

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED
MAY 19 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRACY ALSTON,

APPELLANT

APPELLATE CASE NO. 2015-002430

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

J. BENJAMIN APLIN
Senior Assistant Attorney Deputy General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
1301 2nd Ave.
Conway, SC 29528-1276
(843) 915-5460

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPTEMBER 18, 2014 AND NOVEMBER 15, 2015	1
JURY VOIR DIRE	4
JURY SELECTION	15
DEFENSE MOTION FOR A CONTINUANCE	25
RULING BY THE COURT ON DEFENSE MOTION FOR A CONTINUANCE	30
OPENING REMARKS BY THE COURT	32
OPENING STATEMENT BY MS. RICHARDSON	37
OPENING STATEMENT BY MR. GALMORE	39
TESTIMONY	
JOHN SELLERS, II	44
DEFENSE OBJECTION ON STATE'S EXHIBIT ONE TO ADMIT VIDEO FROM THE DOLLAR GENERAL STORE AND PUBLISH IT TO THE JURY	47
RULING BY THE COURT ON DEFENSE OBJECTION ON STATE'S EXHIBIT ONE TO ADMIT VIDEO FROM THE DOLLAR GENERAL STORE AND PUBLISH IT TO THE JURY	47
TESTIMONY	
JOHN SELLERS, II	48
JASON EDEN	60
TYRES NESMITH	68

STATE RESTS.....	70
DEFENSE MOTION FOR A DIRECTED VERDICT.....	72
RULING BY THE COURT ON DEFENSE MOTION FOR A DIRECTED VERDICT	75
DEFENSE RESTS	77
CLOSING ARGUMENT BY MS. RICHARDSON.....	78
CLOSING ARGUMENT BY MR. GALMORE.....	84
CHARGE ON THE LAW	93
VERDICT	103
DEFENSE MOTION FOR A NEW TRIAL	104
DEFENSE MOTION FOR AN ORDER IN ARREST OF JUDGMENT	104
RULING BY THE COURT ON DEFENSE MOTION FOR A NEW TRIAL.....	104
RULING BY THE COURT ON DEFENSE MOTION FOR AN ORDER IN ARREST OF JUDGMENT.....	104
SENTENCING, NOVEMBER 15, 2015	109
DEFENSE MOTION FOR THE COURT TO REDUCE THE SENTENCE.....	109
RULING BY THE COURT ON DEFENSE MOTION FOR THE COURT TO REDUCE THE SENTENCE	111
INDICTMENT AND SENTENCING SHEET	113
CERTIFICATE OF COUNSEL.....	116

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2014-GS-26-1346

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	September 18, 2014
	)	
Tracy Marshela Alston,	)	November 12, 2015
	)	
Defendant.	)	

B E F O R E:

For Trial, September 18, 2014
Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

For Sentencing, November 15, 2015
Honorable Roger E. Henderson
Horry County Courthouse
Conway, South Carolina

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

Lauree Richardson, Esquire
Attorney for Plaintiff

James Galmore, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1	I N D E X	
2	(September 18, 2014.)	
3	Voir Dire.	4
4	Jury Selection	15
5	Motions.	24
6	Opening Instructions by Court.	31
7	Opening Statement by State	37
8	Opening Statement by Defense	39
9	John Charles Sellers, II	
10	Direct by State.	44
11	Cross by Defense	51
12	Redirect by State.	58
13	Jason Eden	
14	Direct by State.	60
15	Cross by Defense	64
16	Tyres Nesmith	
17	Direct by State.	68
18	Cross by Defense	70
19	Motions.	72
20	Closing Argument by State.	78
21	Closing Argument by Defense.	84
22	Charge	93
23	Verdict.	103
24	Motions.	104
25	Sentencing	105

State v. Alston

3

1 (November 12, 2015.)

