in the
20 direction of Lowe's. Towards Lowe's.

21 Q Okay. And Master Sergeant Day, what I'm going to
22 ask you about is the statement that was made to you by the
23 person that you stopped. The person that you stopped, did
24 you determine his identification or his name?

25 A I got his name at first when I saw him approaching

EXAMINATION OF JASON DAY

1 me. And I exited my -- I stopped and exited my patrol
2 vehicle and asked him to come to me, and in casual
3 conversation, I said, What are you out here doing, you know,
4 and his reply is that he was out running.

5 Q He was out running?

6 A Yes, ma'am.

7 Q Okay. And what happened at that point?

8 A As I was trying to just converse in
9 conversation -- and I was waiting for other officers to
10 arrive to help because he matched the description that we
11 received through Central Dispatch for the potential suspect.
12 But he started to act nervous, eyes were shooting in all
13 different directions. In my experience, that is going to
14 mean a fight or flight type response. So, to try to
15 deescalate what might transpire, I went ahead and placed him
16 in handcuffs.

17 Q Did he make any other statements after that point?

18 A Not to me, no, ma'am.

19 Q Thank you.

20 Did you -- did you advise him of his Miranda
21 rights?

22 A I did not. I -- another -- a vehicle approached
23 as I was at the interaction on the side of the road. So,
24 another officer that was there with me, he was starting to
25 pull his Miranda card out and to read Miranda to the

EXAMINATION OF JASON DAY

1 individual we had stopped, and I approached the vehicle that
2 was like -- essentially like watching us, to see what was
3 going on with that vehicle.

4 Q Did you determine who was in that vehicle?

5 A Yes, ma'am. It ended up being the complainant
6 that was on the phone with Central Dispatch that had
7 observed the suspicious activity.

8 Q The person who had observed the suspicious
9 activity; what was that activity?

10 A That an individual had seemed to be moving swiftly
11 across from Lowe's as he was removing something from
12 under his clothing, which he thought may be a drill or a
13 nail gun.

14 Q We are not going to get into all of that right
15 now.

16 But going back to the statement that
17 Mr. Garvin made to you, to be clear, that was when you
18 initially stopped him on the road?

19 A Yes, ma'am.

20 Q The statement again is that he was running?

21 A He was out for a jog.

22 Q Okay, out for a jog.

23 A (Nods in the affirmative).

24 Q That was made prior to him being advised of his
25 Miranda rights?

EXAMINATION OF JASON DAY

1 A Yes, ma'am.

2 MS. LEMPESIS: Thank you. No further questions of
3 this officer.

4 THE COURT: Mr. Bell.

5 MR. BELL: Thank you, Your Honor. Beg your
6 indulgence.

7 CROSS EXAMINATION

8 BY MR. BELL:

9 Q Good morning, Officer.

10 A Good morning.

11 Q I think that we have two different statements now.
12 At first you said he was out riding, and then you said he
13 was out for a jog.

14 A I don't recall the specific verbiage, but it was
15 to the effect that he was out for a run.

16 Q And you got the impression that was an exercise?

17 A Yes, sir..

18 Q Okay. You said that you didn't Mirandize
19 Mr. Garvin. Were you present for anyone who Mirandized --
20 you said that someone was getting out of the car to
21 Mirandize. Did they proceed with that?

22 A They read Miranda, and when I returned Officer
23 Knapp said he didn't want to say anything.

24 Q He had been Mirandized after your interaction?

25 A By another officer, yes, sir.

EXAMINATION OF JASON DAY

1 Q Immediately afterwards.

2 Thank you. Nothing further.

3 THE COURT: Anything else?

4 MS. LEMPESIS: Nothing further, Your Honor.

5 THE COURT: You may step down.

6 Do we have any other statements?

7 MS. LEMPESIS: Those are the only statements made
8 by the defendant that we intend to enter at trial, Your
9 Honor.

10 THE COURT: Mr. Bell, do you move to suppress
11 either or both?

12 MR. BELL: I certainly -- I forgot that we were
13 getting back to the statement of Officer Erdel. I
14 would move to suppress that. I don't think that
15 Erdel -- Officer Erdel had enough information to place
16 that statement into context. Specifically he did not
17 know how many officers Mr. Garvin had come into contact
18 with since being detained, who were all there for the
19 same purpose of investigating an alleged shoplifting
20 out of Lowe's. And I think that it is a little bit of
21 a stretch and would be misleading to a jury to suggest
22 that Mr. Garvin somehow outted the idea that he is the
23 only one who knew that something had happened at the
24 store as a spontaneous utterance of guilty knowledge
25 about what's transpired previously, when I think it's

EXAMINATION OF JASON DAY

1 just -- when it's easily within the realm of
2 possibility that that information arose naturally out
3 of, well, somebody else told me why they are here.

4 And so, Officer Erdel shows up in plain clothes,
5 perhaps it is easy to speculate that Mr. Garvin says,
6 well, something about a store employee and mistaken
7 Erdel for a store employee. But as far as that being
8 an admission of him having any criminal knowledge that
9 he couldn't have gleaned from the entirety of the
10 situation I think is prejudicial and I think that it
11 ought to be suppressed.

12 THE COURT: And as to the other statement?

13 MR. BELL: As to the other statement I don't have
14 any objection to that coming in.

15 THE COURT: Okay. Solicitor.

16 MS. LEMPESIS: Thank you, Your Honor.

17 I think that the statement given to
18 Investigator -- the statement made by the defendant to
19 Investigator Erdel as he's trying to ID Mr. Garvin
20 comes in not only as an excited utterance, but I think
21 that it comes in under 801(d)(2) as admission by a
22 party, deponent. It was an unsolicited statement given
23 by Mr. Garvin, and he referenced the store. He gave
24 the statement freely and voluntarily. It was given
25 after he was advised of his Miranda rights.

EXAMINATION OF JASON DAY

1 I think it is highly probative. It's more
2 probative than it is prejudicial, Your Honor. It shows
3 that Mr. Garvin knew what he had done, he knew that he
4 had just -- it is very telling that he is -- he knows
5 that he had left the store, why else would he make a
6 statement that they can't get someone from the store to
7 come ID me, I know my rights? And it is more probative
8 than prejudicial and should come in under 801(d)(2) as
9 an admission by a party defendant, and we ask that we
10 be allowed to ask Officer Erdel about this statement.

11 Thank you, your Honor.

12 MR. BELL: Judge, in response, if Mr. Garvin,
13 again, knew he was being arrested as a suspect on the
14 shoplifting from Lowe's, saying that you can't get a
15 store employee to come identify me, even if he is out
16 jogging isn't necessarily an unreasonable thing to do
17 or any sort of criminal admission, and it's just -- it
18 is not clear and it is not a clear admission of any
19 culpability, depending on what else could have
20 happened. I don't think that we can place this
21 statement properly in context with Officer Erdel's
22 statement.

23 If it had more clarity, if it was said in a vacuum
24 and it is an excited utterance that the person makes
25 with interaction with one officer, let's say, well,

EXAMINATION OF JASON DAY

1 that's different. Here Officer Erdel's coming up on
2 the scene where he has no idea what Mr. Garvin has
3 learned about the investigation.

4 So, to put any response to any instruction from
5 Officer Erdel, look at me, you know, after being
6 Mirandized, I think in an abundance of caution could
7 mislead a jury into believing that this is an
8 admission, and for us, you know, not to have to prove
9 anything or disprove anything, I don't know how we
10 disprove a statement that I don't know the meaning of
11 and don't know the context of, that the State is trying
12 to introduce for purely prejudicial means.

13 THE COURT: I understand what you are saying,
14 Mr. Bell, but I think that actually it goes more to the
15 issue of a jury argument on this. But I think that it
16 does qualify, as argued by the Solicitor, as an excited
17 utterance, or both, admission. A statement by a party
18 opponent. You know, all, all statements -- I say all
19 statements. Most statements by a party opponent are
20 prejudicial almost by nature. I agree with the
21 argument set forth by the Solicitor and will deny the
22 motion to suppress.

23 MR. BELL: Thank you.

24 THE COURT: Anything else that we need to take up?

25 MR. BELL: We would just move to sequester the

EXAMINATION OF JASON DAY

1 witnesses.

2 THE COURT: Say it again.

3 MR. BELL: Sequester the witnesses.

4 THE COURT: Solicitor.

5 MS. LEMPESIS: And we have no objection. We just
6 ask that Investigator Erdel be able to stay in the
7 courtroom.

8 THE COURT: When you say sequester, you mean keep
9 them out of the courtroom until it's time to testify?

10 MR. BELL: Yes, sir.

11 THE COURT: Okay. Do you want to check one more
12 time on your client?

13 MR. BELL: Might as well.

14 THE COURT: Other than that, I guess that we are
15 ready for the jury.

16 MR. BELL: Sorry, Judge.

17 MS. LEMPESIS: Judge, I think that me and the
18 defense agree that we would like to go forward with the
19 trial without Mr. Garvin, as Mr. Garvin cited under
20 Rule 16. I do have one request since we are going
21 forward without him. When I ask -- when Investigator
22 Erdel testifies during the trial, would it be
23 permissible for me to ask Investigator Erdel if the
24 person that he identified that day was the same person
25 that was here yesterday for jury selection?

EXAMINATION OF JASON DAY

1 THE COURT: Did you see that person yesterday in
2 jury selection?

3 MS. LEMPESIS: Yes.

4 MR. BELL: Your Honor, I feel a little funny going
5 along with it and not objecting to it since it's not an
6 in-court identification. I know as a practical matter
7 it seems logical, but it's kind of an identification
8 today of someone who is not present. So, I'll object
9 to it for the record.

10 THE COURT: Okay, but I'm going to allow it.

11 Do you want me in this stage of the proceedings to
12 say anything to the jury about his right not to be
13 present?

14 THE BAILIFF: Your Honor, the jury is entering.

15 MR. BELL: Just a moment.

16 THE COURT: Hold one more second.

17 MR. BELL: Or we can go sidebar.

18 THE COURT: That is okay. Go ahead. I'll get him
19 to close the door.

20 MR. BELL: No, Judge --

21 THE COURT: Okay.

22 MR. BELL: -- and I'm not going to, you know,
23 agree to let my -- let the Court go forward without my
24 client's, you know, being here. I think he has a right
25 to be here. I have no reason to -- no reasonable

EXAMINATION OF JASON DAY

1 grounds for objecting to going forward, but as far as
2 the Solicitor asking me if I agree that we should go
3 forward without his presence --

4 THE COURT: You do not.

5 MR. BELL: -- I'm not doing that, and I don't
6 think that any instruction is necessary. He's not
7 here, that is apparent.

8 THE COURT: Well, let's just for the record note
9 that we recessed yesterday until 9:15 today, and it's
10 now ten minutes till ten. So based on that and
11 actually what he said himself yesterday in court
12 indicating that he might not, that he might choose not
13 to be present; I'm going to go ahead and we are going
14 to proceed with the trial in his absence.

15 MR. BELL: Understood, Your Honor.

16 THE COURT: Okay, and let's now bring the jury in.

17 Good morning, ladies and gentlemen, we are about
18 to begin the trial. The first thing that we will do is
19 have the clerk administer the oath to you.

20 THE CLERK: If you will please rise and raise your
21 right hand.

22 (Whereupon, the jury panel was given an oath as jurors.)

23 THE CLERK: Thank you. And have a seat, please.

24 THE COURT: Just a few words, ladies and
25 gentlemen, before we actually begin the trial of the

JURY INSTRUCTIONS

1 case.

2 As you know, the defendant is charged by way of an
3 indictment with the crime of shoplifting. I tell you
4 that the indictment is simply the way that the case is
5 brought into court. It's not evidence. It cannot be
6 considered by you as evidence in this case.

7 The defendant has pled not guilty to that charge.
8 The State, therefore, has the burden of proving each of
9 the elements of the indictment beyond a reasonable
10 doubt. And it'll be your duty, ladies and gentlemen,
11 to determine whether the State meets that burden. Your
12 purpose as jurors is to find and determine the facts of
13 this case. You are the sole judges of the facts of
14 this case.

15 If at any time I do anything or say anything to
16 cause you to believe that I have an opinion about the
17 facts of the case, you must disregard it. The law does
18 not permit me to express an opinion in your presence
19 about the facts in the case. You are to determine the
20 facts of the case from the testimony that you will hear
21 from witnesses who take the witness stand, and there
22 may be exhibits, may be documents, photographs, I don't
23 know, but that is all that you will consider.

24 The attorneys will make to you in a few minutes
25 opening statements where they tell you what the case is

JURY INSTRUCTIONS

1 going to be about, or what the case is not going to be
2 about, and then we will have testimony.

3 After all of the evidence has been submitted, then
4 the attorneys will make to you their closing arguments
5 where they will try to convince you to see the case the
6 way that they see it. And then I'll tell you about the
7 law that applies in the case. Once all of that is
8 done, you will retire to the jury room and begin your
9 deliberations. Until that time you are not to let
10 anyone discuss the case with you, and you are not to
11 discuss the case with anyone else, and believe it or
12 not even in the jury room you cannot discuss the case
13 amongst yourself. Not until the case is finally
14 submitted to you for deliberation.

15 A couple of other things. From time to time you
16 may see the attorneys ask if they can approach me and
17 we have a sidebar where we go to the corner and whisper
18 so that we think that you can't hear us. The reason
19 that we do that is not to try to keep secrets from you.
20 Most of the time it's because the attorneys are
21 requiring me to discuss with them a matter of law. But
22 in doing that I may have to discuss the facts of the
23 case. And as I have already told you, the law does not
24 permit me to discuss the facts of the case in your
25 presence.

JURY INSTRUCTIONS

1 Ladies and gentlemen, we will go ahead now and let
2 the attorneys make their opening statements to you,
3 beginning with the State.

4 Solicitor.

5 MS. LEMPESIS: Thank you, Your Honor. May it
6 please the Court, Mr. Bell.

7 Good morning. What is one of the things, one of
8 the basic things that you learn as a child? You are
9 taught that you don't take something that is yours.

10 Lee Albert Garvin took something that wasn't his.
11 In April of 2012 he had a plan. He went to the Lowe's
12 home improvement store on Parkway with a
13 plan. And he executed his plan. But unfortunately for
14 Mr. Garvin not everything went just according to his
15 plan.

16 Mr. Garvin is on trial today for shoplifting, and
17 I'll be the first to tell you that this isn't going to
18 be the sort of like glamorous, high suspense
19 drama-filled case that you see on TV. He's charged
20 with shoplifting, he took something that didn't belong
21 to him from the Lowe's store in Beaufort.

22 My job today is not to provide drama and suspense,
23 my job is to prove to you all beyond a reasonable doubt
24 that Mr. Garvin is guilty of the crime of shoplifting.

25 Now, you are going to hear from several witnesses

OPENING BY MS. LEMPESIS

1 through this case. You are going to hear from Daniel
2 Jones. He is the loss prevention manager at Lowe's.
3 He was working that day, he was watching the video
4 monitors from his office and he saw Mr. Garvin in the
5 nail gun department. He zeroed in on Mr. Garvin, he
6 watched as Mr. Garvin took a nail gun from the shelf,
7 walked over to another aisle, intentionally,
8 deliberately, carefully took the nail gun out of its
9 packaging, walked around some more and came back to
10 that nail gun. And then you will see -- Mr. Jones will
11 tell you how he watched Mr. Garvin put that nail gun
12 down his pants and walked out of the store. He took
13 something that wasn't his, didn't pay for it, and
14 walked out of the store. Mr. Jones attempted to stop
15 Mr. Garvin in the parking lot. That is when Mr. Garvin
16 ran.

17 From there you will hear from Bill Rockalay, just
18 a man driving down Parkway when he sees a
19 suspicious individual running across the street. He
20 sees this man concealing something under his clothing,
21 he thinks that it's suspicious and so he called 911,
22 the police, and reported what he saw. You will hear
23 from Mr. Rockalay about how he followed Mr. Garvin.

24 He followed him when he went behind a shopping
25 center. He watched Mr. Garvin as he went into the

OPENING BY MS. LEMPESIS

1 woods, and he watched as Mr. Garvin came out of the
2 woods, having shed a layer of clothing and no longer
3 carrying that nail gun. But Mr. Rockalay was still
4 watching him. And he watched him and he followed him
5 and he reported everything that he saw to the dispatch.

6 And it was from this information that the officer
7 from the Beaufort Police Department were able to
8 identify Mr. Garvin on Road. He matched
9 the description from the caller, and he was stopped
10 there on Road. Mr. Garvin was stopped by
11 the police, and it was there that he was eventually
12 placed under arrest for shoplifting.

13 You will also hear from the officer from the
14 Beaufort County Sheriff's Office with the K-9 unit who
15 was called to the scene to help search the woods to
16 find the items, find the stolen nail gun, and also find
17 the clothing left behind. You will hear from all of
18 these people.

19 Mr. Garvin, he had a plan that day. And he
20 thought that he could just walk out of that store
21 without paying for the merchandise. But what he didn't
22 account for was all of the people that would be
23 watching him. Every step of the way they were watching
24 him. And that wasn't planned.

25 I thank you now, in advance of the trial, I thank

OPENING BY MS. LEMPESIS

1 you for your time and your patience and your attention.
2 While, again, this isn't the most flashy case that you
3 could have been chosen to sit for, it is still a very
4 important case, and after you hear all of the testimony
5 today and see all of the evidence, I'm going to come
6 back and I'm going to ask you to find Lee Albert Garvin
7 guilty of shoplifting. Thank you.

8 THE COURT: Thank you, Solicitor. Mr. Bell.

9 MR. BELL: Thank you, Your Honor. May it please
10 the Court, Ms. Lempesis.

11 MR. BELL: Good morning, I'm James Bell again, and
12 I represent Mr. Garvin in this case.

13 Now, the Solicitor has just given you what she
14 described as a not very glamorous story. But be that
15 as it may, this is her version of the events and this
16 is what the State intends to prove. But the only way
17 that they do that, and let's be very clear, is through
18 witnesses. I believe that the Judge will instruct you
19 that as the finders of fact, everything that you learn
20 about this case will come from witnesses. Not through
21 an opening argument, not through my opening argument;
22 that is not evidence. Evidence is going to come from
23 the witness stand.

24 So, I ask that in fairness you hold the Solicitor
25 to what she says she intends to prove through these

OPENING BY MR. BELL

1 witnesses.. And that is very important that you not
2 prejudge, that you not make up your mind. I want you
3 to keep an open mind because there's been no testimony
4 of any substance about what actually happened with
5 actual witnesses on that day in question regarding
6 Mr. Garvin.

7 I too want to thank you for your service. It is
8 not the best week to be driving around in Beaufort
9 County. I saw a little accident at the base of and
10 , so I'm glad that you all made it here safely.
11 This is going to be a relatively brief trial and I
12 don't think that you will have any trouble maintaining
13 your attention throughout the trial. And I appreciate
14 that because it is an important matter, particularly
15 for Mr. Garvin, for a number of reasons.

16 In our constitution we provide that the defendant
17 is afforded the presumption of innocence, and that is a
18 real tangible right that he has, and that right he
19 carries throughout the course of this proceeding, this
20 process, this trial. And it's important to remember
21 that and give those words their full meaning, and I
22 believe that the judge will instruct you as such.

23 We are used to hearing these things from TV shows,
24 from glamorous TV shows, but they have real practicable
25 use in courtrooms throughout the United States today.

OPENING BY MR. BELL

1 You do have the opportunity, although it may be an
2 inconvenience to you, to observe how that works and how
3 that's applied, and we ask that you give those words
4 their full meaning, their full importance and your full
5 attention, and I'm sure that you will.

6 The burden is on the State to prove any defendant
7 guilty beyond a reasonable doubt. It is the highest
8 standard that I'm aware of of law. Standard of proof
9 in the world. And the reason, as meaning -- or all of
10 you should be aware, is that our forefathers, their
11 rights were trampled on repeatedly, and they made the
12 determination that if the State is going to proceed
13 against an individual with an indictment, it is just a
14 piece of paper at this point, as the judge told you,
15 but with an allegation, if they are going to do that,
16 the State, the police, the prosecution are going to be
17 held to a high standard.

18 And we should expect that of law enforcement. We
19 should expect good police work, we should expect good
20 investigation, and for the very reason that we don't
21 want to find innocent people guilty we want to take
22 this matter seriously, we want them to meet this high
23 burden of proof. We want the presumption of innocence
24 to have real meaning.

25 During the course of this trial you'll have the

OPENING BY MR. BELL

1 opportunity to do a number of things, but one is judge
2 the credibility of all witnesses. This is not a hard
3 thing to do because we do it every day. I think that
4 we do it sometimes subconsciously, sometimes
5 consciously. But whether you run into an acquaintance,
6 a friend at the grocery store, church, on the street
7 shopping, wherever it might be, if they are telling you
8 something you are thinking about whether you are
9 believing that or not because you have a history with
10 that person and you know whether or not they might be
11 telling you the truth, or whether they have the
12 opportunity to know the thing that they are telling
13 you. We do it all of the time.