2 Sentencing 109

3 Certificate. 112

4 E X H I B I T S

5 ID EVD

6 S-1 CD - Dollar General 47

7 C-1 Foreperson Selection 30

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Voir Dire

4

1 (On the record, September 18, 2014.)

2 THE COURT: All right. Good morning, ladies and
3 gentlemen. We are getting ready -- let's see. This is case
4 number 2014-GS-26-1346, State of South Carolina versus Tracy
5 Marshela Alston. Ladies and gentlemen, we're getting ready to
6 start the trial of this case, and I've got some questions to
7 go over with you at this point in time. You've been qualified
8 to serve as jurors for this term of court, but these questions
9 are referred to as voir dire questioning. It's to determine
10 whether or not you're qualified to serve as jurors on this
11 particular case, and it also gives the attorneys some
12 additional information that assists them in the jury selection
13 process. So as I told you during jury qualifications, like
14 witnesses, jurors are constantly taking oaths. So if I could
15 please get the jury panel to stand and raise your right hand.

16 (Jury panel sworn by Court.)

17 THE COURT: Is there any member of the jury panel that
18 did not respond to the oath by saying I do? If so, please
19 stand.

20 (No response.)

21 THE COURT: All right. Ladies and gentlemen, please
22 listen up as I go over these questions with you, and if any
23 are applicable to you, please let me know.

24 As I said, this is the State of South Carolina versus
25 Tracy Marshela Alston. Now, Ms. Alston is charged with

Voir Dire

5

1 shoplifting, the allegations being that on or about November
2 the 18th, 2013, that she shoplifted from the Dollar General
3 Store -- which one is this?

4 MS. RICHARDSON: Your Honor, it's the one on 701 North
5 close to the post office.

6 THE COURT: All right. 701 North close to the post
7 office, a Dollar General Store there, the allegations are that
8 she shoplifted from that store on or about November 18th, 2013.

9 Now, is there any member of the jury panel that has heard
10 anything, read anything, knows anything or discussed anything
11 about this case? If so, please stand.

12 (No response.)

13 THE COURT: All right. As I said, the Defendant is Tracy
14 Marshela Alston. Is there any member of the jury panel
15 related by blood or marriage, have a close personal
16 relationship, business relationship, social relationship or
17 any other type of relationship with Ms. Alston? If so, please
18 stand.

19 (No response.)

20 THE COURT: Is there any member of the jury panel who
21 either personally or has a family member or a close personal
22 friend employed by the Dollar General Store? If so, please
23 stand.

24 (No response.)

25 THE COURT: All right. Please listen up as the potential

Voir Dire

6

1 witnesses in this case are Officer Jason Eden, E-D-E-N,
2 Detective Tyres -- is it Tyres or --

3 MS. NESMITH: Tyres.

4 THE COURT: Tyres, Tyres, T-Y-R-E-S, Nesmith, or Nesmith,
5 N-E-S-M-I-T-H, and John Sellers, II, so Jason Eden, Tyres
6 Nesmith and John Sellers, II. Is there any member of the jury
7 panel related by blood or marriage, have a close personal
8 relationship, business relationship, social relationship or
9 any other type of relationship with any of these potential
10 witnesses? If so, please stand.

11 Yes, sir. Your name and number?

12 MR. COLLINS: Anthony Collins, Number 87.

13 THE COURT: Okay. Hold for one second. All right. Mr.
14 Collins, who is it that you know?

15 MR. COLLINS: Nesmith.

16 THE COURT: All right.

17 MR. COLLINS: I'm a, I'm a mechanic at the City of Conway
18 and we also work on police cars.

19 THE COURT: Okay. Do you have any type of relationship
20 with her other than the fact that you're the mechanic for the
21 city and she's employed?

22 MR. COLLINS: No, sir.

23 THE COURT: Okay. Would that association affect your
24 ability to give both the State and the Defendant in this case
25 a fair and impartial trial?

Voir Dire

7

1 MR. COLLINS: No, sir.

2 THE COURT: Would you be able to disregard that
3 association in its entirety and base your decision in this
4 case exclusively on the testimony and evidence in this case?

5 MR. COLLINS: Yes, sir.

6 THE COURT: All right. Thank you, Mr. Collins, for
7 bringing that to our attention. Anyone else that has any type
8 of relationship with any of these potential witnesses? If so,
9 please stand.

10 (No response.)

11 THE COURT: All right. The State of South Carolina in
12 this case is represented by Attorney Lauree Richardson of the
13 15th Circuit Solicitor's Office. The Defendant is represented
14 by Attorney James Galtmore with the Horry County Public
15 Defender's Office. Is there any member of the jury panel
16 related by blood or marriage, have a close personal
17 relationship, business relationship, social relationship or
18 any other type of relationship with either of these attorneys?
19 If so, please stand.

20 Yes, ma'am, your name and number?

21 MS. JOHNSON: Connie Johnson, 238.

22 THE COURT: Okay. Hold for one second.

23 All right. Ms. Johnson, who is it that you know and how?

24 MS. JOHNSON: Her brother married my niece.

25 THE COURT: Ms. Richardson?

1 MS. JOHNSON: Uh-huh.

2 THE COURT: Okay. Her brother married --

3 MS. JOHNSON: My niece.

4 THE COURT: -- your niece. Okay. Now, how, how often do
5 you see Ms. Richardson, socialize with Ms. Richardson?

6 MS. JOHNSON: That's the first time I've seen her -- I
7 might have seen her in passing, but not -- I haven't spoke to
8 her in probably years.

9 THE COURT: Okay. So you all don't socialize on a
10 regular basis?

11 MS. JOHNSON: No, sir. No, sir.

12 THE COURT: Okay. Would that relationship affect your
13 ability to give the Defendant and the State in this case a
14 fair and impartial trial?

15 MS. JOHNSON: I don't think so.

16 THE COURT: Okay. And I appreciate your honesty in
17 saying you don't think so. My focus is that I have to be sure
18 that both the State and the Defendant get a fair and impartial
19 trial without any influence from any outside source
20 whatsoever. So if there's a possibility that it might
21 influence your decision one way or the other I might -- I need
22 to know about that. Do you think it -- I mean, do you --

23 MS. JOHNSON: I don't feel like it would, but I mean if,
24 if there's any chance that it will mess up the case I'd rather
25 just be dismissed.

Voir Dire

9

1 THE COURT: Okay. And I understand that; and I'm going
2 to be honest with you, Ms. Johnson, given the fact that you
3 can't be certain, and I know often you can't be certain, but
4 I'm just, just to avoid even, even the possibility, I'm going
5 to excuse you from this particular case.

6 MS. JOHNSON: That's good.

7 THE COURT: Please stay with us though.

8 MS. JOHNSON: Okay.

9 THE COURT: Anyone else has any type of relationship with
10 either Ms. Richardson or Mr. Galmore? If so, please stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel ever been
13 represented by either of these attorneys? If so, please
14 stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel ever been
17 involved in any legal action in which either of these
18 attorneys represented another party to that action? If so,
19 please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel who
22 either personally, has a family member or close personal
23 friend employed with the 15th Circuit Solicitor's Office or the
24 Horry County Public Defender's Office? If so, please stand.

25 Yes, ma'am, your name and number?

Voir Dire

10

1 MS. HITE: Patsy Hite, 210.

2 THE COURT: All right. Ms. Hite, who is that you know?
3 Is this you, a family member or a friend?

4 MS. HITE: My daughter is an Assistant Solicitor.

5 THE COURT: Okay. Who is your daughter?

6 MS. HITE: Jackie Smith, Jacqueline Smith.

7 THE COURT: Okay.

8 MS. HITE: She works with Georgetown.

9 THE COURT: Okay. So she's not involved in this case at
10 all? Is that correct, Ms. Richardson?

11 MS. RICHARDSON: That's correct, Your Honor.

12 THE COURT: All right. But this -- all right, now, does
13 your daughter still live in your home?

14 MS. HITE: No, sir.

15 THE COURT: Okay. I tell you, Ms. Hite, I'm going to go
16 ahead and excuse you just out of an abundance of caution, too.
17 Thank you.