14 It is the same way in the courtroom, but -- and
15 when I say "credibility" I don't mean is someone lying
16 or not. I just mean, do they have the opportunity to
17 know what they purport to know. And things of that
18 nature. And you do have to think about that and you
19 have to think about what police officers have done and
20 what they have not done, and hold the State to conduct
21 where they failed to do things that would help you in
22 making your decision.

23 Thank you, and I trust that you will give this
24 trial your full attention. Again, it'll be short and
25 we will be asking for a verdict of not guilty at the

OPENING BY MR. BELL

1 end. Thank you.

2 THE COURT: Thank you, Mr. Bell. Solicitor, call
3 your first witness.

4 MS. LEMPESIS: The State calls Daniel Jones.

5 Thereupon,

6 DANIEL ALLEN JONES

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 THE CLERK: Thank you. If you will have a seat,
10 please. If you will state and spell your name for the
11 record, please.

12 THE WITNESS: Daniel Allen Jones, D-A-N-I-E-L
13 A-L-L-E-N J-O-N-E-S.

14 DIRECT EXAMINATION

15 BY MS. LEMPESIS:

16 Q Good morning, Mr. Jones.

17 A Good morning.

18 Q Mr. Jones, who do you work for?

19 A Lowe's.

20 Q What is your position with Lowe's?

21 A I am a loss prevention manager.

22 Q How long have you worked for Lowe's?

23 A I have been with Lowe's for nine years this July.

24 Q Sorry, say that one more time.

25 A I have been with Lowe's loss prevention for nine

EXAMINATION OF DANIEL ALLEN JONES

1 years this July.

2 Q Okay. And currently, where do you currently work?

3 A I am currently in the Lowe's of Summerville. Up
4 in the Charleston market.

5 Q And what are your duties; what do your duties
6 include as the loss prevention manager?

7 A The four objectives of my job are to cover over
8 safety, shrink expense control and liability. I deal a lot
9 with the safety aspect of the stores. Training, things like
10 that. Shrink control over operational, internal and
11 external losses, along with just controlling the bottom line
12 expenses of the store.

13 Q Okay. And were you working, Mr. Jones, at the
14 Lowe's here in Beaufort in April of 2012?

15 A Yes, ma'am.

16 Q Were you working on April 19th of 2012?

17 A Yes, ma'am.

18 Q Thank you. I'm going to ask you to sort of
19 recount your day there. Where were you -- where is your
20 office in the Lowe's store?

21 A The office is up at the front, across from
22 customer service. Near the admin office, cash office. It
23 is a door on the exterior wall that goes into a separate
24 room with all of the cameras and things like that. There's
25 an entryway door from the inside of the store and there's

EXAMINATION OF DANIEL ALLEN JONES

1 also an entryway door from the outside of the store.

2 Q How many -- you referenced cameras and monitors,
3 how many monitors do you have in that office?

4 A At the time with that system, there were four
5 cameras -- or four monitors running about 36 cameras.

6 Q Thirty-six cameras, okay. And what are those
7 cameras set on, or what are they focused on?

8 A They are different types of cameras. We have
9 PVMs, public view monitors, that look at, say, the main
10 entrance so that you actively see yourself as you are
11 entering the store. We have them in certain areas
12 throughout the store. High theft, high shrink areas. And
13 we have still cameras that look at one designated spot all
14 of the time. Over registers and over certain doors
15 throughout the store. And then we have PTZs, which are
16 pan-tilt-zooms. They will look in one location, but they
17 can be moved to whatever location you need to look at.

18 Q These cameras and the monitor setup, is this all
19 recorded?

20 A Yes. It's recorded 24/7, it's all digital. You
21 don't have to change tapes, it's not analog. It's stored on
22 the main processor there for -- generally, depending on how
23 much space it is taking up, anywhere from three to five
24 months.

25 Q Okay. And is it recording -- is there any sort of

EXAMINATION OF DANIEL ALLEN JONES

1 lag in the recording, or is it all --

2 A No, it's real time.

3 Q It is real time, okay. On this day, April 19th of
4 2012, did you have occasion to focus in on any one
5 particular section of the store?

6 A Yes. I was actually working paperwork, which is
7 normal routine, different type of exception base reports
8 that we have to work every day. The common practice is to
9 work them there in front of the cameras, constantly just
10 glancing up, taking a look at the different areas, different
11 cameras. All of the cameras are pulled up on the different
12 monitors at all times so you can see those certain areas.
13 As I was working on the report I was actually glancing up at
14 different cameras.

15 Q Did you turn your attention at any point to the
16 nail gun section?

17 A Yes, I had one camera, which was a PTZ,
18 pan-tilt-zoom, that was looking directly at two bays toward
19 the nail guns. The reason that it's there, that is
20 considered high theft items. We were losing quite a few
21 nail guns at the time. I glanced up from working paperwork
22 and noticed three different individuals in the area. I
23 thought that with many people there in the area I needed to
24 take a break from the paperwork and watch and see what was
25 happening.

EXAMINATION OF DANIEL ALLEN JONES

1 Q Did you take that break and watch that area?

2 A Yes.

3 Q Can you tell me what you saw when you watched the
4 monitor?

5 A I began conducting live surveillance, I saw three
6 different individuals in that area. As soon as I began
7 watching, they all started separating. I kind of watched
8 them -- two of them moved away from the nail guns, and then
9 I focused on the individual that was still right there,
10 actively looking at and touching the nail guns. I began
11 surveillance of that individual.

12 Q If you can, walk us through what you saw that
13 individual do.

14 A The subject was looking at multiple nail guns,
15 looking at displays. Also looking at the boxes on the
16 shelf. I continued to watch him as he handled different
17 items, selected several different ones before he ended up
18 deciding on a DeWalt nail gun. As soon as he selected the
19 product off of the shelf he glanced up at the ceiling,
20 looking for -- what I assumed looking for where cameras were
21 located. He then made his way out of the tool department
22 down the insulation aisle, which is directly across from it.
23 I still had a clear view with the camera, so I continued to
24 follow him.

25 There I observed him set the tool down on the

EXAMINATION OF DANIEL ALLEN JONES

1 shelf and began to mess with the product. Occasionally he
2 would leave as employees or customers would come by, enter
3 the aisle or walk past the aisle. He began messing with the
4 tool. You cannot see exactly what he's doing at first with
5 the tool, but then you see that he's removed the yellow
6 sleeve that goes around the tool as he pulls it off of the
7 shelf and moves it to an different shelf. Then from there
8 he continues to mess with it. And again as more employees
9 or customers would walk by he'd leave the aisle, circle
10 around and come back once the aisle was clear again. He did
11 that several times. Each time he would come back he would
12 mess with the tool some more on the shelf.

13 Eventually he was able to open the product,
14 the case that would have been secured. On the video you see
15 him removing the actual nail gun from the case, turns toward
16 the camera, lift his sweatshirt and places the nail gun in
17 the front of the pants and cover it up with the sweatshirt
18 and then began to come off the aisle.

19 At this point I contacted one of the managers
20 that was working because it was my intention at that point
21 if he were to exit with the product to detain him. But with
22 Lowe's policy to do that I had to have witnesses with me for
23 my protection and their protection. So, I had the manager
24 collect a couple of employees as witnesses, had them wait
25 outside, which I assumed at first he was going to exit

EXAMINATION OF DANIEL ALLEN JONES

1 through Lumber. That was the closest exit so I had them
2 wait there. Through continued video surveillance I saw that
3 he came back down the main aisle towards the front of the
4 store exit, at which point I had them -- talking to them by
5 phone, had them come up towards the front of the store.

6 At that point I found he was going to be
7 going out the main entrance so I exited my office via the
8 external exit, came around the front of the store and met up
9 with the witness that were already out there and was
10 approaching him.

11 At the time the subject came out the door I
12 was maybe 15-foot away or so. He looked at me. I attempted
13 to give him the same spiel that we normally give them of
14 identifying myself, Lowe's loss prevention, I need to
15 recover the unpaid-for merchandise that you have. Before I
16 could finish saying that I was the Lowe's loss prevention he
17 began running across the parking lot. At that -- sorry, go
18 ahead.

19 Q Did you or any of the employees go after him?

20 A We attempted to pursue him for maybe 20, 30 feet.
21 He was a lot quicker than we were, so we did not have a
22 chance to.

23 Q So when you approached the suspect that you saw in
24 the video surveillance, when you approached him outside of
25 the store, was that the same suspect that you had seen

EXAMINATION OF DANIEL ALLEN JONES

1 inside the store?

2 A Yes.

3 Q Was he -- you said that you ran after him, but you
4 all couldn't catch him?

5 A No.

6 Q Did you call 911, or anyone in the store call 911?

7 A Before I could call 911 I would have to get
8 approval from my supervisor, just because we don't normally
9 immediately contact law enforcement for that. So I called
10 my boss, informed him of what happened, that I had gone to
11 make an apprehension of the subject that still had the
12 product and we were not able to recover the product. At
13 that point in time she called her supervisor, got the
14 approval, called me back and said, yes, go ahead.

15 Q Okay. And do you -- do you recall the sort of
16 clothing that the Defendant was wearing during the video?

17 A He was wearing baggy pants, I believe that they
18 were sweat pants, along with a T-shirt with a hooded
19 sweatshirt overneath it.

20 Q Did you have occasion to speak with anyone from
21 Beaufort Police Department?

22 A After the fact, yes.

23 Q Did you make -- so, do you -- is it your duty to
24 make copies of videos of that surveillance footage?

25 A Yes, I have the ability to make copies of any of

EXAMINATION OF DANIEL ALLEN JONES

1 the video off of there.

2 Q Did you make a copy for law enforcement?

3 A I did.

4 Q Did you give that copy over to law enforcement?

5 A Yes.

6 MS. LEMPESIS: Your Honor, may I approach the
7 witness?

8 THE COURT: Sure.

9 BY MS. LEMPESIS:

10 Q Mr. Jones, I'm going to hand you what's been
11 previously marked as State's Exhibit 1. Would you look at
12 that and tell me if you recognize that.

13 A Yes, ma'am.

14 Q How are you able to recognize it?

15 A This is a copy of the video that I made for law
16 enforcement.

17 Q At my request, have you reviewed that video?

18 A Yes, ma'am, I did.

19 Q Is it a true and accurate copy of the video
20 surveillance as you observed it on the date of the incident?

21 A Yes, ma'am. It is the exact copy that I made.

22 MS. LEMPESIS: Your Honor, at this point, we move
23 to admit State's 1 into evidence.

24 THE COURT: Any objection?

25 MR. BELL: No, Your Honor.

EXAMINATION OF DANIEL ALLEN JONES

1 THE COURT: All right, admitted without objection.

2 *(Whereupon, State's Exhibit No(s) 1 marked for*
3 *identification and received in evidence.)*

4 MS. LEMPESIS: Thank you, Your Honor, and we would
5 move to publish it to the jury.

6 THE COURT: Granted.

7 MS. LEMPESIS: Just a moment, with the Court's
8 indulgence.

9 (The video being played.)

10 BY MS. LEMPESIS:

11 Q Mr. Jones, as we watch this video, if you could --
12 are you able to see it from where you are sitting?

13 A Yes.

14 Q Actually, if you could --

15 MS. LEMPESIS: Your Honor, may the witness step
16 down from the witness stand?

17 THE COURT: You may.

18 Q Come on over here, Mr. Jones.

19 If you could just sort of tell us what you
20 were --

21 A Like I said, I was -- I was working paperwork at
22 the time, glanced up at the camera, noticed individuals near
23 the two bays which are there on the right that the subject
24 is looking at. Noticed them in the area, decided that I
25 would start watching that area since it was a high theft

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1 product.

2 The other two individuals walked off. I
3 began focusing on the subject that was actually handling
4 nail guns at the time. I continued to watch him. Like I
5 said, he selected several different nail guns at first
6 before he settled on a DeWalt nail gun.

7 Q I'll stop you there as we just watch the video.

8 That was the look-up at the camera?

9 A That was the look-up at the camera. We don't have
10 product or anything at the ceiling, so generally shoplifters
11 will look up to see where cameras are located so they know
12 where to move.

13 MR. BELL: Objection, your Honor.

14 THE COURT: Objection to what?

15 MR. BELL: If we may step up.

16 THE COURT: If you want to pause that.

17 MS. LEMPESIS: I've paused it.

18 (Bench conference.)

19 BY MS. LEMPESIS:

20 Q Thank you, Mr. Jones. I'll start the video again.
21 If you will just observe the video. Thank you.

22 Mr. Jones, I'm going to skip now to -- that
23 is the end of the first video, and we will move now to the
24 second video on the disc that you reviewed. Tell us now
25 before we start it, what is this going to show?

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1 A This is the exterior of the building, the parking
2 lot. This is where we attempted to make contact. I come
3 out from above the palm tree on the left, the exit door of
4 my office. You will see me come from behind the tractors on
5 the sidewalk. You will see the witnesses in Lowe's vests
6 coming across the parking lot as well. Eventually you will
7 see the subject come out from the main entrance on the
8 left-hand side. You will see me approach him from the side.
9 He will look at me, I make initial contact to try to
10 identify myself. At that point he flees.

11 Q Thank you.

12 Thank you, Mr. Jones, you can take the stand.

13 (Witness resumes stand.)

14 BY MS. LEMPESIS:

15 Q Mr. Jones, you saw on the video as the defendant
16 ran from you in the parking lot. Can you sort of tell me
17 what general direction he ran in?

18 A Towards Parkway.

19 Q Okay.

20 MS. LEMPESIS: No further questions from the State
21 at this point, Your Honor.

22 THE COURT: Thank you.

23 CROSS EXAMINATION

24 MR. BELL: Thank you, Your Honor. May it please
25 the Court.

EXAMINATION OF DANIEL ALLEN JONES

1 BY MR. BELL:

2 Q Good morning, Mr. Jones.

3 A Good morning, sir.

4 Q Now, you made reference to contacting your
5 superior or your boss in reference to making a 911 call?

6 A Uh-huh. (Indicating affirmatively.)

7 Q How long after -- I think I saw a video time stamp
8 of 11:20. Is that approximately the time that the subject
9 left Lowe's?

10 A Yes.

11 Q Okay. Do you know or recall what time you called
12 911?

13 A Within five minutes.

14 Q Okay. 11:25?

15 A Yes, sir.

16 Q And that is an estimate?

17 A Yes, sir.

18 Q Now, did you do anything regarding this incident
19 after the -- in the store afterwards? You remained at that
20 store?

21 A Yes, I was there for -- yes, I was there
22 afterward.

23 Q Did you collect the packaging that the drill would
24 have been contained in?

25 A Yes.

EXAMINATION OF DANIEL ALLEN JONES

1 Q And what did you do with that packaging?

2 A We were told that we could dispose of that.

3 Q Sorry?

4 A We were told that we could dispose of that.

5 Q When did you dispose of it?

6 A It would have been the same day.

7 Q Who told you that you could dispose of it?

8 A I believe that it was -- law enforcement said that
9 that was not necessary. I'm not one hundred percent on
10 that.

11 Q And you are not sure who you talked to in law
12 enforcement?

13 A No.

14 Q Was that relayed to you directly or indirectly?

15 A It would have been directly.

16 Q On the phone?

17 A In person.

18 Q In person?

19 A Yes.

20 Q But you don't remember who you talked to?

21 A No.

22 Q Okay. Thank you.

23 And would that have been that morning or
24 early that afternoon?

25 A It would have probably been that afternoon by

EXAMINATION OF DANIEL ALLEN JONES

1 then, since it was almost noon.

2 Q And did you -- and they didn't want to take it
3 into evidence?

4 A No, they had -- I'm assuming that they had the
5 images of the product. I believe we matched serial numbers
6 with the box, but I can't be certain. It's been so long.

7 Q So you don't know whether the box matched the
8 serial number of the item that was recovered?

9 A I'm fairly certain we did that at that time.

10 Q But you don't know for sure?

11 A I couldn't tell you that.

12 Q Thank you. And you may have already stated this,
13 but that video recording hasn't been manipulated, edited in
14 any way?

15 A No, sir.

16 Q Thank you, Mr. Jones.

17 A Yes, sir.

18 MS. LEMPESIS: Just a couple of follow-up
19 questions.

20 REDIRECT EXAMINATION

21 BY MS. LEMPESIS:

22 Q Do you know the value of the nail gun that was
23 taken?

24 A I believe it was around \$180.

25 Q And you testified just now that you recall someone

EXAMINATION OF DANIEL ALLEN JONES

1 in law enforcement coming back to the store in reference to
2 the nail gun?

3 A Yes.

4 Q Do you recall if they returned the nail gun to you
5 or to someone else working at the store?

6 A It was returned to the store.

7 Q Thank you.

8 MS. LEMPESIS: I have no further questions for
9 this witness, Your Honor.

10 RE-CROSS EXAMINATION

11 BY MR. BELL:

12 Q Just briefly on redirect.

13 You took that item back into inventory in the
14 store?

15 A Yes.

16 Q When would that have happened?

17 A That would have been later on that day.

18 Q Later on that day?

19 A Yes, sir.

20 Q After it had been moved into evidence?

21 A Yes.

22 Q And then they brought it to your Lowe's and you
23 signed a form, do you recall?

24 A I can't recall.

25 Q Okay.

EXAMINATION OF DANIEL ALLEN JONES

1 MR. BELL: Thank you.

2 THE COURT: All right, thank you. You may step
3 down.

4 Call your next witness.

5 MS. CONCANNON: The State calls Bill Rockalay.

6 MR. BELL: Judge, can we briefly approach before
7 that?

8 THE COURT: All right.

9 (Off the record discussion.)

10 Thereupon,

11 WILLIAM CHARLES ROUCOULET

12 was called as a witness, having been first duly sworn,

13 was examined and testified as follows: by the clerk.

14 THE CLERK: Please state your name and spell it
15 for the record, please.

16 THE WITNESS: William Charles Roucoulet, Sr.
17 William, W-I-L-L-I-A-M, Charles, C-H-A-R-L-E-S. Sr.,
18 S-R. The last name is R-O-U-C-O-U-L-E-T.

19 DIRECT EXAMINATION

20 BY MS. CONCANNON:

21 Q Good morning, Mr. Roucoulet. Am I pronouncing
22 that correctly?

23 A Yes.

24 Q Where do you currently live?

25 A Drive in Ladson.

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 Q Where were you living in 2012?

2 A Lived on s Island, Circle.

3 Q What did you do while you were living here in
4 Beaufort?

5 A At that time I was working for the Beaufort County
6 Facilities Maintenance. I was the HVAC section leader.

7 Q Do you remember by any chance April 19th of 2012?

8 A Yes.

9 Q Do you think that you can recount the events of
10 that day for us, please?

11 A I was actually -- I think that I had just left the
12 government center and was going out to Burton Wells, the
13 park out in Burton Wells. And that is the way that I
14 normally go, is down Parkway. I can't recall
15 if I was stopped at the light at or whether I
16 was passing through that intersection. However, I noticed a
17 person running across the road, and that is something that
18 normally you would do just in case there's something, a
19 hazard ahead. But I also noticed that as the person walked
20 over -- they were kind of jogging, I guess. They walked
21 over to this field on the corner of I believe
22 is the name of the road, and Road, and as they
23 were going across the road they pulled a nail gun out from
24 under their shirt, and I thought that was odd because I had
25 just seen them running from Lowe's. And then at that point

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 is when I decided to call to dispatch.

2 Q Do you remember what this person was wearing that
3 you witnessed?

4 A It appeared to be dark sweat clothes.

5 Q Sweatshirt, sweat pants?

6 A Yes.

7 Q Thank you. Where did you see him pull the nail
8 gun out?

9 A They were in the corner field. It's like a little
10 corner field there.

11 Q From the person, where did he pull the nail gun
12 out from?

13 A It kind of looked like he was struggling to keep
14 it where it was. I believe he lifted his shirt and pulled
15 it out from under his shirt.

16 Q You mentioned you called 911.

17 A Yes.

18 Q Why did you call 911?

19 A I just knew it was odd. He had just come running
20 from Lowe's, and normally if someone buys a nail gun they
21 are not going to have it under their shirt.

22 Q When you were traveling on , was
23 Lowe's -- what direction were you --

24 A It was on the left. I was heading towards
25 Wal-Mart. I guess that would have been south.

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 MS. LEMPESIS: Beg the Court's indulgence.

2 Your Honor, could Mr. Roucoulet come down from the
3 stand at this time?

4 THE COURT: Yes.

5 Q Mr. Roucoulet, as a visual aid I'm showing you a
6 map of the area. While you were on the phone with 911, do
7 you know where you are?

8 A I was traveling this way. Like I say, I can't
9 remember if I was stopped at the light, but I know at that
10 intersection is when I noticed that individual running
11 across this road right here into this field. This field
12 right here.

13 Q Okay. I'm going to bring it a little bit forward.
14 I'm sorry.

15 A Okay, sure.

16 But I was -- I was traveling this way, and
17 like I say, if you are driving you are going to notice
18 something in the road up ahead. But I noticed someone run
19 across the street right here. And they went into this field
20 and it looked like they were at a quick pace.

21 Q Where is Lowe's on this map?

22 A This is Lowe's.

23 Q You were at this point traveling which direction?

24 A Whatever this direction is. South, southwest.

25 Q After you saw someone running across the

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 intersection, what did you do?

2 A I had slowed down, but I was right about here, I
3 believe, and that's when I saw him pull the nail gun out
4 from under his shirt. And I was like, that's odd. That is
5 when I slowed down. That is when I called 911. At the same
6 time that I was doing that I made a U turn right here in
7 this opening here, and he was still walking across this way.
8 He had crossed . I pulled up to the light here.
9 I can't recall if I had to wait for the signal or not. But
10 he was walking this way and I turned down this way because I
11 just knew it -- actually, the whole time I was on the phone
12 with 911 and I turned this way and pulled into this parking
13 lot because I saw him walking across as if he was going
14 behind this building.

15 So I turned to the right and went inside the
16 parking lot and went around this direction and stopped right
17 here to see if he would come around the other side. And he
18 did. He approached right about here, and that's when he
19 made eye contact with my vehicle sitting here. That is when
20 he headed into the woods here.

21 I didn't see him after that. I drove down to
22 right here and looked up in there just to see what may have
23 been going on. And that is when I told dispatch, I believe
24 I told dispatch that he went into the woods and I could no
25 longer see him.

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 But I went back around, back out to Robert
2 Smalls, and I turned left, and I believe that this is a
3 church here. And at the time was Beaufort Liquidation, used
4 to be Beaufort Furniture, and I was like -- I saw it, I was
5 like, there's not a whole lot there, I wonder where this guy
6 must have gone. So I'm sitting right in this median.
7 Actually, I turned into Beaufort Liquidation and sat right
8 there for a minute, I didn't see any activity so I pulled
9 right back out.

10 I'm sitting in the median in front of
11 Beaufort Liquidation and I see someone come out. And at the
12 time I wasn't a hundred percent sure that it was the same
13 guy, but I'm sitting there, and I'm still on the phone with
14 dispatch. And so he comes walking out, and I was like,
15 well, maybe that guy maybe works for Beaufort Liquidation,
16 that is why he's coming out from back there. It turns out
17 he crosses the parking lot for Beaufort Liquidation, got
18 onto the sidewalk. At this time he is wearing a white
19 T-shirt and I believe beige shorts, and I was like, well --
20 as I'm sitting here, he starts to walk and I'm slowly
21 following him. And I'm not -- I'm still in the median, but
22 I am on the phone.

23 He walks and he gets to about the tree line
24 and turns around and sees that I'm sitting there. I don't
25 think that he saw me when he came from back here. I don't

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 believe he paid attention. I don't know.

2 But when he gets to the tree line and looks
3 over his shoulder and he sees me there and I'm on the phone.
4 And then he starts to jog and he jogs all the way down to
5 the corner here, and he goes up in this way. And I'm pretty
6 sure I'm still talking to dispatch. And he goes up in here.
7 This is really a dead end, supposed to be a dead end, but so
8 many people had driven through there so many that it was
9 worn down. He went up through there and I followed him in
10 my van. Now, once he got into this area and I'm here I lost
11 sight of him. So, I drove up in here.

12 Now, I wasn't sure where he may have gone. I
13 turned in here and I thought -- I even told dispatch, I
14 think we went into the backyard of Coastal Contractors. And
15 I had actually pulled into their yard and looked around.
16 Now, dispatch told me that the police department had
17 someone, and so I pulled my vehicle to right here. This is

18 Road. I pulled my vehicle to right here. And
19 I could actually see that the police had someone here.

20 Q Did the person that the police had apprehended,
21 did he match the description of the person that you had
22 originally followed from Lowe's onto and
23 throughout?

24 A He did.

25 Q Do you know what time of day this was? Was the

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 sun out or was it dark?

2 A It was during the day, yes. It was before lunch,
3 if I'm not mistaken. I can't remember if it was before or
4 after lunch.

5 Q Was it a clear day?

6 A Yes, it was a clear day.

7 Q Did you see anyone else in the vicinity that
8 matched the description of the man you saw running?

9 A No, not at all.

10 Q Thank you.

11 MS. LEMPESIS: I beg the Court's indulgence.

12 You may have a seat back in the witness stand.

13 BY MS. LEMPESIS:

14 Q Mr. Roucoulet, I have no further questions of you.
15 If you could answer any questions that Mr. Bell or Mr. Box
16 may have.

17 A Sure.

18 THE COURT: Any further examination?

19 MR. BELL: No questions, Judge.

20 THE COURT: Thank you. You may step down.

21 MS. LEMPESIS: Your Honor, I ask that

22 Mr. Roucoulet be excused.

23 THE COURT: Any objection?

24 MR. BELL: No, Your Honor.

25 THE COURT: You may step down.

EXAMINATION OF WILLIAM GEORGE ROUCOULET

1 Call another witness before we have a break?

2 MS. LEMPESIS: Thank you, your Honor. The State
3 calls Jason Day.

4 Thereupon,

5 JASON DAY

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE CLERK: If you can have a seat, please.

9 If you will state your name for the record,
10 please.

11 THE WITNESS: Jason Day.

12 DIRECT EXAMINATION

13 BY MS. LEMPESIS:

14 Q Thank you. Master Sergeant Day, who do you work
15 for?

16 A Beaufort Police Department.

17 Q How long have you worked there?

18 A I have been an officer since 2009 in Beaufort
19 City. In law enforcement since 1997.

20 Q Okay. And I mentioned your rank already, but your
21 rank is what?

22 A A master sergeant.

23 Q And your duties, what do your duties include?

24 A Currently my duties include overseeing the
25 day-to-day operations of patrol.

EXAMINATION OF JASON DAY

1 Q And were you working on April 19th of 2012 for the
2 Beaufort Police Department?

3 A Yes, I was.

4 Q What was your -- what did your duties include at
5 that time?

6 A At that time, that particular day, my duties
7 included basically patrol officer. I was actually assistant
8 supervisor for the shift that day.

9 Q Did you respond to a call regarding a shoplifting
10 incident that day at Lowe's?

11 A I responded to a call in reference to a suspicious
12 person that was seen -- appeared to be fleeing from the
13 Lowe's area, carrying something that they thought looked
14 odd.

15 Q Okay. And did you have any other information
16 about any sort of shoplifting that had occurred at Lowe's?

17 A Further -- later on, as information kept coming
18 out, we were getting other calls.

19 Q Okay. Can you tell me where the Lowe's in
20 Beaufort is located?

21 A , it is Parkway.

22 Q Is that in Beaufort County, Master Sergeant Day?

23 A No, it is in the jurisdiction of Beaufort City.

24 Q Jurisdiction of Beaufort City, thank you.

25 You said that you got information from

EXAMINATION OF JASON DAY

1 dispatch about a suspicious person. What was the
2 information -- what was the description that you received
3 from dispatch?

4 A The information that we received originally was a
5 black male was seen crossing and appeared to be pulling
6 out an item from under his sweatshirt or his clothing that
7 he had on. The complainant who was on the phone with Center
8 disptach throughout the duration until I made contact was
9 giving updated information to disptach, which was being
10 relayed via the radio to all of the patrol division.

11 Q What was the person that you were looking for
12 wearing?

13 A Originally the individual that crossed the road
14 was wearing a sweatshirt and like long darker pants. The
15 information that came out to us later on was that an
16 individual had come out of the wood line and was wearing a
17 white T-shirt.

18 MR. BELL: Your Honor, I'm going to object to
19 hearsay.

20 THE COURT: Sustain the objection.

21 BY MS. LEMPESIS:

22 Q What did you do as a result of the information
23 that you got from disptach?

24 A Based on the location of where the individual --
25 the information that was being relayed, the location of

EXAMINATION OF JASON DAY

1 direction of travel, I made an approach from onto
2 Road.

3 Q Did you come into contact with Road --
4 did you come into contact with anyone there?

5 A Yes, ma'am, I did.

6 Q What did the person look like that you came into
7 contact with?

8 A On Road, kind of around the Burton
9 Fire Department headquarters building I approached -- as I
10 was coming down the road I was coming into view of a black
11 male that was wearing a white T shirt that appeared to be
12 wet and sweaty. So I pulled my patrol vehicle over to the
13 side and called him to me.

14 Q When you called him to you, what did you say to
15 him?

16 A Just in casual conversation I said, Hey, what are
17 you doing, or something to that effect.

18 Q What was his response?

19 A His response was something to the effect of -- I
20 don't know the exact verbiage, was, I'm out for a run, I'm
21 out for a jog. Interpretation, he was out exercising.

22 Q Did he have on exercise sort of clothes?

23 A He had on a white T shirt. To be honest with you,
24 I don't know about the pants.

25 Q Do you remember what color the pants were?

EXAMINATION OF JASON DAY

1 A Tan.

2 Q Okay. And so you said you stopped him and he said
3 he was out for a jog or out for a run. Describe a little
4 bit more for me his appearance, what did his -- you said
5 what his clothes looked like, but what was his general
6 appearance?

7 A General appearance, he appeared to me to be wet
8 with sweat. He had grass kind of over his legs and all over
9 his shoes, like grass particles. He appeared to be acting a
10 little bit nervous, in my opinion.

11 Q So, what did you do at this point?

12 A I was kind of waiting for another officer to come,
13 which they did rather quickly. But as I was sitting there
14 with him at the front of my patrol vehicle his eyes started
15 wandering around. Kind of staring past me, through me, in
16 the immediate area.

17 Q Did you -- did you -- what did you do next?

18 A I placed him into handcuffs.

19 Q Okay. Why did you do that?

20 A To detain him.. Based on my experience when people
21 start to do that it's either a fight or flight type thing.
22 They're looking for a way to get away from me, or the other
23 alternative is to see if I have any fellow officers around
24 me, to cause me harm. So I placed him in handcuffs to
25 combat anything that might transpire either in that way

EXAMINATION OF JASON DAY

1 negative.

2 Q You said that other officers had arrived. Do you
3 remember how many other officers arrived?

4 A Two officers arrived.

5 Q Okay. What did you do next after you placed him
6 in handcuffs?

7 A When I placed him into handcuffs another fellow
8 officer was right there, and I saw a vehicle that was
9 approaching and then stopped a short distance away from me,
10 and stopped a short distance away from me, facing me. And
11 so I said to the officer, You got him. And I walked to the
12 vehicle to see, to inquire why the vehicle was stopped,
13 staring at us.

14 Q Did you learn why that vehicle had stopped?

15 A Yes, ma'am. When I made contact with the driver
16 of the vehicle I spoke to him through the window and I
17 learned that he had been the individual on the phone with
18 Central dispatch, giving them information.

19 Q So you determined that he was the 911 caller?

20 A Yes, ma'am.

21 Q Okay. And did you confirm with that man that the
22 person that you had detained was the person that the 911
23 caller had been following?

24 A He said to me that that was the individual that he
25 had followed.

EXAMINATION OF JASON DAY

1 Q Did you -- tell me sort of what happens next.

2 MR. BELL: Judge, I'm going to object.

3 THE COURT: To the question or to the response?

4 MR. BELL: The response.

5 THE COURT: I'll sustain the objection.

6 Q Tell me what you did next, Master Sergeant Day.

7 What did you do with the defendant?

8 A I put him in the back of my patrol vehicle.

9 Q At some point, did you determine his
10 identification?

11 A Yes, ma'am.

12 Q What was his name?

13 A His name was Albert Lee Garvin.

14 Q Okay. And you put him -- you said that you put
15 him in the back of your patrol car?

16 A Yes, ma'am, I did.

17 Q Did you -- what did you do next?

18 A This was a short period of time had transpired. I
19 had another officer that had stopped at Lowe's to view some
20 of the video footage. So, in that short period of time we
21 were trying to inquire whether the suspect that I had
22 stopped was in fact the person that had just committed a
23 crime at Lowe's.

24 Q Okay. And did that officer respond to where you
25 were?

EXAMINATION OF JASON DAY

1 A Yes.

2 Q And did -- to your knowledge, did that officer
3 have the opportunity to identify Mr. Garvin?

4 A Yes, ma'am.

5 Q Okay. And what did you do as a result of that
6 identification?

7 A I placed him under arrest for shoplifting.

8 Q Thank you. And going back to approximately how
9 long that time frame was, can you give us an approximation
10 of how long you were waiting?

11 A If I can give an approximation, maybe three to
12 seven minutes. We were a short distance from Lowe's, very
13 short distance.

14 Q Okay. You said that other officers arrived. To
15 your knowledge, was -- did another officer advise Mr. Garvin
16 of his Miranda rights?

17 A As I was walking when the vehicle approached and I
18 saw the vehicle, another fellow officer, Officer Knapp, he
19 was pulling his Miranda card out of his pocket and he was
20 beginning to read it to Mr. Garvin as I was approaching the
21 vehicle.

22 Q The vehicle driven by the person, the 911 caller?

23 A Yes, ma'am.

24 Q So, you said as a result of the identification you
25 placed Mr. Garvin under arrest for shoplifting?

EXAMINATION OF JASON DAY

1 A After I had a positive identification from another
2 fellow officer.

3 Q Thank you. Did you -- let me ask you, were there
4 any other people in that area that day that matched the
5 description that you had received from disptach?

6 A I personally didn't see anybody else in the area
7 except for the individual that I had stopped.

8 Q Thank you. And what did you do after you placed
9 him under arrest for shoplifting?

10 A Took him to the detention center.

11 Q Okay. Did you return back to that area, to the
12 scene?

13 A I returned to another portion of the scene, yes,
14 ma'am, I did, to an individual who was actually the
15 supervisor for the day. They had contacted the K-9 team to
16 come out and do an article search to see if we could find
17 property in the wood line.

18 Q Did you have any personal knowledge of any
19 property that was recovered?

20 A Yes, ma'am. I saw -- I took custody of a nail gun
21 that was recovered.

22 Q Thank you.

23 A And there was some clothing recovered also.

24 Q Let's talk about the nail gun that you took
25 custody of. Did you -- what did you do with that nail gun?

EXAMINATION OF JASON DAY

1 A I -- when I took custody of the nail gun, I took
2 it to Lowe's and went to the LP office. I filled out a
3 property receipt and I matched the serial number of the nail
4 gun that was recovered in the wood line to the actual box
5 that was left at Lowe's, and the serial numbers matched.

6 Q Just to be clear, the nail gun that was recovered
7 from the woods matched the serial number on the box that was
8 left behind at the Lowe's store?

9 A Yes, ma'am, I personally matched the serial
10 numbers.

11 Q Okay. Did you -- while you were at Lowe's did you
12 determine the value of the nail gun?

13 A They looked it up for me, and I want to say that
14 it was like -- the actual dollar figure, it was like a \$189
15 and some change.

16 Q Okay. And then what did you do with that nail
17 gun?

18 A I turned it over to LP officer, and he signed my
19 property receipt.

20 Q Okay. And just to be clear, LP is?

21 A The loss prevention officer.

22 MS. LEMPESIS: Just a moment, with the Court's
23 indulgence?

24 THE COURT: Sure.

25

EXAMINATION OF JASON DAY

1 BY MS. LEMPESIS:

2 Q Master Sergeant Day --

3 MS. LEMPESIS: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 BY MS. LEMPESIS:

7 Q I'm going to hand you what's been marked now as
8 State's Exhibit 7. Do you recognize that item?

9 A Yes, ma'am, this is the property receipt that I
10 filled out.

11 Q Thank you. So, this is the property receipt that
12 you were referring to just now in your testimony?

13 A Yes, ma'am.

14 MS. LEMPESIS: And permission to publish it to the
15 jury, Your Honor?

16 THE COURT: Sure.

17 BY MS. LEMPESIS:

18 Q And so, just to be very clear, what this shows --
19 tell me again what this shows.

20 A It shows that I had a piece of property that I
21 returned to Lowe's and they signed for it.

22 Q Okay. And again, the serial numbers matched?

23 A Matched the box that was left at Lowe's that was
24 located.

25 Q Okay.

EXAMINATION OF JASON DAY

1 MS. LEMPESIS: One more moment of the Court's
2 indulgence.

3 Your Honor, I would move to admit State's
4 Exhibit 7 into evidence.

5 MR. BELL: No objection.

6 THE COURT: Okay. Admitted without objection.

7 *(Whereupon, State's Exhibit No(s). 7 marked for*
8 *identification and received in evidence.)*

9 BY MS. LEMPESIS:

10 Q No further questions at the time, Master Sergeant.
11 Day. Thank you.

12 THE COURT: Cross examination?

13 MR. BELL: Thank you, Your Honor, may it please
14 the Court.

15 CROSS EXAMINATION

16 BY MR. BELL:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Or good morning.

20 Officer Day, I am a little unclear about some
21 things that you may have already testified to, so I
22 apologize if I'm retreading old ground. You encountered
23 Mr. Garvin. A few minutes thereafter two more officers
24 arrived?

25 A Yes, sir.

EXAMINATION OF JASON DAY

1 Q Okay. And was Knapp one of those?

2 A Yes, Officer Knapp was one of those.

3 Q Who was the other?

4 A Officer Tabb-Walker was the other.

5 Q Tabb-Walker. And is there any reason why you
6 didn't include what you testified to as to comparing the
7 nail gun serial number to the packaging in your report?

8 A No. It is -- the serial number was listed in the
9 report, but as far as the comparison I didn't put it in
10 there.

11 Q Because you didn't think that it was important?

12 A Not at all. I just overlooked it.

13 Q You put important things in your report; is that
14 correct?

15 A Absolutely.

16 Q You are trained to?

17 A Yes.

18 Q So you actually returned the nail gun to Lowe's on
19 the same day that it had been recovered in this incident?

20 A Yes, sir.

21 Q Was it ever turned into evidence?

22 A It was never turned into evidence.

23 Q Was it ever evidence?

24 A It was property located in the woods, so it was
25 evidence in the crime that I had charged somebody with.

EXAMINATION OF JASON DAY

1 Q But it wasn't evidence that you intended to
2 confront a defendant with at trial?

3 A No, sir. I guess that's what you are getting at.

4 Q Yes, sir. And when you talk about the identifying
5 officer who arrived, did you say he arrived three to seven
6 minutes after you encountered --

7 A I believe approximately three to seven minutes
8 after Mr. Garvin was placed in the back of my patrol
9 vehicle.

10 Q Okay. And how long was he placed -- or how long
11 was it between your initial encounter and when he was placed
12 in the back of your patrol vehicle?

13 A Possibly two to three minutes.

14 Q So now we are talking about ten minutes possibly?

15 A Possibly, yes, sir.

16 Q And is Mr. Garvin interacting with Knapp who
17 Mirandized him obviously, correct?

18 A He didn't say anything.

19 Q Okay. But he's interacting with him?

20 A He didn't say anything. He stood there and said
21 he didn't want to talk. When I approached Officer Knapp
22 again, he said that he wanted a lawyer. I didn't hear that,
23 but that is what I was told.

24 Q But you don't know what Knapp was talking about
25 the entire time?

EXAMINATION OF JASON DAY

1 A No, sir.

2 Q You don't know what Tabb-Walker was talking about
3 the entire time?

4 A Tabb-Walker, he was in between -- as backup. I
5 didn't see him converse with anybody.

6 Q Okay.

7 MR. BELL: I beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 BY MR. BELL:

10 Q We discussed the nail gun and not taking that into
11 evidence. You didn't process it for DNA?

12 A No, sir, I did not.

13 Q You didn't process it for fingerprinting?

14 A I did not.

15 Q You didn't process the packaging for
16 fingerprinting?

17 A No, I did not.

18 Q You didn't process the packaging for
19 fingerprinting or take it into evidence?

20 A No, I did not.

21 Q Okay, thanks.

22 REDIRECT EXAMINATION

23 BY MS. LEMPESIS:

24 Q Just a couple of quick things.

25 Master Sergeant Day, is it typical for you to

EXAMINATION OF JASON DAY

1 return an item that was shoplifted from a store?

2 A Absolutely. If there's no damage down to the
3 vehicle -- I mean to the property, sometimes they can resell
4 it.

5 Q That is what you did in this case?

6 A Yes, ma'am.

7 Q Do you remember who you got the nail gun from
8 before you returned it to Lowe's?

9 A Officer O'Neill.

10 Q O'Neill?

11 A O'Neill.

12 Q Thank you.

13 MS. LEMPESIS: Nothing further from the State for
14 this witness, Your Honor.

15 RE-CROSS EXAMINATION

16 BY MR. BELL:

17 Q Even though that's your ordinary practice, Officer
18 Day, there's no reason why you couldn't perform forensic
19 tests on these materials or that item, right?

20 A The only thing that I could have done, aside from
21 putting fingerprint dust on it, is maybe a DNA swab, you are
22 correct.

23 Q Or both?

24 A Or both.

25 Q On both items?

EXAMINATION OF JASON DAY

1 A Yes, sir.

2 Q Thank you.

3 THE COURT: Thank you. You may step down.

4 Ladies and gentlemen, let's take a short
5 ten-minute recess, and I'll remind you that it's too
6 early to begin discussing the case.