18 All right. Yes, ma'am. Your name and number?

19 MS. HARDEE: 194, Barbara Hardee.

20 THE COURT: All right. Ms. Hardee, is this you, a family
21 member or a close personal friend?

22 MS. HARDEE: My sister-in-law is the receptionist for the
23 Solicitor's Office.

24 THE COURT: Here in Horry County?

25 MS. HARDEE: Yes, sir.

Voir Dire

11

1 THE COURT: And who is your sister-in-law?

2 MS. HARDEE: Wanda Collins.

3 THE COURT: Okay. That's your sister-in-law?

4 MS. HARDEE: Yes, sir.

5 THE COURT: Okay. And how often do you see your sister-
6 in-law or socialize with her?

7 MS. HARDEE: Maybe once a month.

8 THE COURT: Okay. Would the fact that she is employed
9 with the Solicitor's Office affect your ability to be fair and
10 impartial to both the Defendant in this case and the State?

11 MS. HARDEE: No.

12 THE COURT: Would you be able to disregard your sister-
13 in-law's employment in its entirety and base your decision in
14 this case exclusively on the testimony and evidence in this
15 case?

16 MS. HARDEE: Yes.

17 THE COURT: Okay. And you say she's a receptionist?

18 MS. HARDEE: Uh-huh.

19 THE COURT: Okay. So she hasn't discussed this case or
20 anything with you?

21 MS. HARDEE: No, sir.

22 THE COURT: Okay. Thank you, Ms. Hardee, for bringing
23 that matter to our attention.

24 Anyone else, personally, family member or close personal
25 friend employed with the Solicitor's Office or the Public

Voir Dire

12

1 Defender's Office? If so, please stand.

2 (No response.)

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

6 (No response.)

7 THE COURT: Any member of the jury panel aware of any
8 bias or prejudice towards either the State or the Defendant in
9 this case? If so, please stand.

10 (No response.)

11 THE COURT: Is there any member of the jury panel that
12 was a member of the Grand Jury that issued the indictment in
13 this case? If so, please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel who is
16 a member of or a contributor to any organization which has as
17 its primary concern the promotion of law enforcement or
18 victims' rights? Some of these organizations are Mothers
19 Against Drunk Drivers, MADD, Students Against Drunk Drivers,
20 Citizens Against Violent Crime, also known as CAVC or Citizens
21 Against Spousal Abuse, CASA, or any similar organization? Is
22 there any member of the panel that is a member of or a
23 contributor to any such organization? If so, please stand.

24 Yes, ma'am, your name and number?

25 MS. VANSICKLER: 458, Vansickler. I contribute strongly

Voir Dire

13

1 to CASA and spousal abuse there was a previous history in my
2 family.

3 THE COURT: All right. Hold for one second.

4 All right. Ms. Vansickler, you're a contributor to that
5 organization?

6 MS. VANSICKLER: Yes, sir.

7 THE COURT: Are you a member of the organization or --

8 MS. VANSICKLER: I don't consider myself a member, a
9 contributor.

10 THE COURT: Okay. Would the fact that you contribute to
11 that organization affect your ability to give both the State
12 and the Defendant in this case a fair and impartial trial?

13 MS. VANSICKLER: If it involves spousal abuse I believe
14 it might.

15 THE COURT: Okay. The sole allegations in this case are
16 allegations of shoplifting from a store. So in that those are
17 the allegations in this case, would that affect your ability
18 to give both the State and the Defendant a fair and impartial
19 trial?