7 THE BAILIFF: The jury is clear, Your Honor.

8 THE COURT: You indicated that we needed to put
9 some things on the record.

10 MR. BELL: Yes, Your Honor. At the point during
11 Mr. Roucoulet's [sic] testimony that he mentioned, to
12 my recollection, that shoplifters, that is what
13 shoplifters do, look up at the camera, something along
14 those lines. I'm paraphrasing. I believe that's a --
15 I mean, it goes to the ultimate issue in the case on
16 whether this person did shoplift, is a shoplifter,
17 rather than describing the behavior that he observed on
18 the video. He's sort of making a decision about -- or
19 characterizing my client broadly with shoplifters,
20 which I think is inappropriate. And I would move for a
21 mistrial.

22 To the Solicitor, in fairness, it wasn't elicited
23 from anything that she said, but he did volunteer
24 something that I think could be problematic for a jury.

25 THE COURT: All right. Solicitor.

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1 MS. LEMPESIS: Your Honor -- and I appreciate
2 Mr. Bell saying that I didn't ask a question that would
3 directly lead to that.

4 I think what Mr. Jones was saying -- he was not
5 calling Mr. Garvin a shoplifter, he was saying
6 generally in his experience this is what shoplifters
7 do, is look at the camera after taking an item.

8 I certainly don't think that it warrants a
9 mistrial. I suppose our suggestion would be a curative
10 instruction, but I don't think that that's even
11 warranted in this case. I don't think that Mr. Jones'
12 statement prejudices the defendant in the trial of this
13 case. He was speaking from his experience as a loss
14 prevention manager and not calling Mr. Garvin a
15 shoplifter.

16 THE COURT: I agree and deny the motion.

17 MR. BELL: Judge, one additional matter. When you
18 sustained my objection to Officer Day's hearsay
19 characterization of Mr. Roucoulet's identification of
20 Albert Garvin, I would ask for a curative instruction
21 in that that's not to be considered by the jury because
22 it's hearsay and it was improperly before them. And it
23 goes along with sort of the way that we have postured
24 this case, and not allowing Mr. Roucoulet to do any
25 sort of identification other than general clothes and

EXAMINATION OF JASON DAY

1 things of that nature.

2 But he didn't identify him on the stand, is my
3 point. When the State had the opportunity to elicit
4 that information.

5 THE COURT: Solicitor.

6 MS. LEMPESIS: I think that what Officer Day
7 testified to is that he was just giving a description
8 of the information that he received from dispatch as to
9 the person that he was on the lookout for. I'm not
10 quite sure I understand exactly what Mr. Bell is
11 arguing here.

12 MR. BELL: What I heard Officer Day say is that he
13 talked to William Roucoulet, and Mr. Roucoulet
14 indicated or said -- I mean, that that was the
15 individual he had been following. So, that is a
16 identification. I don't think -- I mean, at that point
17 their interaction is directly. He approached the car.
18 That is what I recall of the testimony.

19 MS. LEMPESIS: Our recollection is that he
20 identified Mr. Roucoulet as the 911 caller.

21 MR. BELL: She may be referring to the first
22 objection that I made to the hearsay, talking about
23 Mr. Roucoulet, and he's introduced not just as someone
24 relaying information through 911 but as an actual
25 person on the scene saying something which is parroted

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1 or repeated by Officer Day.

2 THE COURT: Well, let's think about it. He --
3 when he told the officer that that is the man that you
4 have in custody -- I think this is what he said,
5 something along these lines, the man in custody is the
6 man that I was calling about. Well, was he referring
7 to the man that came out of the woods, or was he
8 referring to the man who ran across the street with
9 something under his shirt?

10 MR. BELL: Well, that is the problem. I mean,
11 he -- at one point he lost sight of him and said he
12 wasn't a hundred percent sure that that was even the
13 same individual, and we know that's the individual that
14 now they want to kind of back door a positive ID on.
15 So I don't know which individual he's identifying, but
16 I know that he lost track of either or both in the
17 meantime.

18 THE COURT: Well, that is true, but isn't that a
19 matter for cross examination? Meaning when he said he
20 told him, that is the man that I was talking about.
21 That doesn't necessarily mean that he's saying that it
22 was your client that ran across the road.

23 MR. BELL: Well, at that point that is my client
24 in handcuffs.

25 THE COURT: I know, but going back to what I said

EXAMINATION OF JASON DAY

1 a minute ago.

2 MR. BELL: Yes, sir. I may not be understanding.

3 THE COURT: He's not identifying him as -- I'm
4 going to say as the shoplifter, he's identifying him
5 potentially as the man who came out of the woods, which
6 could be -- your case, your argument is going to be
7 these are two different people. I guess. Isn't that
8 right?

9 Ultimately you may argue to the jury that the
10 person who came out of the woods is not necessarily the
11 same person who ran across the street.

12 MR. BELL: Yes, sir.

13 THE COURT: I mean, I'm guessing that you are
14 going to say that.

15 MR. BELL: Yes, sir, but the reason of my
16 objection is he did lose sight of him, and I think that
17 they may -- determ -- or make the determination that
18 he, you know, was fairly consistent in following him,
19 and invariably that is the same person. But I
20 understand, and there's no argument there.

21 THE COURT: All right. Anything else?

22 MS. LEMPESIS: I just -- I would just say that
23 Bill Roucoulet did testify that the person that Officer
24 Day had in custody was the person that he was
25 following. He testified to that when he was on the

EXAMINATION OF JASON DAY

1 stand, Bill Roucoulet, and then as -- just as Your
2 Honor said, as far as whether or not -- it is a
3 question for the jury as to whether or not they are
4 going to make a connection that Mr. Garvin was the
5 person that ran across the road, went into to the woods
6 and came out with different clothes on and then was
7 detained by the police scene. I think it is a question
8 to be left to the jury.

9 MR. BELL: Judge, we take the position that you
10 sustained the hearsay objection to the answer, which
11 was the identification. That is the record.

12 MS. LEMPESIS: That was in reference to Officer
13 Day's testimony, not in reference to Bill Roucoulet's
14 testimony.

15 MR. BELL: Bill Roucoulet never identified a
16 handcuffed man. That's the difference.

17 MS. LEMPESIS: He testified that the person that
18 he saw with Officer Day was the person that he had been
19 following.

20 MR. BELL: Not when -- Roucoulet didn't testify to
21 that.

22 MS. LEMPESIS: I think he did, Your Honor. But I
23 can review my notes.

24 MR. BELL: Well, let's say that he did. We don't
25 know at what distance. I mean --

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1 THE COURT: I don't know that Roucoulet testified
2 that he was the man, did he?

3 MR. BELL: He said that it matched the
4 description.

5 MS. LEMPESIS: He didn't ID him positively as
6 Mr. Garvin.

7 MR. BELL: So we are making the leap from matched
8 the description to is that the man.

9 MS. LEMPESIS: There is no we. That is the point
10 that I would make to the jury in closing, is that he
11 matched the description of the man that he had been
12 following.

13 As far as Officer Day's testimony and the
14 objection that was sustained, I don't think -- you are
15 just asking for clarification as to what was sustained?
16 I don't understand.

17 MR. BELL: I'm asking for a clarification that the
18 identification of Albert Garvin when he's detained --
19 well, we have got two different types of
20 characterizations of some subject. One is by clothing,
21 by description, and one is basically on show-up ID,
22 which, after you sustained my objection to the hearsay,
23 it would be like a back-door eyewitness ID from close
24 up that we weren't anticipating because that had never
25 been testified to by Mr. Roucoulet prior to Day's

EXAMINATION OF JASON DAY

1 introduction of his -- some other conversation he had
2 with Roucoulet. Does that make sense?

3 THE COURT: All right. And so --

4 MR. BELL: Which was sustained.

5 THE COURT: -- tell me -- I got lost on that.
6 What is your motion? That is where I got lost.

7 MR. BELL: Just a curative instruction that
8 Officer Day cannot comment on any identification of the
9 defendant, you know, because he did it through hearsay,
10 and to rely on their memory of what Mr. Roucoulet had
11 at the incident.

12 I'm getting a little lost too on -- but I think
13 that we are dealing with a -- basically a specific
14 identification where you sustained an objection to
15 hearsay when I was objecting. I would object to it no
16 matter what he had said about what Roucoulet said, and
17 I had done so earlier in his testimony at the very
18 beginning when he began to do that.

19 But this is more significant precisely because it
20 doesn't match what Mr. Roucoulet testified to, which
21 was more general in nature and not specific to Albert
22 Garvin.

23 THE COURT: All right. I understand the request.
24 I'll deny the request.

25 All right. Let's take five minutes.

EXAMINATION OF JASON DAY

1 (Break.)

2 THE COURT: Welcome back.

3 I assume that we are ready to continue to
4 presentation of evidence by the State.

5 MS. LEMPESIS: Yes, Your Honor. The State calls
6 Deputy Seronka.

7 Thereupon,

8 CHAD SERONKA

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 THE CLERK: If you will state and spell your name
12 for the record, please.

13 WITNESS: Corporal Chad Seronka. C-H-A-D
14 S-E-R-O-N-K-A.

15 DIRECT EXAMINATION

16 BY MS. LEMPESIS:

17 Q Corporal Seronka, I see that you are in a uniform
18 today. Where are you currently employed?

19 A Beaufort County Sheriff's Office.

20 Q What position are you in at the Beaufort County
21 Sheriff's Office?

22 A Patrol Division and a K-9 handler.

23 Q What are your duties as a K-9 handler?

24 A It's just a road patrol with anything involving a
25 canine -- anything from a criminal track for a suspect to a

EXAMINATION OF CHAD SERONKA

1 searching a vehicle for narcotics, article search, area
2 search, search buildings, anything along those lines.

3 Q Are you assigned to -- my apologies. The K-9
4 unit, are you assigned to one dog in particular?

5 A I am.

6 Q What is that dog's name?

7 A Hugo.

8 Q Do you and Hugo go through some trainings?

9 A We have.

10 Q Can you describe those trainings?

11 A The initial training was three weeks, which is
12 held at an outside location. It is a pass or fail school.
13 And then every week we conduct anywhere between eight to ten
14 hours of training, weekly.

15 Q So, it's ongoing training?

16 A Correct.

17 Q Okay. How long have you been with Hugo?

18 A Just over four and a half years.

19 Q Okay. Were you with another canine prior to that?

20 A I was not.

21 Q He is your first?

22 A Yes.

23 Q Thank you. You mentioned that you worked with the
24 Beaufort County sheriff's office.

25 A Correct.

EXAMINATION OF CHAD SERONKA

1 Q Are you ever called out to assist with other
2 agencies?

3 A Quite frequently.

4 Q Why is that?

5 A Like I said, if they have a crime that's committed
6 where an individual runs, I can put the dog down and I can
7 track the suspect. If they have a vehicle which they
8 believe has illegal narcotics in the vehicle, I can respond
9 at the scene of the vehicle with the dog and put the dog in
10 to locate the narcotics. If there's a building that needs
11 to be cleared, I can clear the building with the dog. If
12 there's evidence that needs to be located that was discarded
13 I can put the dog on the ground and I can locate the
14 evidence with that.

15 Q Do these other agencies have their own dog teams?

16 A Not currently.

17 Q That is why the Sheriff's Office is involved?

18 A Yes.

19 Q On April 19th of 2012, you were called out to
20 assist the Beaufort City Police Department?

21 A I was.

22 Q In what capacity were you there to assist Beaufort
23 City?

24 A I was informed that they had a shoplifting that
25 just occurred at Lowe's, and that they believed that the

EXAMINATION OF CHAD SERONKA

1 individual suspected of the crime had dropped the evidence
2 somewhere in the area between Lowe's and where they were
3 able to catch up with him.

4 Q Okay. Very briefly, if you could describe as
5 simply as possible how a dog learns to alert to certain
6 items.

7 A It is an odor that we train them to alert to.
8 Everything smells differently. It's all by -- in an article
9 search, I'll -- in regards to this case, an article search
10 is the dog looking for anything that is not native to that
11 area. If you have a field of grass or shrubs, they smell a
12 certain way. Anything put into that area obviously doesn't
13 smell like grass and shrubs, the dog will alert to that.

14 Q In this case, did Hugo alert to something?

15 A He did.

16 Q What sort of action does he take when he alerts?

17 A When he's on an article search, he is off leash,
18 meaning he is not on a leash or a long line, he is free to
19 run, he's allowed to work an area. When he and I clear
20 areas, he can obviously do it much faster off leash. His
21 alert is to stop at whatever he believes is an object that
22 doesn't belong. He will stop and investigate it by smelling
23 it. And his alert is to go to that object and lay down next
24 to it, which is what he did in this case.

25 Q He did alert to an object in this case?

EXAMINATION OF CHAD SERONKA

1 A Yes, he did.

2 MS. LEMPESIS: I beg the Court's indulgence.

3 THE COURT: All right.

4 MS. CONCANNON: Permission, Your Honor, for this
5 witness to come off of the witness stand.

6 THE COURT: Sure.

7 BY MS. CONCANNON:

8 Q Corporal Seronka, if you could come down here,
9 please.

10 Can you point on this map where you first
11 responded on this date?

12 A With Lowe's being here, I responded and met up
13 with Officer O'Neill here at Road. He asked
14 me to conduct an area search between this parking lot and
15 this building here, which is -- or was the old Beaufort
16 Liquidation.

17 I apologize.

18 Q So you reported --

19 A I responded here, which is where K-9 Hugo and I
20 started back here in this parking lot. We worked the back
21 of the building, we worked through this patch of woods right
22 here. When we came through the woods, right behind Beaufort
23 Liquidation, right at the corner of that building is a curve
24 in the vegetation. That is where Hugo alerted.

25 Q Was that area undisturbed, was it --

EXAMINATION OF CHAD SERONKA

1 A Yes, yes. There's no reason for anyone to go
2 through that area. It is the side of a building which is
3 fenced off. And from working that business, they do not
4 access it for any reason.

5 Q How did he alert you again?

6 A Again, he went up, gave a head turn to the bushes
7 and shrubbery, went to it, went into the bush a little bit,
8 came back and laid down.

9 Q Okay. You may return to your seat.

10 MS. CONCANNON: Your Honor, permission to approach
11 the witness.

12 THE COURT: Sure.

13 BY MS. CONCANNON:

14 Q Officer Seronka, I'll hand you what's been
15 previously marked as State's Exhibit 2, 3, 4 and 5. Can you
16 tell me what those are pictures of?

17 A They are pictures of the edge of the wood line and
18 the jacket and nail gun that were removed -- or recovered
19 that day.

20 Q Are those a fair and accurate depiction of the
21 items located by Hugo?

22 A They are.

23 MS. CONCANNON: At this point the State would move
24 to admit those pictures into evidence and publish to
25 the jury.

EXAMINATION OF CHAD SERONKA

1 MR. BELL: No objection.

2 THE COURT: Without objection.

3 *(Whereupon, State's Exhibit No(s). 2-5 marked for*
4 *identification and received in evidence.)*

5 BY MS. LEMPESIS:

6 Q Corporal Seronka --

7 MS. LEMPESIS: Permission for the witness to come
8 down.

9 THE COURT: Sure.

10 BY MS. LEMPESIS:

11 Q Corporal Seronka, if you could come down one more
12 time.

13 A Sure.

14 Q Can you tell the Court what this picture depicts?

15 A As you can see, there's grass at the bottom; this
16 is a grassy area. This right here represents the edge of
17 the woods or the shrubs. Right here is a break in the
18 vegetation where Hugo went in and indicated to me.

19 Q Is this the location that you just pointed to on
20 the map?

21 A They are.

22 Q Thank you. Can you tell the Court what this
23 picture is?

24 A This picture is the jacket that was laying on the
25 ground in the condition that it was when it was recovered.

EXAMINATION OF CHAD SERONKA

1 Q Okay. Thank you.

2 Please tell the Court what this picture
3 depicts.

4 A The same jacket with the nail gun slightly
5 exposed.

6 Q Thank you. And this final picture?

7 A Same picture, just a little bit farther out.
8 Again, of the jacket with the nail gun exposed.

9 Q Thank you, you can have a seat. Thank you very
10 much.

11 Corporal Seronka, after K-9 Hugo alerted to
12 these items in the woods, what did you do?

13 A At that point I approach the dog and I try to
14 determine what it is that he's alerting to. Once it was
15 discovered that it was a jacket, I notified Officer O'Neill
16 who came over and took photographs and collected the
17 evidence.

18 Q Thank you. Do you have any other involvement
19 after Hugo alerted?

20 A I do not, ma'am.

21 Q Thank you. I have no further questions. If you
22 could answer any questions of Mr. Bell.

23 A Absolutely.

24 CROSS EXAMINATION

25 BY MR. BELL:

EXAMINATION OF CHAD SERONKA

1 Q Good morning, Officer Seronka.

2 A Good morning.

3 Q Your dog Hugo alerted at these objects, and you
4 carry a camera with you to take pictures -- did you take
5 those pictures?

6 A I did not. Those were not taken by me.

7 Q Were they taken in your presence?

8 A They may have been, I don't recall honestly.

9 Q Okay. Did you -- and you didn't take any of these
10 items into evidence?

11 A I didn't, no. My job is simply just to locate the
12 stuff. From there the other agency will collect it and
13 photograph it.

14 Q Okay. And you said your dog has the ability to do
15 tracking, but that is not part of his job that day, or his
16 assignment that day?

17 A No, this was strictly an article search, this was
18 not to track.

19 Q Okay.

20 A But to answer your question, yes, he does have
21 that ability.

22 Q Okay. Could he have followed a track from those
23 articles on a scent?

24 A Absolutely.

25 Q Okay, thank you.

EXAMINATION OF CHAD SERONKA

1 MS. LEMPESIS: No further questions from the
2 State.

3 THE COURT: Thanks. You may step down.
4 You may call your next witness.

5 MS. LEMPESIS: Permission for Corporal Seronka to
6 be excused.

7 THE COURT: Yes, you may be excused from your
8 subpoena, thank you.

9 MR. BELL: Yes.

10 MS. CONCANNON: The State calls Corporal John
11 O'Neill.

12 Thereupon,

13 JOHN ONEILL

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 THE CLERK: Please state and spell your name for
17 the record, please.

18 THE WITNESS: My name is John O'Neill. J-O-H-N
19 O-N-E-I-L-L.

20 DIRECT EXAMINATION

21 BY MS. CONCANNON:

22 Q Good morning, Mr. O'Neill. Are you currently
23 employed right now?

24 A No, ma'am, I'm retired.

25 Q Where are you retired from?

1 A I'm retired from the City of Beaufort Police
2 Department.

3 Q How long did you work for Beaufort Police
4 Department?

5 A Seventeen years.

6 Q In that seventeen years, what did some of your
7 duties include?

8 A I was the supervisor for the shift. Five to six
9 members on my team.

10 Q Were you working in your capacity with the
11 Beaufort Police Department on April 19th, 2012?

12 A Yes, ma'am, I was the shift supervisor for that
13 day.

14 Q Okay. And do you remember responding to an
15 incident that day?

16 A Yes, ma'am. I responded to a shoplifting incident
17 at three -- or Parkway, which is Lowe's,
18 which is in the city of Beaufort.

19 Q Thank you, okay. When you responded to that
20 incident location, what did you do?

21 A I initially responded over to Road.
22 Patrolman Day, who was my assistant supervisor for that day,
23 had already -- was out with a suspect, and I proceeded over
24 to that area, and that was in -- I was informed that the
25 alleged suspect had gone over in a wooded area behind 129

EXAMINATION OF JOHN ONEILL

1 Road. So I contacted the County supervisor to
2 get a K-9 unit for tracking purposes, and I proceeded to 129

3 Road and waited for the K-9 unit to arrive.

4 Q Did that K-9 unit in fact arrive?

5 A Yes, ma'am, it was Deputy Seronka.

6 Q What did you do when the K-9 unit arrived?

7 A Myself and the K-9 unit proceeded to track the
8 area about Road, which is a little shopping
9 complex there, and proceeded behind the buildings and
10 through a little wood line, hedge line area by the church,
11 and the dog discovered some items on the ground, laying in
12 the bushes there.

13 Q What were these items?

14 A The dog discovered some clothing and what appeared
15 to be like a drill type of object that was buried under the
16 clothing.

17 Q Okay.

18 MS. LEMPESIS: Permission to approach, Your Honor?

19 THE COURT: Sure.

20 BY MS. LEMPESIS:

21 Q Thank you. I'll show you what's previously been
22 admitted as State's 2, 3, 4, and 5. Can you please tell the
23 Court what those are, what those pictures depict.

24 A All right. Exhibit 2 depicts the drill or the
25 tool that is being covered up by -- it looks like a

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1 sweatshirt or a hoodie of some sort. Exhibit No. 3 is the
2 same thing. It is a little blurry, but it is the same
3 picture. Exhibit No. 5 shows -- apparently it looks like
4 the pants or sweat pants that were on the ground, and
5 Exhibit No. 4 is a lot clearer picture of the sweat pants.

6 Q Thank you. Who took these photographs?

7 A I took the photographs on my department-issued
8 camera.

9 Q And these were the items that the dog had alerted
10 to?

11 A Yes, ma'am.

12 Q Thank you.

13 MS. LEMPESIS: I beg the Court's indulgence.

14 (Pause.)

15 BY MS. CONCANNON:

16 Q After you saw these items on the ground or in the
17 woods, what did you do?

18 A I collected the items for evidence. And I placed
19 them in the evidence bag and secured the evidence bag in the
20 trunk of my patrol vehicle.

21 Q Okay. And after you secured it in the trunk of
22 your patrol vehicle, what did you do?

23 A I submitted them into evidence at the police
24 department in one of the temporary evidence lockers.

25 Q Okay. Thank you.

EXAMINATION OF JOHN ONEILL

1 MS. LEMPESIS: Permission to approach, Your Honor?

2 THE COURT: Certainly.

3 BY MS. LEMPESIS:

4 Q I'll show you what's been marked as State's 6 for
5 identification purposes only. Can you tell the Court what
6 this is?

7 A That is an evidence bag that I submitted into
8 evidence on the date of April 19th.

9 Q How do you know it is the bag that you submitted?

10 A It is -- the bag, it's got my information on here,
11 and it shows the items that I submitted into evidence.

12 Q Thank you.

13 Can you please tell the Court what this is?

14 A That is the hooded sweatshirt that I collected as
15 evidence.

16 Q And how are you able to recognize that this is the
17 hooded sweatshirt --

18 A It is the one that was taken in the photograph
19 there that was laying on the ground when the dog --

20 Q My apologies for interrupting.

21 A When the dog discovered it on the ground.

22 Q Is this the only sweatshirt that you collected
23 that day?

24 A Yes, ma'am.

25 MS. LEMPESIS: At this point, the State moves

EXAMINATION OF JOHN ONEILL

1 State's 6, sweatshirt, into evidence.

2 MR. BELL: No objection.

3 THE COURT: Motion granted.

4 *(Whereupon, State's Exhibit No(s). 6 marked for*
5 *identification and received in evidence.)*

6 BY MS. LEMPESIS:

7 Q Corporal Mr. O'Neill, what is this?

8 A That is a black T-shirt.

9 Q Okay. Where did this black T-shirt come from?

10 A That black T-shirt was with the other clothing
11 discovered by the dog behind the bushes there west of ,
12 Parkway.

13 Q How are you sure that this is the same T-shirt
14 that was located in the woods?

15 A It's in the photographic evidence that I took.

16 Q Did you place it in the bag?

17 A Yes, ma'am.

18 Q Thank you.

19 MS. LEMPESIS: At this point, the State moves this
20 T shirt of State's Exhibit 6 into evidence.

21 MR. BELL: Without objection.

22 THE COURT: Received.

23 *(Whereupon, State's Exhibit No(s). 6a marked for*
24 *identification and received in evidence.)*

25 BY MS. CONCANNON:

EXAMINATION OF JOHN ONEILL

1 Q One more. And can you please tell the Court what
2 this is.

3 A Those are black sweat pants that were collected
4 from the site where the dog had discovered the items on the
5 ground in the wood line there.

6 Q Did you yourself personally place these sweat
7 pants in the bag?

8 A Yes, ma'am.

9 Q Are these the same sweat pants that came from the
10 wood line?

11 A Yes, ma'am.

12 Q Are these the same sweat pants that were located
13 along with the T-shirt and sweatshirt?

14 A Yes, ma'am.

15 Q As well as the nail gun?

16 A Yes, ma'am.

17 MS. CONCANNON: At this point, I move the sweat
18 pants of State's Exhibit 6 into evidence.

19 MR. BELL: No objection.

20 THE COURT: Motion granted.

21 *(Whereupon, State's Exhibit No(s). 6b marked for*
22 *identification and received in evidence.)*

23 BY MS. CONCANNON:

24 Q After you collected those clothes, what did you do
25 with them?

EXAMINATION OF JOHN ONEILL

1 A I took them to -- well, I placed them into my --
2 the trunk of my patrol vehicle, and then I proceeded -- once
3 I proceeded to the police department I took them out of the
4 trunk of my patrol vehicle, filled out an evidence control
5 form and submitted it to evidence into a temporary evidence
6 locker at the police department.

7 Q Did you have any further investigation with this
8 case?

9 A No, ma'am.

10 Q I have no further questions of you at this time,
11 but if you could answer any questions Mr. Bell may have.
12 Thank you.

13 THE COURT: Cross examination.

14 MR. BELL: Thank you.

15 CROSS EXAMINATION

16 BY MR. BELL:

17 Q Mr. O'Neill, or Officer O'Neill. I'm sure you are
18 still called frequently.

19 A Yes, sir.

20 Q Let's go back to Officer Seronka. Did you issue
21 his orders to respond to that scene, or was that just his
22 duty?

23 A I requested from the County supervisor that was on
24 duty at the time for a dog to come track. The on duty
25 supervisor with the County allowed Deputy Seronka to

EXAMINATION OF JOHN ONEILL

1 proceed.

2 Q It happened to be Seronka. Do you remember what
3 specifically your orders to -- directing Seronka to do?

4 A No, sir, I sure don't. I can't remember exactly.
5 I just told him that we wanted to track for an item search
6 through the wood line. And the alleged suspect had ran
7 through this area, and he proceeded to track.

8 Q This dog has the ability to do human tracking,
9 alerting to drugs, and -- but this was an object tracking
10 type of situation?

11 A Correct, yes, sir.

12 Q Thank you. Now, you took these photographs,
13 correct, you stated that earlier?

14 A Yes, sir.

15 Q And there is not a serial number visible on the
16 drill that you are aware of, is there, in the pictures?

17 A Not on the pictures, no, sir.

18 Q Okay. And we know that Officer Day has testified
19 that he turned that object back in to Lowe's?

20 A Yes, sir.

21 Q Did you give that object to Officer Day?

22 A I gave the drill to Officer Day at the time to
23 return back to Lowe's.

24 Q Okay.

25 A Once he verified the serial number on it.

EXAMINATION OF JOHN ONEILL

1 Q Okay. And did you consider processing that item
2 for fingerprints or taking it into evidence?

3 A No, sir.

4 Q Or DNA swabbing?

5 A No, sir.

6 Q Okay. But you took the clothing into evidence?

7 A Yes, sir.

8 Q And did you do any DNA testing on the clothing?

9 A No, sir, I did not. I don't know if
10 investigations did or not, but I did not myself.

11 Q Okay. Would that have been your decision?

12 A No, sir.

13 Q Okay, thank you.

14 But you do know that DNA testing can be done
15 on clothing items for cellular evidence, for sweat evidence?

16 A Yes, sir.

17 Q Secretion evidence, things of that nature, hairs?

18 A Yes, sir.

19 Q And I saw a lighter fall out. I don't think that
20 that's in evidence, but that wasn't submitted for
21 fingerprinting or anything, was it?

22 A No, sir.

23 Q Were you aware of it before today?

24 A No, sir.

25 Q Okay. Thank you.

EXAMINATION OF JOHN ONEILL

1 MS. LEMPESIS: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. CONCANNON:

4 Q You keep testifying to a drill. Could it have
5 been a nail gun?

6 A It could have been a nail gun.

7 Q The nail gun that you located in the woods is the
8 same one that you gave to Officer Day?

9 A Yes, ma'am. The one that was depicted in the
10 picture underneath the clothing is the same one that I gave
11 to Officer Day.

12 MS. LEMPESIS: Thank you, I have no further
13 questions.

14 THE COURT: Okay, anything further?

15 MR. BELL: Nothing further. I'm sorry.

16 THE COURT: You may step down.

17 Call your next witness.

18 MS. LEMPESIS: The State calls Investigator George
19 Erdel.

20 THE CLERK: Please state your name for the record.

21 THE WITNESS: George Erdel. G-E-O-R-G-E

22 E-R-D-E-L.

23 Thereupon,

24 GEORGE ERDEL

25 was called as a witness, having been first duly sworn,

EXAMINATION OF GEORGE ERDEL

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. LEMPESIS:

4 Q Investigator Erdel, who do you work for?

5 A The Beaufort Police Department.

6 Q How long have you worked there?

7 A A little over ten years.

8 Q What is your official rank?

9 A Investigator II, which corresponds to the rank of
10 corporal in the patrol division.

11 Q Thank you. What do your duties include as an
12 investigator?

13 A We investigate pretty much anything. Felony
14 crimes, violent crimes, misdemeanor crimes. We respond on
15 an on-call status if the department requires crime scene
16 processing or things that are not normally handled by patrol
17 officers that may be more involved.

18 Q Okay. Were you working as an investigator on
19 April 19th of 2012?

20 A Yes.

21 Q And do you recall responding to a report of a
22 shoplifting from Lowe's?

23 A Yes. I was in the vicinity. Initially the radio
24 traffic did not describe it as shoplifting. There was a
25 person reporting suspicious circumstances and that he was

EXAMINATION OF GEORGE ERDEL

1 following an individual that he -- it was later determined
2 it was reported as shoplifting, but he thought that it was
3 suspicious, that he had something under his clothes, running
4 from Lowe's, and that's how it initially did come out. And
5 I was in the vicinity at that time.

6 Q Where did you respond to initially?

7 A Well, when I was still en route I heard -- I had
8 intended to respond to the area where they were looking for
9 and individual where he was last reported, but before I
10 could get to that area I heard that they had somebody
11 matching the description detained. And I didn't hear
12 anybody go out to Lowe's to meet with the -- while the
13 situation was unfolding over the radio, I heard a
14 transmission saying that someone from Lowe's was reporting.
15 So I went to Lowe's.

16 Q You went to Lowe's?

17 A Yes, ma'am.

18 Q Tell me where Lowe's is located.

19 A Parkway in the city limits of
20 Beaufort.

21 Q Is that also in Beaufort County?

22 A It is.

23 Q And so you testified that you went to -- you went
24 directly to Lowe's?

25 A Yes, ma'am.

EXAMINATION OF GEORGE ERDEL

1 Q What did you do once you got to Lowe's?

2 A I made contact with the loss prevention manager to
3 look at the video to see if I could see if the video was of
4 sufficient quality to see who was in it so I could go and ID
5 or not ID, to see if he matched the person being detained by
6 Officer Day at that point.

7 Q So you go to Lowe's and you meet with loss
8 prevention manager?

9 A I think that his name was Mr. Jones.

10 Q Thank you. Did he show you the video?

11 A He did.

12 Q And you have seen the video here today. Did you
13 watch that video in its entirety or just parts of it?

14 A If I recall correctly I probably had him -- you
15 know, I do remember seeing him select the drill and leave
16 the store with the drill. I don't know if I watched it from
17 the initial selection all the way through. I was focused
18 mainly on portions that got close up to the face. I knew
19 that is what I would use to make the determination if it was
20 the same subject or not.

21 Q Your purpose of watching the video is so you could
22 see who was on that video taking the drill and then try to
23 make an identification or not make an identification?

24 A Right, whatever the case may be.

25 Q You were totally focused on the video surveillance

EXAMINATION OF GEORGE ERDEL

1 footage where you were there at Lowe's?

2 A Yes, ma'am.

3 Q So, tell us what you did after you viewed this
4 video surveillance.

5 First let me back up. How was the quality of
6 the video?

7 A It was probably, if not the best, one of the very
8 best videos I've ever seen as far as surveillance. A lots
9 of time we don't get good quality video, but it was very
10 good.

11 Q You got a closeup of the defendant's face?

12 A Yes. In fact, I recall I had him pause it at
13 certain points, back up. You know, play the key portions.
14 In other words, you can see the video where he was far away
15 I wasn't concerned so much with the far away parts, I wanted
16 to watch the stuff up close to get an idea of what he looked
17 like.

18 Q Then what did you do after that, after you had a
19 chance to view the video surveillance?

20 A I went to where Officer Day was, and he had
21 Mr. Garvin, I believe it was, detained in his vehicle.

22 Q In the back of his patrol car?

23 A In his patrol car, yes, ma'am.

24 Q So when you went to where Mr. Garvin was detained,
25 did you -- did you -- were you able to identify him as the

EXAMINATION OF GEORGE ERDEL

1 person who was in the video?

2 A I was, yes.

3 Q Okay. And let me ask you, as you were trying to
4 look at him and identify him, or determine if you could
5 identify him, did Mr. -- did Mr. Garvin make any sort of
6 statement to you?

7 A He did. I had asked him to look at me so that I
8 could -- just simply to look at me so I could determine if
9 it was him or not. To look at his face. When I did that --
10 as I opened the door to the back of the vehicle and I came
11 in, I said, Look at me. He turned his head away, turned his
12 head down, and he said, I know the law, you can't bring
13 someone from the store to come look at me. And then I
14 basically I -- I carefully turned his face to where I could
15 see his face and looked at him very closely. I mean,
16 probably -- very close, and I determined that it was him.

17 Q Did you determine his identification from Officer
18 Day, or did you learn what his identification was?

19 A As far as a name?

20 Q As far as a name.

21 A I don't recall if I knew him by name at that time.
22 I'm sure that it probably came up.

23 MR. BELL: I want to place my prior objection on
24 the record as to that statement.

25 THE COURT: Objection noted.

EXAMINATION OF GEORGE ERDEL

1 BY MS. LEMPESIS:

2 Q At some point did you learn his name?

3 A Yes, I did.

4 Q What was his name?

5 A Albert Lee Garvin.

6 Q Okay. Investigator Erdel, you said that you ID'd
7 him as the same person in that video taking the nail gun
8 from Lowe's?

9 A Yes, ma'am.

10 Q Did you see that person, that same person who was
11 on the video surveillance at Lowe's, the person that you
12 identified in the back of Officer Day's patrol car, did you
13 see that person yesterday here at the courthouse during jury
14 selection?

15 A I did.

16 Q Was he the person sitting with Mr. Bell and
17 Mr. Bax?

18 A He was.

19 MR. BELL: Judge, I'm going to object to that for
20 the record.

21 THE COURT: Same objection?

22 MR. BELL: Yes, sir.

23 THE COURT: All right. Objection noted.

24 MS. LEMPESIS: Thank you. Beg the Court's
25 indulgence.

EXAMINATION OF GEORGE ERDEL

1 THE COURT: All right.

2 (Pause.)

3 MS. LEMPESIS: Investigator Erdel -- I don't have
4 any further questions for you at this time. Thank you.

5 THE COURT: Cross examination.

6 MR. BELL: Thanks, Your Honor, may it please the
7 Court.

8 CROSS EXAMINATION

9 BY MR. BELL:

10 Q Officer Erdel, I want to talk a little bit about
11 this statement about a store employee don't bring us -- or
12 you can't bring a store employee to identify me or anything.
13 You had just arrived on the scene when you went directly to
14 identify Albert Garvin, correct?

15 A By the scene, do you remember where he was, where
16 Mr. Garvin was?

17 Q Where he was located?

18 A I'm confused by the question. I didn't arrive
19 there until after I made -- I had looked at the video. So,
20 initially I had never gone to where Mr. Garvin was until
21 after I had gone to Lowe's. I went straight to Lowe's. Is
22 that the answer?

23 Q I was being confusing, sorry. I'll rephrase it.

24 When you arrived at the location where
25 Mr. Garvin was detained, you went immediately to try to

EXAMINATION OF GEORGE ERDEL

1 positively ID him, fair enough?

2 A Oh, yes, sir.

3 Q And there's several officers on the scene?

4 A I can't recall how many. I guess that it depends
5 on the definition of several. Two or three maybe.

6 Q Okay. But you have been in the courtroom for the
7 entire testimony?

8 A Uh-huh. (Indicating affirmatively.)

9 Q So, at least Officer Day, Knapp and Tabb-Walker
10 had already been there?

11 A Yes.

12 Q And you don't know what conversations they had
13 with Mr. Garvin about what sort of investigation they were
14 doing?

15 A No, sir.

16 Q And the type of investigation that they are doing
17 is shoplifting, right?

18 A Yes, sir.

19 Q Okay. And so Mr. Garvin's statements, he could
20 have come about that information independent of his own
21 knowledge, correct?

22 A I'm sure that it's possible.

23 Q You don't know?

24 A I don't know.

25 Q And you could have brought a store employee down

EXAMINATION OF GEORGE ERDEL

1 to where Mr. Garvin was detained, like Mr. Jones who had
2 watched the video?

3 A We could have.

4 Q And you could have taken a photo lineup to
5 Mr. Jones to see if he could pick him out again?

6 A Could have.

7 Q And also Mr. Roucoulet, you could have done that?

8 A Yes, sir.

9 Q And was it your decision not to test any of these
10 items?

11 A No, sir, it wasn't my decision. In other words --
12 this is kind of a long-winded answer, but basically that day
13 I happened to be in the vicinity so I basically assisted
14 with the case. I mean, it wasn't assigned to me, it wasn't
15 my case primarily, I simply functioned in making the
16 identification off of the video. Officer Day was the
17 officer who charged, so basically it was his case. So it
18 wasn't my decision, no.

19 Q So, your testimony is that Officer Day would have
20 been the officer who would have submitted any items into
21 evidence for testing?

22 A He'd have been in charge of dictating how things
23 were handled. It was his case. In other words, I didn't
24 arrive to assume the case, I just arrived to assist however
25 I could. Whether it be to look for whoever, which was my

EXAMINATION OF GEORGE ERDEL

1 original intention, or -- and I ended up looking at the
2 video.

3 Q Thank you, I understand.

4 I guess finally, Officer Day, Officer Knapp,
5 Officer Tabb-Walker, or Officer -- or the -- Officer O'Neill
6 didn't order for any of these items to be tested, it didn't
7 happen. And that is what did not happen, correct?

8 A Can you say that again?

9 Q No officer submitted any of these items for
10 fingerprinting, testing?

11 A Just going off of their testimony today, no.

12 Q And the actual nail gun was returned to Lowe's
13 without any forensic examination?

14 A That is my understanding, correct, yes, sir.

15 Q Thank you.

16 MS. LEMPESIS: Just a quick follow-up, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. LEMPESIS:

19 Q Investigator Erdel, how far from Lowe's was the
20 location where the defendant was detained, if you can
21 approximate?

22 A It would have been less than half a mile getting
23 from getting in my car at the front door of Lowe's and
24 getting there. If the light was green and I got lucky I
25 could get there in 45 seconds. If I caught the red light, a

EXAMINATION OF GEORGE ERDEL

1 minute, minute and a half.

2 Q So, less than a half a mile to the location that
3 he was detained?

4 A Yes.

5 Q Can you tell me about how much time passed from
6 the time that you got to Lowe's, watched the video, to when
7 you identified Mr. Garvin at that location?

8 A I would say probably in the neighborhood of ten
9 minutes or so, plus or minus, give or take a little bit.
10 You know, two years later, that is best that I can recall.

11 MS. LEMPESIS: Okay. I have no further questions
12 for this witness, Your Honor.

13 THE COURT: Okay. Thank you. You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Another witness?

16 MS. LEMPESIS: Your Honor, if we may take a brief
17 recess -- or if we could approach?

18 THE COURT: Sure.

19 If you would like to stand and stretch for just a
20 moment while I talk to the attorneys.

21 (Off the record discussion)

22 You don't have to sit down. We are getting ready
23 to go to lunch.

24 We have some legal matters to take up, ladies and
25 gentlemen of the jury. The attorneys still believe

EXAMINATION OF GEORGE ERDEL

1 that we will finish this case this afternoon, early.

2 2:00. You don't talk to anybody about the case, don't
3 let anyone to talk to you about the case. See you back
4 at 2:00, ladies and gentlemen.

5 (Jury out of the room at 12:20.)

6 THE COURT: Solicitor.

7 MS. LEMPESIS: Thank you, Your Honor. As you
8 know, this is a shoplifting value under 2,000 under the
9 property crime enhancement, Your Honor. At this point
10 the State would introduce into evidence his prior --
11 Mr. Garvin's prior convictions. There are multiple
12 prior convictions, so at this point I would ask that we
13 call someone from the clerk's office to testify to
14 entering those prior convictions from Beaufort County
15 that qualify this as under the enhancement statute.

16 THE COURT: Okay.

17 MS. LEMPESIS: There are also prior convictions --
18 one prior conviction, multiple magistrate court prior
19 convictions, and general sessions prior convictions,
20 but there's one from Jasper County that also -- that is
21 a general session prior convictions from 2010. I
22 didn't have anyone from the Jasper County clerk's
23 office to come over here today. I can get someone over
24 here.

25 We have enough with the Beaufort County

EXAMINATION OF GEORGE ERDEL

1 convictions to qualify under the enhancement statute.
2 But there's an additional charge from Jasper County
3 that I would like to enter into evidence as a certified
4 true copy of his prior conviction in Jasper County for
5 grand larceny.

6 MR. BELL: Judge, particularly in light of the
7 fact that she has everything that she needs already, I
8 don't want, on behalf of my client, to agree to
9 anything or stipulate to anything without due process.

10 THE COURT: Okay.

11 MR. BELL: Particularly in his absence and without
12 consulting with him.

13 THE COURT: Maybe you can consult with him at
14 lunch.

15 MR. BELL: Sir.

16 THE COURT: Maybe you can consult with him at
17 lunch.

18 MS. LEMPESIS: Judge, I would ask that we be
19 able -- isn't it true an accurate -- a certified true
20 copy from Margaret Bostick, clerk of the court from
21 Jasper County. And I ask that we be able to move and
22 admit it. It's his most recent conviction from 2010.

23 THE COURT: Well --

24 MS. LEMPESIS: I certainly will bring it up during
25 sentencing when I read out his rap sheet. If that ends

EXAMINATION OF GEORGE ERDEL

1 up being the case we could still get a not guilty.

2 THE COURT: If there is sentencing.

3 MR. BELL: Your Honor, you know, we are not trying
4 to be difficult. If it is -- if it becomes a
5 sentencing issue, I think that it comes in then
6 regardless of whether it comes in now or whether the
7 Court is comfortable letting it come in over my
8 objection now.

9 THE COURT: Do we have someone available from the
10 clerk's office from Beaufort County who is prepared to
11 authenticate?

12 MS. LEMPESIS: We do, Judge. I was going to call
13 either Chris Taylor or Lasondra Young. Chris Taylor,
14 could you -- we will call Chris Taylor.

15 THE COURT: Let's proceed.

16 MS. LEMPESIS: Thank you. The State calls Chris
17 Taylor.

18 Thereupon,

19 KRISTI TAYLOR

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 MS. LEMPESIS: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

EXAMINATION OF KRISTI TAYLOR

1 BY MS. LEMPESIS:

2 Q Well, first, Ms. Taylor, who do you work for?

3 A Beaufort County clerk of court.

4 Q What is your title there?

5 A I am a general sessions clerk.

6 Q What do your duties include?

7 A We handle all the paperwork that gets processed
8 for general session cases through the clerk's office. We
9 handle bonds, sentencing, and any other paperwork that comes
10 in.

11 Q Are you able to give -- to make true copies of
12 documents that are stored at the clerk's office?

13 A Yes, I am.

14 Q Do you regularly get asked for certified copies of
15 perhaps sentencing sheets or indictments or whatever?

16 A Very regularly.

17 Q Thank you.

18 MS. LEMPESIS: And now may I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 MS. LEMPESIS: And I apologize, Judge. I'm going
22 to mark these as Court's exhibits so that they do not
23 go to the jury.

24 *(Whereupon, Court Exhibit No(s). 1-3 marked for*
25 *identification.)*

EXAMINATION OF KRISTI TAYLOR

1 BY MS. LEMPESIS:

2 Q Ms. Taylor, I'll hand you what's now been marked
3 as Court's Exhibits 1, 2 and 3. Can you please just take a
4 look at these documents and tell us exactly what they are
5 and the charges and the defendant that is listed on those
6 documents.

7 A This is a certified true copy for a sentencing
8 sheet for indictment number 1990GS0007711. It was for the
9 charge of grand larceny and the defendant was given a
10 five-year sentence, suspended to five years probation.

11 Q Thank you. Oh, yes, can you state what the name
12 of the defendant was?

13 A I am sorry, Albert Lee Garvin.

14 Q Thank you. And I'm sorry, Ms. Taylor, also his
15 birthdate?

16 A It is not stated on this sentencing sheet.

17 Q Okay. But the name again is Albert Lee Garvin?

18 A It is.

19 Q Okay.

20 A This is a sentencing sheet, a certified true copy
21 for indictment number 1989GS0700912 for Albert Garvin for
22 the charges of grand larceny of a vehicle, in which the
23 defendant was given a 30-day sentence.

24 Q Okay. And do you see on that document, that
25 sentencing sheet, anywhere his date of birth or any

EXAMINATION OF KRISTI TAYLOR

1 identifying number?

2 A I do not.

3 Q Do you see a signature on both of those sentencing
4 sheets that you have previously -- that you have talked
5 about now? Is there a signature for the defendant?

6 A There is.

7 Q Okay. Thank you. Okay.

8 A And the last one is a certified true copy
9 1990GS0071341 for the Defendant, Lee Albert Garvin, for the
10 charge of breach of trust. He was given a five-year
11 sentence.

12 He was given a five-year sentence.

13 Q Okay. And again, his signature is on that page?

14 A It is.

15 Q Okay.

16 MS. LEMPESIS: A moment. Beg the Court's
17 indulgence.

18 (Pause.)

19 BY MS. LEMPESIS:

20 Q Ms. Taylor, if you can look back to the
21 indictments, if you look at the actual indictment, is there
22 a dollar amount on any of the charges? The charges I know
23 were grand larceny, possession of a stolen vehicle and
24 breach of trust?

25 A Yes. Do you want me to tell you by indictment

EXAMINATION OF KRISTI TAYLOR

1 number?

2 Q Please. Thank you.

3 A 1990-1341 for breach of trust. It was the
4 property value in excess of \$200, described as a 1988 GT
5 Mustang automobile.

6 Q Thank you.

7 A Indictment number 1989-912, it states the value to
8 be more than \$200 of a 1977 Datsun 280Z.

9 Q Okay.

10 A And indictment number 1990-711, it states the
11 value of more than \$200 on three gold necklaces.

12 Q Okay.

13 MS. LEMPESIS: No further questions at this time
14 for Ms. Taylor.

15 CROSS EXAMINATION

16 BY MR. BAX:

17 Q Good afternoon, Ms. Taylor.

18 A Good afternoon.

19 Q A couple of quick questions for you. The -- I
20 believe that you have indicated in your direct testimony
21 three different charges that you have indicated a Mr. Garvin
22 is listed as the defendant on. Grand larceny, a grand
23 larceny of a vehicle and a breach of trust; is that correct?

24 A Yes.

25 Q Okay. The first grand larceny, what was the date

EXAMINATION OF KRISTI TAYLOR

1 of sentencing on that case?

2 A June 28th, 1990.

3 Q June 28th, 1990?

4 A Yes.

5 Q Okay. And of the grand larceny of a vehicle, what
6 was the -- what was the sentencing date indicated on that?

7 A May 4th, 1995.

8 Q And ma'am, the -- as you can anticipate my next
9 question, what was the date of the sentencing on the breach
10 of trust case?

11 A January 9th 1991.

12 Q January 19th, you said?

13 A It states January 9th.

14 Q January 9th, 1991?

15 A Yes.

16 Q So, of those three, only the grand larceny of a
17 vehicle is within the last ten years; is that correct?

18 A Yes.

19 Q Thank you.

20 MR. BAX: A moment's indulgence, Your Honor?

21 THE COURT: All right.

22 (Pause.)

23 MR. BAX: Thank you very much. No further
24 questions.

25 THE COURT: Redirect?

EXAMINATION OF KRISTI TAYLOR

1 MR. BAX: I'm sorry. My lead counsel has reminded
2 me I've been remiss in my duties, Your Honor. May I
3 ask a few further questions?

4 THE COURT: You may.

5 BY MR. BAX:

6 Q I believe that you testified on direct that you
7 could not find a birth date on at least one or more of those
8 sentencing sheets; is that correct?

9 A Yes.

10 Q Is there a birth date on any of the sentencing
11 sheets that you can locate?

12 A I didn't see one. I know today they have that
13 information, but I didn't locate them on these.

14 Q Okay. Ms. Taylor, on any of those sentencing
15 sheets that you have in front of you, is there a place for a
16 Social Security number to be filled in?

17 A Not that I can see.

18 Q So, other than the name of the defendant as listed
19 on the sentencing sheets, is there any other identifying
20 information about the defendant involved in those cases on
21 the documentation, Ms. Taylor?

22 A There is a Social Security number written on
23 indictment number 1989-912.

24 Q So, there is a Social Security number on one of
25 them. And that particular one, what charge is that

EXAMINATION OF KRISTI TAYLOR

1 associated with, Ms. Taylor?

2 A Grand larceny of a vehicle.

3 Q That was, I believe, the offense -- or the
4 sentencing that occurred in 1995, correct?

5 A Correct.

6 Q That is the one that's within the ten years of
7 today's date, correct?

8 A Correct.

9 Q Do the other two have a social security on them?

10 A Not that I can find.

11 Q Is there any other identifying information other
12 than the alleged Defendant's name on those other two
13 convictions?

14 A Not that I can -- not that I can see.

15 MR. BAX: A moment's indulgence, Your Honor?

16 THE COURT: Yes, sir.

17 MR. BAX: No further questions. I promise this
18 time. The last time. Thank you.

19 THE COURT: Anything else?

20 MS. LEMPESIS: Nothing further from the State,
21 Your Honor.

22 THE COURT: Thank you. You may step down. And
23 you may be released from your subpoena.

24 MR. BAX: Thank you, Your Honor. I want to place
25 on the record, as a result of the information testified

COLLOQUY

1 to by Ms. Taylor of the clerk's office we would object
2 to the usage of the grand larceny from 1990 and the
3 breach of trust from 1991.

4 The reason that we would make those objections is
5 two-fold. Number one -- and frankly I'm just making
6 this objection, I have not looked back at this statute
7 in a while but if the statute enumerates this, that
8 anything outside of ten years couldn't be used for
9 enhancement, we would make the objection these are
10 outside of those ten years.

11 I do not recall, in all honestly with the Court,
12 whether or not the statute makes the delineation about
13 whether ten years is usable or not usable, but I want
14 to make sure that we cover that for our client.

15 The second objection to those two convictions
16 would be based on identification, Your Honor. We would
17 argue that the State has not bore their burden of proof
18 in proving that these convictions are from the Albert
19 Lee Garvin that is charged in this case, because the
20 documentation that they have lacks any other
21 identification other than the name Garvin, Albert Lee.
22 And I think that there might have even been a
23 different -- I am not sure if they were both -- Lee as
24 the first name and Albert as the middle or Albert as
25 the first name and Lee as the middle. So there was

COLLOQUY

1 some confusion there.

2 But the fact that there's no social security
3 number, there is no date of birth on either the grand
4 larceny from 1990 or the breach of trust from 1991, and
5 the fact that both of those convictions are outside of
6 ten years from today's date, would be the basis for the
7 Defense's objection to those being used for the
8 purposes of enhancement. Thank you.

9 MS. LEMPESIS: Your Honor, there is no ten-year
10 look-back for classification of a third or subsequent
11 offense under the enhancement statute. There is no
12 time frame, Judge.

13 THE COURT: You are saying that there's not?

14 MS. LEMPESIS: Yes, thank you. The statute is
15 16-1-57. It does not specify a time frame. It says a
16 person convicted of an offense for which the term of
17 imprisonment is contingent upon the value of the
18 property involved. Must, upon conviction for a third
19 or subsequent offense be punished as prescribed for a
20 Class E felony. Class E felony of course is one that
21 carries zero to ten years.

22 And Your Honor, just to cite a case for you,
23 there's Waiters versus the State, 371 SC571. It's a
24 2007 South Carolina Supreme Court case, the timing of
25 crimes is irrelevant to the determination of a

COLLOQUY

1 subsequent offense as long as there's a prior
2 conviction. The date of the crime does not determine
3 the status. However, for possession, drug cases, that
4 is when the ten years comes into effect.

5 And as far as the identification on the sentencing
6 sheets, the sentencing sheets -- I was interested when
7 I looked at them, they have hardly any place for any
8 information, but they do have the name of the
9 defendant, Lee Albert Garvin, or Albert Lee Garvin, and
10 we pulled those sentencing sheets based on a rap sheet
11 that we ran and saw the information listed and then
12 went to the clerk's office to get the true and accurate
13 copies of the certifieds of these prior convictions.
14 That would go towards -- these are in fact convictions
15 of Mr. Lee Albert Garvin, also known as Albert Lee
16 Garvin. And I think that he goes by Albert.

17 THE COURT: Thank you. Anything else from the
18 Defense?

19 MR. BAX: The only other thing that I would add,
20 Your Honor, is just based on what the Solicitor said,
21 is that without introducing that rap sheet as a Court's
22 exhibit I don't think that you can rely on that as a
23 basis for validating these convictions one way or the
24 other. That is it. Thank you.

25 THE COURT: All right. I've also looked at 16157.

COLLOQUY

1 It does not reference any time frame. So, as to that
2 motion, it would be denied.

3 As to the issue of whether or not the Court could
4 consider these other two -- three, the other -- well,
5 the three --

6 MR. BAX: Well, I believe, Your Honor, the one at
7 1995 did have a Social Security number. And based on
8 the testimony obviously that would be some additional
9 identifying information. So, for clarity purposes,
10 Your Honor, the two were the ones that there was an
11 identification issue with.

12 THE COURT: Okay.

13 MR. BAX: Thank you.

14 THE COURT: Well, there is information. It has a
15 name that is identical to this Defendant's name. In
16 the absence of anything else, I'll overrule that
17 objection.

18 MR. BAX: Thank you, Your Honor.

19 THE COURT: Now, does the State have any other
20 evidence that they wish to present?

21 MS. LEMPESIS: I believe that is everything from
22 the State. No other evidence.

23 THE COURT: So, the State can rest now, and we
24 will put it on the record in front of the jury
25 whenever. Does the defense have any motions?

COLLOQUY

1 MR. BELL: Judge, at this time we make a motion
2 for directed verdict based on all of our prior
3 objections, and Your Honor, based on the fact that
4 there was never any colloquy, and admittedly the Court
5 didn't have an opportunity to do it at the ordinary
6 time. But I think that I need to put it on the record
7 an objection that my client was never given the
8 opportunity to be asked and instructed by the Court
9 about his right to testify or not testify as to his
10 pleas.

11 Maybe we haven't reached that part yet until after
12 lunch, but at any rate we move to direct a verdict
13 based on that as well.

14 THE COURT: But if -- what the Court did prior to
15 jury selection, wasn't it? Was it prior to jury
16 selection? That the Court did have a discussion with
17 your client in a different courtroom with a different
18 court reporter indicating that the Court would go,
19 proceed with his trial if he did not appear.

20 MR. BAX: Your Honor, my memory was it was in here
21 but it was prior to the jury selection. We were
22 trading back and forth so much, it was confusing. He
23 was in here. And that was during the time that he was
24 walking off, saying that he was going to exercise his
25 right not to be here under rule 16.

COLLOQUY

1 MR. BELL: I think that instruction was given, but
2 not to include necessarily the specific instruction
3 about testifying.

4 THE COURT: I understand all of the motions,
5 including the motion for mistrial in the court, and
6 deny those motions.

7 Any jury charges, anybody put a thought to any
8 requests for charges? Anything special that anybody
9 wants?

10 MS. LEMPESIS: The only special one that I can
11 think of, Your Honor, obviously would be the charge
12 regarding the defendant not being present.

13 MR. BELL: Sorry.

14 MS. LEMPESIS: A charge about the defendant not
15 being present.

16 MR. BELL: Just that the jury is not to consider
17 that. If that's your ordinary charge. I haven't --

18 THE COURT: Right. I can -- I can --

19 MR. BELL: That all his rights --

20 THE COURT: I can modify the standard one about
21 him not testifying, and include in it that he has a
22 right not to testify and a right not to be present and
23 wrap it all into the same charge.

24 MR. BELL: That sounds good.

25 THE COURT: Should discuss it in the jury room,

COLLOQUY

1 blah blah blah blah. Other than that --

2 MR. BELL: Judge, I think a charge of mere
3 presence might be appropriate.

4 THE COURT: Mere presence.

5 MR. BELL: Particularly because Mr. Roucoulet, the
6 only person who had anything close to an uninterrupted
7 view of a suspect was interrupted, and he said that he
8 was not one hundred percent that that was the same
9 person, and his observations began after -- of that
10 particular individual, after the property, including
11 the parking lot and everything of Lowe's, would have
12 been vacated by the particular person that he was
13 following.

14 So he can't connect that person that he was
15 following to anything that happened prior, including
16 what is in the video. And so the person that we end up
17 with in handcuffs at the end is -- should be entitled
18 to -- I believe a charge of mere presence based on the
19 fact that he's not found in actual possession of
20 anything and it is not an identification case.

21 MS. LEMPESIS: Well, I don't think that a mere
22 presence charge would be appropriate in this case.
23 While that's true that Mr. Roucoulet was following --
24 while some of what Mr. Bell said was accurate, we saw
25 him in the video putting the nail gun down his pants.

COLLOQUY

1 And then we have Investigator Erdel's testimony that
2 the man he saw in the video was the man he ID'd, that
3 Officer Day detained, and also that that was the man
4 that was in the courtroom yesterday, present for jury
5 selection.

6 Mere presence is not appropriate in this case and
7 we have much more than mere presence and that is in the
8 evidence.

9 MR. BELL: Judge, I would agree that mere presence
10 is not good if the State has proven their case, but
11 what we are talking about is a jury's decision about
12 what the facts of the case are. And there's nothing in
13 the testimony that points irrevocably, or whatever
14 verbiage you might want to use, at Mr. Garvin. There
15 are gaps there that frankly might have been filled in
16 and mere presence not charged. But I think that it
17 would be appropriate in this case. I don't see the
18 harm.

19 THE COURT: All right. Let me think about the
20 mere presence.

21 MS. LEMPESIS: Could I respond one other thing
22 very briefly?

23 THE COURT: Sure.

24 MS. LEMPESIS: I think that mere presence is used
25 more often in drug cases or accomplice cases. It would

COLLOQUY

1 be appropriate maybe if we had no other evidence to
2 show that Mr. Garvin was the one that took the nail
3 gun, but we are not just relying on Mr. Roucoulag's
4 testimony. We have all of these other things that
5 point to Mr. Garvin with the nail gun.

6 I don't think that it would be an appropriate and
7 would only confuse the jury.

8 MR. BELL: Judge, whether it's used -- whatever
9 area of the law it's used the most as a defense or as a
10 charge I think is immaterial to the fact that it could
11 be used if happening to be in the neighborhood, meeting
12 a broad description of a subject.

13 THE COURT: Well, I have got to give a charge on
14 identification. Let me think about it. It would be a
15 separate charge than identification, so let me think
16 about it. Let me look at my --

17 MR. BELL: Certainly.

18 THE COURT: Anything else?

19 MR. BELL: No, sir.

20 THE COURT: My thoughts would be that -- let's
21 assume that when we come back, that is the end of
22 everything and nobody else testifies and nobody else
23 presents any evidence. That I have the foreperson,
24 whoever that is, write the verdict on the verdict form,
25 guilty or not guilty.

COLLOQUY

1 All right. Anything else?

2 2:00. The court is in recess until 2:00.

3 (Lunch Recess.)

4 MR. BELL: Judge, you said that you would add the
5 absence of the defendant to your identification. Mere
6 presence was the other thing.

7 THE COURT: I thought that there was something you
8 were going to talk to your client about and let us know
9 after lunch.

10 MR. BELL: No. I said that if he were to appear
11 during lunch, miraculously. He's not around. All
12 right. I think that you have already ruled on
13 everything else.

14 MS. LEMPESIS: The last thing I have is that you
15 were going to debate on a charge of identification.
16 You said, let me think about it. A separate charge.

17 THE COURT: Mere presence. I'm going to deny that
18 request. I have read and thought about it. I don't
19 see it as being appropriate in this case.

20 So, anything else that we need to take up before
21 the jury comes back?

22 MR. BELL: No, Your Honor.

23 THE COURT: Are you going to rest in front of the
24 jury?

25 MS. LEMPESIS: Yes, I'll rest on the record,

COLLOQUY

1 Judge.

2 THE COURT: Then are you all ready to argue and
3 charge? You're not going to present --

4 MR. BAX: We would rest after they rest, Your
5 Honor, for the record.

6 THE COURT: But you are not going to present
7 anything, you are ready to go?

8 MR. BELL: No, sir. Yes, sir.

9 THE COURT: Okay. Go get the jury.

10 (The jury enters the courtroom at 2:07.)

11 THE COURT: Welcome back again, ladies and
12 gentlemen. It is my understanding that the jury has
13 selected or elected juror 163, Madonna Jordan. And I
14 concur with that. A very wise decision of the jury.
15 Thank you for serving.

16 FOREPERSON: You are welcome.

17 THE COURT: I believe that we are ready to resume
18 with the presentation of evidence in the case. We are
19 still in the State's case. Solicitor.

20 MS. LEMPESIS: Thank you, Your Honor. At this
21 point the State rests.

22 THE COURT: Now it's time for the defense, if the
23 defense chooses to do so, to offer evidence.

24 MR. BELL: Your Honor, the defense rests.

25 THE COURT: Ladies and gentlemen, you have now

COLLOQUY

1 heard all of the testimony and evidence that is going
2 to be submitted to you in this case. In just a moment
3 the attorneys will make their closing arguments to you.
4 I'll then tell you about the law that applies in the
5 case and you will retire to the jury room.

6 Solicitor.

7 MS. LEMPESIS: Thank you, Your Honor, may it
8 please the Court.

9 First I want to start by thanking you all again
10 for your attention during this trial and for your time
11 and patience. I do appreciate it very much. And we
12 couldn't do this job without you as members of the
13 jury. So, thank you.

14 As I told you earlier today, it wasn't one that
15 was filled with suspense and drama, it was a pretty
16 quick but still very important case nonetheless. And
17 again, I appreciate your time.

18 You all have now had the opportunity to hear all
19 of the testimony and see the evidence in this case.
20 You have seen the video, you have seen how very clear
21 it is that Albert Lee Garvin carefully and deliberately
22 took that nail gun from the shelf at Lowe's, moved it
23 to another area in the store, took it from its
24 packaging and put it down his pants and then walked out
25 of the store without paying for it. Albert Garvin

CLOSING BY MS. LEMPESIS

1 shoplifted a nail gun worth a little less than \$200
2 from Lowe's in Beaufort.

3 We also showed you during testimony a map. And
4 the map of where they found the items. And I would
5 suggest that the testimony that you heard today also
6 serves as a map, and it is a map that leads you to your
7 findings in this case. A map that I believe will lead
8 you to a guilty verdict in this case.

9 But let's just go back briefly and look at what we
10 know. We know that a man dressed in a tan-colored
11 sweatshirt, hooded sweatshirt and black sweat pants and
12 a black T-shirt and white undershirt was at Lowe's on
13 April 19th, 2012, and he stole a nail gun worth, as I
14 said before, just under \$200 from the Lowe's. We saw
15 exactly how he did it. Very deliberate, very careful.
16 He had a plan. And we saw step by step on the video
17 surveillance. You all saw how he did it.

18 We know that that same man, when confronted by the
19 loss prevention manager, Mr. Jones, in the parking lot
20 right outside the store, as soon as he identified
21 himself as loss prevention took off running. He went
22 in the direction of Parkway. And we know
23 from that point that that same man was then spotted
24 running across Parkway.

25 We know that because Bill Roucoulet, the witness

CLOSING BY MS. LEMPESIS

1 that you heard today, Mr. Roucoulet, told you that he
2 saw a man in a tan-colored sweatshirt and dark-colored
3 pants concealing something under his clothing run
4 across the parkway, and he looks suspicious, suspicious
5 enough for him to call 911 and report exactly what he
6 saw. He saw him also, Bill told us how he also saw
7 that man pull out what looked like a nail gun from
8 under his clothes.

9 And we heard from Bill who followed him basically
10 all of the way until he was stopped by the police. He
11 followed him step by step and told disptach exactly
12 what he was seeing. He saw him go into the woods, and
13 then he saw a man who looked very similar to the man
14 who had gone into the woods come out of the woods,
15 except for this time he had taken off the tan
16 sweatshirt and the dark sweat pants and black T-shirt.
17 And he left the nail gun there.

18 But Bill continued to watch him, he looked
19 suspicious and the man looked very similar to the man
20 that he seen before. And so he followed him and
21 followed him. He followed him until the police
22 apprehended him. And we know that he told the police
23 who apprehended Mr. Garvin that that man they had in
24 custody matched the description of the person that he
25 had been following. So, we know all of those things.

CLOSING BY MS. LEMPESIS

1 We also know that Mr. Garvin was then arrested and
2 charged with shoplifting by Master Sergeant Day. We
3 know that he was located within a half a mile of the
4 Lowe's on Road, that he was located within
5 minutes, hardly any time passed, and that he was
6 charged with the crime of shoplifting.

7 We know that also there wasn't anyone else in that
8 general vicinity that matched his description. We know
9 that. Several of the witnesses told us that.

10 We also know that these clothes, these sweat
11 pants, these sweat pants, this shirt, this shirt and
12 this sweatshirt were found right there in the woods by
13 the K-9 unit by Corporal Seronka and canine Hugo as
14 being something that didn't belong in that area. And
15 also found, of course, with those clothes was the nail
16 gun. The nail gun with the serial number that matched
17 the serial number on the discarded packaging that was
18 left behind at Lowe's. We know all of that.

19 We know that it was Mr. Garvin who took those
20 items, and we know that because Investigator Erdel went
21 to Lowe's, and instead of going to where Mr. Garvin had
22 been detained, he went to Lowe's to look at the video,
23 the same video that you all saw. And he could see for
24 himself who this person was that had stole the nail
25 gun. He could see with the clarity that you all saw on

CLOSING BY MS. LEMPESIS

1 the video. You can see him right there, Mr. Garvin.
2 Without question, he looks at that man and then he goes
3 to the scene where Mr. Garvin was detained and he IDs
4 him, looks at him square in the face and IDs him as the
5 same person that was on the video at Lowe's shoplifting
6 the nail gun.

7 We also know, we know that Investigator Erdel
8 testified today that that man that he saw in the video,
9 Albert Garvin, the man that he ID'd a half a mile up
10 the road as the person who shoplifted was the same man
11 that you all saw yesterday at jury selection. We know
12 that, Investigator Erdel told us that that was the same
13 person.

14 Now, the defense has asked questions of all of the
15 officers involved about why and whether or not the nail
16 gun that was taken was fingerprinted or tested for DNA.
17 All valid questions. You know, why wasn't this done
18 before it was returned to Lowe's. And the answer is
19 that they didn't do it because they didn't need to.
20 They caught Mr. Garvin red-handed. They didn't need to
21 do those things.

22 You heard how the police typically treat these
23 items. Typically return them if they are able to be
24 resold. And this nail gun, fortunately, was able to be
25 resold. They took it right back to the store. They

CLOSING BY MS. LEMPESIS

1 matched the serial numbers, same serial number on the
2 box, and made sure that that information matched and
3 then they returned it to Lowe's so that they could
4 still try to sell it.

5 Lee Albert Garvin, he took something that wasn't
6 his and he was caught red-handed. Right there, clear
7 as day on the video, he shoplifted from Lowe's.

8 I asked you when I started to please carefully
9 listen to all of the evidence, and I ask you again to
10 carefully consider all of the evidence, and I have no
11 doubt that what you will do is come back with the
12 verdict of guilty and you will be convinced by the
13 proof in this case beyond a reasonable doubt that
14 Mr. Garvin, Albert Garvin, is guilty of the crime of
15 shoplifting. Thank you.

16 THE COURT: Thank you, Solicitor.

17 Mr. Bell. Time is now 2:20 p.m.

18 MR. BELL: Thank you, Ms. Lempesis.

19 Your Honor, ladies and gentlemen of the jury,
20 thank you for your attention in this case. I noticed
21 that you were all very attentive, listened to the
22 witnesses.

23 One interesting thing I believe that could have
24 occurred to you, the Solicitor stated that there's no
25 suspense and drama in this case, and the reason that we

CLOSING BY MR. BELL

1 are sitting here at 2:30 and it's already come to you
2 is because there's not a heck of a lot of evidence
3 either. We are relying on one piece of evidence
4 essentially, and some clothing. Some clothing that is
5 not tested for DNA, which is done all of the time.
6 Items which aren't fingerprinted, including an item --
7 whether that's here nor there, the Bic lighter that
8 they never even discovered when they apparently
9 examined the items that they did take into evidence.

10 And it is their ordinary practice to return an
11 item alleged to be stolen directly back to Lowe's.
12 That is all well and good and fine if that is the
13 practice of the Beaufort County -- or the City of
14 Beaufort Police Department. But it's not all well and
15 good here when we are dealing with reasonable doubt.
16 When what you should require of the State, what I
17 believe that you will require of the State, is that
18 they give you everything that they are capable of
19 giving you.

20 And the Solicitor is making -- jumping to that
21 conclusion for you. She is saying, oh, you don't need
22 it. We made the decision that they don't need it.
23 Based on a video, observed by an officer who responded
24 to a showup ID of a black male found in the general
25 area. That is what we have got here.

CLOSING BY MR. BELL

1 And I didn't hear any testimony about there were
2 no other people that fit the description in the area.
3 They didn't canvass the area. Did you hear from any
4 civilian witness? Did you hear from anybody that saw
5 anything other than this fellow that followed him
6 around in his truck, Mr. Roucoulet? The Solicitor said
7 followed him seamlessly. I don't remember that. I
8 remember him saying, I lost sight of him and I'm not a
9 hundred percent the guy that I saw after that is the
10 same guy. He is not sure. How are you going to be
11 sure?

12 They want you to connect all of the dots, when all
13 they had to do -- they could have still returned the
14 drill to Lowe's, just fingerprint it. They have got a
15 lab, they have people over there that do that all of
16 the time, all day long. It is their job. Their job is
17 to provide the evidence so that juries have any and all
18 information that they might want or require. And you
19 should want anything and everything of value. Because
20 a reliance on video evidence alone is a dangerous place
21 to go in our society. What about good old-fashioned
22 police work, what about before we had video. What
23 about when we had to rely on witnesses and their
24 veracity from the stand?

25 Well, that is fine that we have video now to add

CLOSING BY MR. BELL

1 to the ordinary tools that are at our disposal, but
2 what I'm talking about is scientific evidence. There
3 are scientific ways of performing identifications. You
4 do -- you put five photos of similarly ethnic,
5 similarly same sex, same age generally, and you can
6 take that back to the operator of the video camera and
7 say, do you see the fellow that you saw that day who we
8 have -- now have in custody. And he may not be in one
9 of these two six-packs or five-packs of lineups. And
10 then that's how you do it with some scientific rigor.

11 Anytime that you just show up and, you know, does
12 the guy in the back of the police car look like the guy
13 in the video. Oh, yeah, we got him. Don't take any
14 more evidence, don't fingerprint anything. Just -- and
15 that was the job, we found out, of Officer Day.

16 And we heard from Officer O'Neill. It was his
17 decision to send a K-9 unit out there, and it happened
18 to be the K-9 unit operated by Seronka and his dog Hugo
19 responded. Not to track a human scent, which seemed to
20 make a lot of sense in this case, I hope you would
21 agree, but to go find some foreign object.

22 Now, the dog can do it quicker than a human being
23 can, I'll concede that readily. So, the dog goes and
24 lays down by -- nothing wrong with that police work,
25 and it is a fine use of a dog. Particularly in a

CLOSING BY MR. BELL

1 larger area, I could see where that would be valuable.

2 Where that dog would be valuable in this case
3 would be to establish and track how those objects
4 arrived at that location, and they can do that. They
5 chose not to.

6 All of these things that they did not do are
7 choices that they made because they didn't think that
8 it would be important for you to consider. And I think
9 that you should think that it would be important things
10 for you to consider. You should demand that of the
11 State. And I believe that's your charge.

12 Beyond a reasonable doubt is a very high standard,
13 and when the police fail to do the things that they do
14 day in, day out all over this country, well, that's
15 good enough. Is it good enough for you?

16 Well, you know, we can go to lunch. I mean, these
17 guys do a great job all of the time, and they do the
18 right thing all of the time. I'm not trying to
19 disparage these officers in any way, but in this
20 particular case they didn't collect the information
21 that would have aided you in making a fully informed
22 decision. I believe that they failed to meet their
23 burden of proof and we would ask for a verdict of not
24 guilty accordingly. Thank you.

25 THE COURT: Thank you, Mr. Bell.

JURY CHARGE

1 Ladies and gentlemen, I remind you that the fact
2 that the defendant was arrested, was charged and was
3 indicted is not evidence in the case and cannot be
4 considered by you as evidence. Nor do these facts
5 create any presumption or inference of guilt. As I
6 told you earlier, the indictment is simply the document
7 that -- the vehicle that brings this case into court.
8 And the defendant has pled not guilty to this
9 indictment. The plea puts the burden upon the State to
10 prove the defendant guilty. I'll tell you that a
11 person charged with committing a criminal offense in
12 this state is never required to prove himself innocent.

13 I charge you further as an important rule that the
14 defendant in a criminal case, no matter what the
15 seriousness of the charge may be, will always be
16 presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proven by
18 evidence that satisfies you of that guilt beyond a
19 reasonable doubt.

20 Presumption of innocence doesn't begin when you
21 begin your deliberations, but it accompanies the
22 defendant throughout the trial until you reach a
23 verdict of guilty based on evidence that satisfies you
24 of that guilt beyond a reasonable doubt.

25 The presumption of innocence is like a robe of

JURY CHARGE

1 righteousness placed about the shoulders of a
2 defendant, which remains with the defendant until it
3 has been stripped from the defendant by evidence that
4 satisfies you of that guilt beyond a reasonable doubt.

5 The presumption of innocence is not mere legal
6 theory, it is not a legal phrase, it is just a
7 substantial right to which every defendant is entitled
8 unless you, the jury, are satisfied of the Defendant's
9 guilt beyond a reasonable doubt. A reasonable doubt is
10 the kind of doubt that would cause a reasonable person
11 to hesitate to act.

12 Some of you may have served as jurors in civil
13 cases where you were told that it was only necessary to
14 prove that a fact was more likely true than not, such
15 as by the greater weight of the preponderance of the
16 evidence. But in criminal cases the State's proof must
17 be more powerful than that. It must be beyond a
18 reasonable doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of a Defendant's guilt. Of
21 course, there are very few things in this world that we
22 know of with absolute certainty. In criminal cases,
23 the law does not require proof that overcomes every
24 possible doubt. If, based upon your consideration of
25 the evidence, you are firmly convinced that the

JURY CHARGE

1 defendant is guilty of the crime charged, you must find
2 the defendant guilty. If, on the other hand, you think
3 that there's a real possibility that the defendant is
4 not guilty, you must give the defendant the benefit of
5 the doubt.

6 During this trial you and I have had different
7 responsibilities and obligations. I have been required
8 to rule on the admissibility of evidence and preside
9 over the trial. If any evidence was ordered stricken
10 from the record, you must disregard that evidence. You
11 are to only consider evidence which has been presented
12 from this witness stand, and any exhibits which are
13 made part of the record in this case.

14 I also have the additional duty to tell you about
15 the law that applies in this case. I am the sole judge
16 of the law of this case. It is your duty, ladies and
17 gentlemen, to accept the law and apply the law as I
18 tell you it is. If you have any ideas that the law is
19 different than I tell you, or should be different than
20 I tell you, you must put that thought out of your mind.
21 Because under your oath you are obligated to take the
22 law as I give it to you.

23 As you know, in every case tried before a jury in
24 this state the jury becomes the sole and exclusive
25 judge of the facts of the case. And a trial judge such

JURY CHARGE

1 as myself cannot intimate, state, comment on any fact
2 in this case in the presence of you, the jury. You're
3 not to infer anything that I have done or said or ruled
4 on during the progress of this trial that I have an
5 opinion about the facts of this case. As I told you
6 earlier, the law does not permit me to express an
7 opinion about the facts of the case in your presence.

8 Generally speaking, there are two types of
9 evidence presented during the trial. Direct the
10 evidence, which -- direct evidence is the kind of
11 evidence submitted by a person who has or claims to
12 have actual knowledge of a fact, such as an eyewitness.
13 Circumstantial evidence is proof of a chain of facts
14 and circumstances indicating the existence of a fact.
15 It is evidence which immediately establishes collateral
16 facts from which a main fact may be inferred.
17 Circumstantial evidence is based on inference and not
18 on personal knowledge or observation.

19 The law makes no distinction between the weight of
20 the value to be given to either direct or
21 circumstantial evidence, nor is a greater degree of
22 certainty required of circumstantial evidence than of
23 direct evidence. You should weigh all of the evidence
24 in this case, and after weighing all of the evidence,
25 if you're not convinced of the guilt of the defendant

JURY CHARGE

1 beyond a reasonable doubt you must find the defendant
2 not guilty.

3 Necessarily, ladies and gentlemen, you must
4 determine the credibility of the witnesses who have
5 testified in this case. And that simply means the
6 believability of the witnesses. It becomes your duty
7 as jurors to analyze and evaluate the evidence and
8 determine which evidence convinces you of its truth.
9 In determining the believability of the witnesses who
10 have testified, you may believe one witness over
11 several witnesses, or several witnesses over one
12 witness. You may believe part of the testimony of a
13 witness and reject the remaining part of the testimony
14 of that very same witness. You may believe the
15 testimony of a witness in its entirety or reject the
16 testimony of a witness in its entirety. And you may
17 consider whether the witness has exhibited to you any
18 interest or bias or any prejudice or any other motive
19 in this case.

20 I instruct you, ladies and gentlemen, and
21 emphasize that the fact that the defendant did not
22 testify or appear in this case is not a factor to be
23 considered by you. It's not a factor that should be
24 considered in your deliberations on the question of the
25 guilt or innocence of the defendant. It must not be

JURY CHARGE

1 considered by you in any manner whatsoever. A
2 defendant has a constitutional right to remain silent,
3 to not testify, to not be present.

4 And the assertion of this right must not be
5 considered by you in your deliberations. Under your
6 oath, I'll tell you that you are to draw no conclusions
7 whatsoever from the fact that the defendant in this
8 case did not appear or testify in this trial. And
9 these facts should not even be discussed in the jury
10 room.

11 As I've told you, the burden of proof is on the
12 State. The defendant is not required to prove his
13 innocence. The burden of proof remains on the State to
14 prove guilt beyond a reasonable doubt.

15 At issue in this case is the identification of the
16 person who committed the crime charged. The State has
17 the burden of proving identity beyond a reasonable
18 doubt. You must be satisfied beyond a reasonable doubt
19 of the accuracy of the identification of the defendant
20 before you may convict the defendant.

21 Identification testimony is an expression of
22 belief or impression by a witness. You must determine
23 the accuracy of the identification of the defendant.
24 You must consider the believability of each of the
25 identification witnesses in the same way as any other

JURY CHARGE

1 witness. You may consider whether a witness had an
2 adequate opportunity to observe the offender at the
3 time of the offense. This may be affected by how long
4 or short a time is available, how far or close the
5 witness was, the lighting conditions and whether the
6 witness had the chance to see or know the person in the
7 past.

8 Once again, I tell you that the burden of proof is
9 on the State, and it extends to every element of the
10 crime charged. And this specifically includes the
11 burden of proving beyond a reasonable doubt the
12 identity of the defendant as the person who committed
13 the crime. If after examining the testimony you have a
14 reasonable doubt as to the accuracy of the
15 identification, you must find the defendant not guilty.

16 Give me a second, ladies and gentlemen. I dropped
17 something that I need to tell you about.

18 (Pause.)

19 As you know, the defendant is charged with the
20 offense of petty larceny -- of shoplifting, excuse me.
21 The State must prove -- I have lost it again. Bear
22 with me one minute.

23 (Pause.)

24 As I said a minute ago, the defendant is charged
25 with the offense of shoplifting. The State must prove

JURY CHARGE

1 beyond a reasonable doubt that the defendant took
2 possession of or carried away or transferred from one
3 area of the store to the other, or caused to be carried
4 away merchandise with the intent to deprive the
5 merchant of the possession, use, or benefit of the
6 merchandise without paying the full value, the full
7 retail value. Merchandise means any goods, chattel,
8 foodstuffs or wares of any type and description,
9 regardless of the value thereof.

10 Intent means willfully, intending the result which
11 actually occurs, not accidentally or involuntarily.

12 Intent may be shown by acts and conduct by which you
13 may naturally and reasonably infer intent.

14 Ladies and gentlemen, in a few minutes you will
15 retire to the jury room and begin your deliberations.
16 You will also be given all of the exhibits and a copy
17 of the indictment. And I'm going to ask our foreperson
18 if she would, once the jury reaches a unanimous
19 verdict, meaning all 12 of you agree, to write that
20 verdict on the verdict form under the word verdict.
21 And of course there are only two possible verdicts,
22 guilty or not guilty. So, if you would write guilty or
23 you would write not guilty and then sign the verdict
24 form and then let the bailiffs know that you have
25 reached a verdict. We will receive you back in the

JURY CHARGE

1 courtroom.

2 Before you begin your deliberations, ladies and
3 gentlemen, though, I'm going to send to the jury room
4 all of the exhibits with the verdict form with the
5 indictment and when that occurs our alternate juror
6 will step back into the courtroom. Step out of the
7 jury room, back into the courtroom and then you may
8 begin your deliberations.

9 Ladies and gentlemen, if you will please retire to
10 the jury room. Thank you.

11 (Jury goes out at 2:40 p.m.)

12 THE BAILIFF: The jury is clear, Your Honor.

13 THE COURT: Exceptions?

14 MS. LEMPESIS: None from the State, Your Honor.

15 MR. BAX: No exceptions. The charge, there was
16 one thing that co-counsel and I discussed on the
17 verdict form since you have the verdict form on the
18 indictment.

19 The only thing that I thought of that I think in
20 representation of Mr. Garvin that we need to bring up,
21 is that due to this being an enhancement statute,
22 obviously there is going to be some things blacked out
23 on that. We would at this time object that to being
24 the form of the verdict because they are going to get
25 something with things blacked out. I don't know what

JURY CHARGE

1 their imagination is going to come up with as to what
2 could be underneath those black-outs. So I think that
3 the defense at this point would request an independent
4 verdict form that is not attached to the indictment
5 that just lists guilty and not guilty. That would be
6 the defense's request.

7 THE COURT: Anything, Solicitor?

8 MS. LEMPESIS: Judge, I'm fine either way. I
9 think that it could go back like it is, but if you
10 would like the defense to do a verdict form, fine with
11 me.

12 THE COURT: I agree with the defense on that. I
13 think that we need to create a new verdict form. So,
14 who is going to do that?

15 MR. BAX: Your Honor, I'd be happy to do it since
16 we have made the request. It'll take a few minutes to
17 do it, and I'll send it to Ms. Taylor to print it out.

18 MS. LEMPESIS: And I can print it too. If you
19 will just send it to me. In fact, do you want the
20 caption?

21 THE COURT: While we are doing that, could we get
22 somebody to look and make sure that we have got
23 exhibits?

24 MS. LEMPESIS: The only thing that you are missing
25 is the disc. So.

JURY CHARGE

1 THE COURT: All right. We got everything ready to
2 go?

3 THE BAILIFF: Yes, sir.

4 THE COURT: Before you hand this back, would you
5 tell them to change the form.

6 THE BAILIFF: Yes, I will tell them to change
7 that.

8 THE COURT: Either put in the words guilty or not
9 guilty. And I'll send Ms. O'Reilly back as the
10 alternate.

11 THE COURT: The alternate, yeah.

12 THE BAILIFF: Meaghan O'Reilly is her name. Time
13 is now 3:55.

14 THE COURT: Ms. O'Reilly, I want to thank you.
15 You can leave any time that you want to, or you can
16 stay if you want. Often jurors want to stay to see
17 what happens. But it's totally up to you.

18 JUROR: Would I sit here or there?

19 THE COURT: Could she go through here to get back
20 there? And then if you get tired and you want to leave
21 you can still leave. If they take a long time and you
22 want to leave then you can walk out the door.

23 JUROR: I think that I know what they are going to
24 say, but I appreciate the opportunity.

25 THE BAILIFF: We have a verdict.

JURY CHARGE

1 (Jury enters the courtroom at 3:05 p.m.)

2 THE COURT: Let's bring the jury in.

3 THE BAILIFF: Your Honor, the jury is entering.
4 Watch your step please. Thank you.

5 THE COURT: Welcome back, ladies and gentlemen.
6 Let me ask Ms. Jordan, the bailiff indicates that he
7 believes that the jury has reached a verdict; is that
8 correct?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Let me ask, unanimous verdict, all 12
11 of you agree?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: You wrote down the verdict on the
14 form?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: Guilty or not guilty?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: Will you sign the form?

19 THE FOREPERSON: Yes, sir.

20 THE COURT: Would you please pass it forward. And
21 Madam Clerk, would you please publish the verdict?

22 THE CLERK: In the case of the State of South
23 Carolina versus Lee Albert Garvin Indictment
24 2012GS07000962 on the charge of shoplifting, we the
25 jury unanimously find the Defendant guilty.

THE JURY'S VERDICT

1 Ladies and gentlemen of the jury, if this is the
2 decision of each and everyone of you, if you will
3 please indicate so by raising your right hand.

4 (Whereupon, all raise their right hand.)

5 THE COURT: Anything further before the jury is
6 discharged from the Defendant?

7 MR. BELL: Judge, if you would poll the jury,
8 please?

9 THE COURT: Madam Clerk.

10 THE CLERK: When I call your number, if you would
11 please stand, please.

12 Juror 57 is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Thank you.

17 Juror 329 is this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Thank you.

22 Juror 137 is this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

THE JURY'S VERDICT

1 THE CLERK: Thank you.
2 Juror 233 is this your verdict?
3 THE JUROR: Yes.
4 THE CLERK: Is it still your verdict?
5 THE JUROR: Yes.
6 THE CLERK: Thank you.
7 Juror 332 is this your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 THE JUROR: Yes.
11 THE CLERK: Thank you.
12 Juror 129 is this your verdict?
13 THE JUROR: Yes.
14 THE CLERK: Is it still your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Thank you.
17 Juror 140 is this your verdict?
18 THE JUROR: Yes.
19 THE CLERK: Is it still your verdict?
20 THE JUROR: Yes.
21 THE CLERK: Thank you.
22 Juror 257 is this your verdict?
23 THE JUROR: Yes.
24 THE CLERK: Is it still your verdict?
25 THE JUROR: Yes.

THE JURY'S VERDICT

1 THE CLERK: Thank you.
2 Juror 198 is this your verdict?
3 THE JUROR: Yes.
4 THE CLERK: Is it still your verdict?
5 THE JUROR: Yes.
6 THE CLERK: Thank you.
7 Juror 163 is this your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 THE JUROR: Yes.
11 THE CLERK: Thank you.
12 Juror 95 is this your verdict?
13 THE JUROR: Yes.
14 THE CLERK: Is it still your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Thank you.
17 Juror 158 is this your verdict?
18 THE JUROR: Yes.
19 THE CLERK: Is it still your verdict?
20 THE JUROR: Yes.
21 THE CLERK: Thank you.
22 THE COURT: Thank you Madam Clerk. Anything
23 further?
24 MR. BELL: No, Your Honor..
25 MS. LEMPESIS: Nothing from the State, Your Honor.

THE JURY'S VERDICT

1 THE COURT: Ladies and gentlemen, I want to thank
2 you for your service. As I previously told you that
3 you couldn't talk to anybody about the case. You are
4 now free to talk to anybody about the case, including
5 what happened in the jury room; or not talk to anybody
6 about the case, if you don't want to. That is totally
7 up to you. I'll tell you one other thing, there's
8 nobody that is in the position to criticize your
9 verdict because I'll say thi, only the 12 of you sat
10 there, saw the witnesses, heard the attorneys, listened
11 to me and then sat down in the jury room and discussed
12 it all with your fellow jurors.

13 I'm getting ready to let you go. Of course, you
14 are free to go for the week. This ends your jury
15 service obligation. What remains to be done is the
16 Court is now going to be required to impose sentencing
17 and oftentimes jurors would want to stay and see what
18 happens in the sentencing. I'll tell you this, this is
19 a case that is called an enhancement case and people
20 who are convicted of committing offenses three or more
21 times, their potential sentence can be increased or
22 enhanced so it's not just a simple shoplifting case.

23 It is -- and if you stay, and you don't have to,
24 you will hear that the Defendant in this case has a
25 fairly lengthy record. But since the Defendant is not

THE JURY'S VERDICT

1 present his sentence will actually be sealed which
2 means that nobody is going to know what the sentence is
3 except me. It won't be announced before he's brought
4 before the Court on another day. Typically what
5 happens is a bench warrant is issued for him and he's
6 picked up and brought to court to have sentence imposed
7 on him.

8 At any rate, anybody have any questions? I'm
9 getting ready to let you go. No questions? Does
10 anybody need a work excuse? Ladies and gentlemen, you
11 are free to go or stay in your chair. Thank you.

12 THE COURT: Any motions or other matters that the
13 court needs to take up?

14 MS. LEMPESIS: None from the State, Your Honor.

15 MR. BELL: Judge, just at the appropriate time if
16 you want to be heard at all in mitigation or that may
17 not be necessary?

18 THE COURT: Well, are you talking about on
19 sentencing?

20 MR. BELL: Yes, sir.

21 THE COURT: Is the State ready to proceed on
22 sentencing?

23 MS. LEMPESIS: Judge, just five minutes. I'm
24 printing a sentencing sheet. It won't take longer than
25 five minutes.

THE JURY'S VERDICT

1 THE COURT: Okay.

2 (Pause.)

3 MS. LEMPESIS: I am ready. Your Honor. I'll pass
4 up a sentencing sheet. I just filled in convicted of
5 and then the offense and then the CRD code.

6 THE COURT: Okay.

7 THE COURT: I'll be glad to hear from the State as
8 to sentencing then.

9 MS. LEMPESIS: Thank you, Your Honor. To start I
10 would like to pass up, we pulled certified copies of a
11 lot of his prior convictions, all of the prior
12 convictions that would serve as enhancements under the
13 property crime statute. If Your Honor would allow me,
14 I would like to pass these up and make them part of the
15 Court's record so that they are there and there's no
16 question.

17 THE COURT: All right.

18 MS. LEMPESIS: Judge, you have heard all of the
19 facts of the case, I'm not going to go back through
20 that for you. I do just want to recap, which will take
21 a little time, Mr. Garvin's prior record for you,
22 beginning to end. Starting 1985, petty larceny, 1988,
23 hit and run with property damage. Also shoplifting,
24 two counts of shoplifting. Eighty-nine, shoplifting
25 charge, public disorderly conduct and grand larceny.

SENTENCING

1 1990, grand larceny, burglary second non-violent six
2 counts. And also a breach of trust. In 1995 auto
3 tampering, petty larceny times two, simple assault and
4 battery. Two more burglaries. Second non-violent,
5 which he was sentenced to 10 years supended for the
6 service of three and received five years probation for.

7 In 1997 convicted of resisting arrest. In 2004 he
8 was convicted of selling fraudulent Lottery tickets, 12
9 counts. And also assisting arrest. 2006, failure to
10 stop for a blue light and possession of drug
11 paraphernalia, shoplifting, disorderly conduct. 2007,
12 petty larceny disorderly conduct. 2008, petty larceny
13 shoplifting times three. And again, possession of drug
14 paraphernalia. And two 2010 grand larceny more than a
15 thousand, less than 5,000.

16 And in Florida from 1994 he had a petty theft
17 charge. And then today for shoplifting under the
18 property crime enhancement charge 2014. Judge,
19 Mr. Garvin's record speaks for itself. I'm sure if he
20 were here he would have something to say but he's not
21 here. We would ask for the full ten-year sentence.
22 The charge carries up to ten and the State certainly
23 feels that he deserves that sentence.

24 THE COURT: What is the greatest length of
25 sentence he's received?

SENTENCING

1 MS. LEMPESIS: Ten years suspended for three and
2 then five years probation. Actually he may have
3 received eight years on the grand larceny charge from
4 1990 and the burglary second charges. It looks like he
5 might have gotten an eight-year sentence on that.

6 THE COURT: Okay.

7 MR. BELL: Thank you, Your Honor. I'll be brief.
8 I would just ask that you not consider some of the
9 things such as his disruptive behaviour. That has been
10 his nature, I don't think that he should be punished
11 for that or exercising his right to have a trial. I
12 know that he was a little rambunctious, to say the
13 least and failed to appear and complete this process,
14 but it was a short process. I mean, I don't think that
15 he belabored Court time unduly. And I don't think that
16 the Court should punish him for that. And we are
17 talking about a not guilty case where nobody was hurt
18 and I think that we still ought to consider the facts
19 of this particular case and what justice those
20 particular facts deserve in light of his record.

21 THE COURT: All right.

22 MR. BELL: And we would ask for something between
23 zero and ten years.

24 THE COURT: All right. Okay. Solicitor I'll just
25 take these, his conviction history that you handed up

SENTENCING

1 and just put it in the envelope so it'll be there with
2 the -- for the next judge.

3 MS. LEMPESIS: Thank you, Your Honor.

4 THE COURT: Anything else on this case?

5 MR. BELL: No, Your Honor.

6 THE COURT: Okay. Thank you.

7 (Trial concluded.)

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SENTENCING

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 29th day of January, 2015.

MONA L. MANLEY
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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBER 2012-GS-07-00962

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

OCTOBER 1, 2014

TRANSCRIPT OF SENTENCE IMPOSITION

BEAUFORT, SOUTH CAROLINA

ALBERT LEE GARVIN

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

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EXHIBITS

No exhibits were admitted.

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING (ORIGINAL)

1 BEGINNING 3:45 P.M.

2 BY THE COURT:

3 MS. LEMPESIS: Good afternoon, your Honor.

4 THE COURT: Good afternoon.

5 MS. LEMPESIS: State calls Albert Garvin.

6 THE COURT: Come on around, Mr. Garvin.

7 DEFENDANT GARVIN: I'm coming, Judge. You ain't
8 going to have no problem out of me, Judge. I just need
9 to get something.

10 THE COURT: Thank you. All right.

11 MS. LEMPESIS: Your Honor, Mr. Albert Lee Garvin is
12 standing before you under Indictment Number 2012-GS-07-
13 0962. Mr. Garvin is before you today for his sentence
14 imposition. Mr. Garvin was tried in his absence in a
15 trial that began with jury selection on March 17th of
16 this year, before the Honorable Judge Goldsmith. The
17 trial concluded on March 18th, and Mr. Garvin was found
18 guilty of shoplifting under the Property Crime
19 Enhancement statute. That charge carries up to ten
20 years, and he was sentenced. That sentence was sealed
21 by Judge Goldsmith.

22 Mr. Garvin was tried in his absence, as I stated,
23 your Honor. However, Mr. Garvin did show up for the
24 first day of the trial. He was there and present for
25 his jury selection, and as he left the courtroom on that

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING (ORIGINAL)

1 Monday afternoon, he told Judge Goldsmith that he knew
2 the law. He said that the appropriate -- the correct
3 rule, Rule 16, he said that he knew the law; that we
4 could try him in his absence; and then, he did not come
5 back Tuesday morning. .

6 We did, your Honor, try Mr. Garvin in his absence.
7 Mr. Bell represented him, and we presented six different
8 witnesses. And if I can, just mention the witnesses
9 that we called. I know I think Mr. Garvin might have
10 had a question about who testified at the trial. There
11 was a William Roclay from Lowe's, a Lowe's employee.
12 Daniel James, also a Lowe's employee. Or excuse me, the
13 first witness, Bill Roclay, was a witness who saw Mr.
14 Garvin fleeing from the Lowe's Shopping Center, and with
15 the items that he had stolen. A Daniel Jones, who was a
16 Lowe's employee. George Arnold from the Beaufort Police
17 Department. Jason David of Beaufort Police Department.
18 John O'Neal, who was a former officer of Beaufort Police
19 Department. And Chad Seronka, who works for the
20 Beaufort County Sheriff's Office.

21 Your Honor, as I stated, Mr. Garvin was found
22 guilty in his absence. Judge Goldsmith did seal that
23 sentence, and did issue a bench warrant on that day,
24 March 19 -- or on the next day, March 19. Mr. Garvin
25 was picked up on that bench warrant in Jasper County,

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING (ORIGINAL)

1 and was transported to our jail on the 20th of
2 September. And so, he stands before you today to have
3 his sentence imposed.

4 THE COURT: Okay. Thank you.

5 MADAM CLERK: Mr. Garvin, would you do me a favor.
6 Would you raise your right hand, please,

7 THE COURT: That's okay.

8 MADAM CLERK: Okay.

9 THE COURT: You don't need to do that. I
10 apologize. Okay. Mr. Garvin?

11 DEFENDANT GARVIN: Yes, ma'am.

12 THE COURT: On Indictment 2012-0962, it's for
13 shoplifting, enhancement, third or subsequent offense,
14 value \$2,000.00 or less, the sentence of this Court is
15 that you be committed to Department of Corrections for a
16 period of nine years. And that's signed by Brooks
17 Goldsmith on March 18, 2014.

18 Anything further, Mr. Bell?

19 MR. BELL: No, Judge. I would just ask that Mr.
20 Garvin be given any credit for the jail time since his
21 arrest on the bench warrant and any prior time 'til
22 bonding out.

23 THE COURT: Did you ask Judge Goldsmith that?

24 DEFENDANT GARVIN: No.

25 MR. BELL: I'm sure I did.

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING (ORIGINAL)

1 MS. LEMPESIS: I believe he did, your Honor.

2 COURT REPORTER: I'm sure I didn't? Did? What did
3 you say?

4 MR. BELL: I'm sure I did.

5 MS. LEMPESIS: I believe he did. I seem to recall
6 that you did.

7 THE COURT: Okay. Do you have any objection to
8 that?

9 MS. LEMPESIS: I don't, your Honor.

10 THE COURT: Okay. Anything further from anyone?

11 DEFENDANT GARVIN: Your Honor?

12 THE COURT: Yes, sir, Mr. Garvin?

13 DEFENDANT GARVIN: I wasn't allowed to speak before
14 you gave me a sentence?

15 THE COURT: Sir, all I can do is institute the
16 sentence that was given you by the trial judge.

17 DEFENDANT GARVIN: So, you don't know -- your
18 Honor, she just read the case, but she ain't never said
19 that anyone testified. No one testify at my trial. No
20 one test -- I was there when they did the deposition.
21 No one stated that -- I mean, the people stated that
22 they could not identify the suspect. There was no one
23 at the trial. So, what she just stated just now is
24 completely wrong, your Honor.

25 THE COURT: Mr. Garvin, you were convicted by a

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING (ORIGINAL)

1 jury of twelve people, your peers. You have --

2 DEFENDANT GARVIN: No victim, your Honor.

3 THE COURT: Sir. Sir.

4 DEFENDANT GARVIN: You have no victim.

5 THE COURT: Sir, don't interrupt me.

6 DEFENDANT GARVIN: Well, isn't this --

7 THE COURT: Sir.

8 DEFENDANT GARVIN: Don't practice backwoods law on
9 me.

10 THE COURT: Anyway.

11 DEFENDANT GARVIN: That's what you're doing.

12 THE COURT: Mr. Garvin, that is your sentence.

13 DEFENDANT GARVIN: I don't want to hear this, man.

14 MS. LEMPESIS: Thank you, your Honor.

15 THE COURT: You can file any appropriate appeal.

16 MS. LEMPESIS: Thank you, Judge. That concludes
17 all the matters that we have.

18 THE COURT: Sorry, April.

19 MADAM CLERK: Oh, no, no.

20 THE COURT: That is the one exception to swearing
21 them in.

22 MADAM CLERK: Okay.

23 THE COURT: Just on the off chance. Okay?

24 DEFENDANT GARVIN: Racist mother fuckers.

25 MADAM CLERK: Yeah, he said it.

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING (ORIGINAL)

1 THE COURT: Apparently, someone needs to decide
2 whether or not we want to hold him in contempt of court.
3 Let me think about it, but I'm thinking it's a good
4 idea. I don't know why he didn't get the ten years, to
5 start with.

6 MS. LEMPESIS: Thank you, Judge.

7 THE COURT: Okay. I'll let you all know if you
8 need to have another hearing.

9 MS. LEMPESIS: Thank you.

10 MR. BELL: Judge, I will tell you that was not
11 unexpected. I should have warned you.

12 THE COURT: Really?

13 MR. BELL: Yes.

14 THE COURT: I've sentenced him before myself. I
15 mean, I've been with him in Jasper before.

16 MS. LEMPESIS: Thank you, Judge.

17 THE COURT: Thank you.

END PROCEEDING 3:55 P.M.

10-1-14 STATE V. ALBERT LEE GARVIN - SENTENCING

(ORIGINAL)

CERTIFICATE OF REPORTER

OCTOBER 1, 2014 TRANSCRIPT OF SENTENCE IMPOSITION

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 1, 2014 Transcript of Sentencing is a true, accurate, and complete record of the proceedings had on said date in the case of State of SC versus Albert Lee Garvin, Beaufort County, South Carolina, Court of General Sessions, Case Number 2012-GS-07-00962; that no exhibits were admitted.

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

Copies of this transcript are not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature December 25, 2014.

S/Wanda H. Rowe

Wanda H. Rowe, CVR-M
Official Court Reporter

WITNESSES

J. Day / Beaufort PD

ARREST WARRANT NUMBER

J358384

ACTION OF GRAND JURY

True Bill

Melvin D. Boerj
Foreperson of Grand Jury

Date: MAY 31 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0700962

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

Lee Albert Garvin

Indictment for

Shoplifting / Enhancement for 3rd or
subsequent offense - Value \$2,000 or less

SC Code: 16-13-0110(A); 16-01-0057
CDR Code: 2877

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

254

Defendant

I _____
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

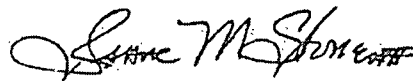
INDICTMENT
2012GS0700962

At a Court of General Sessions, convened on May 31, 2012, the Grand Jurors of Beaufort County present upon their oath:

Shoplifting / Enhancement for 3rd or subsequent offense - Value \$2,000 or less

That in Beaufort County, South Carolina, on or about April 19, 2012, the Defendant, Lee Albert Garvin, 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, or did 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: the Defendant did take possession of and carried away a Dewalt nail gun with an estimated value of less than \$2,000 from Lowe's, located at 207 Robert Smalls Parkway, Beaufort, 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.



Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

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

June 3, 2015



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

RECEIVED

JUN 03 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

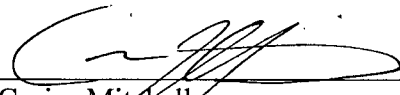
LEE GARVIN,

APPELLANT

APPELLATE CASE NO. 2014-002205

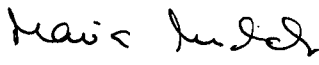
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 3rd day of June, 2015 .



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
This 3rd day of June, 2015 .

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.