20 MS. VANSICKLER: I'm not sure.

21 THE COURT: Okay. Thank you, Ms. Vansickler. I'm going
22 to excuse you from this particular case.

23 Anyone else a member of or contributor to any
24 organization that has as its primary concern the promotion of
25 law enforcement or victims' rights? If so, please stand.

Voir Dire

14

1 (No response.)

2 THE COURT: Let me see the attorneys one second.

3 (Whereupon, a bench conference is held in the presence
4 but of the hearing of the jury panel.)

5 THE COURT: Does any member of the jury panel know of any
6 reason whatsoever why he or she should not serve as a juror in
7 this case, with particular emphasis being placed on your
8 ability to be fair and impartial to both the State and the
9 Defendant? If so, please stand.

10 (No response.)

11 THE COURT: All right. Any additional questioning from
12 the State?

13 MS. RICHARDSON: None from the State, Your Honor.

14 THE COURT: Any from the Defense?

15 MR. GALMORE: No, sir.

16 THE COURT: Okay. All right. Ladies and gentlemen, the
17 way we select juries in General Sessions cases or criminal
18 cases is if your name is called by the clerk you'll need to
19 come forward and stand here in front of the bench, turn and
20 face the attorneys, and the State gets to decide whether or
21 not they want to choose you as a juror, and if they decide
22 they want you as a juror, then the Defense gets to decide
23 whether they want to select you as a juror, and we go through
24 this process until we get 12 jurors in this case. So if your
25 name is called, please come forward. I know it's going to be

Jury Selection

15

1 uncomfortable because you're going to be standing up here
2 while they stare at you and then look at their notes and then
3 stare at you and discuss a little bit and then look back at
4 you and you're going to be standing up here in front of
5 everybody, but it is necessary. Bring with you any coats,
6 umbrellas, pocketbooks, whatever you might have, come forward
7 and face the attorneys, and if you're chosen then the bailiff
8 will direct you into the jury box. If not, you can take your
9 seat if you're excused. If you're excused, please do not take
10 it personally. It just means that for whatever reason you do
11 not fit a certain profile that the attorney is looking for in
12 this particular case. I've known many cases where a juror has
13 been struck in one case by a party and then taken by that same
14 party in another case. Likewise, I've known them to be taken
15 in one case and then struck by the same party in the following
16 case. So there's really no rhyme or reason. It just means
17 that for whatever reason you do not fit a certain profile that
18 they're looking for in this particular case. So please listen
19 carefully and if your name is called please come and stand in
20 front of the attorneys, turn and face the attorneys' benches.
21 Thank you. Excuse me.

22 THE CLERK: Juror 99, Bradley Crumling.

23 What say the State?

24 MS. RICHARDSON: Please present juror.

25 THE CLERK: Defense?

Jury Selection

16

1 MR. GALMORE: Please seat the juror.

2 THE CLERK: Please have a seat in the jury box, please.

3 Juror 113, Albert Dennison.

4 MR. DENNISON: Misunderstand the question. I know he's
5 related to my family.

6 THE COURT: Who is this now?

7 MR. DENNISON: Jerome.

8 THE COURT: Okay. Now, and who is this?

9 MR. GALMORE: The private investigator for our office,
10 Judge.

11 THE COURT: Oh, for the Public Defender's Office?

12 MR. GALMORE: Yes, sir.

13 THE COURT: Okay. Now, and how are you related to him?

14 MR. DENNISON: He married in my family.

15 THE COURT: Okay. I mean, married a sister, a daughter
16 or --

17 MR. DENNISON: He's, I believe, a cousin.

18 THE COURT: He's a cousin. All right. And how often do
19 you see him?

20 MR. DENNISON: I see him a whole lot at the ball fields,
21 everywhere else.

22 THE COURT: Would your relationship with him affect your
23 ability to give both the State and the Defense a fair and
24 impartial trial?

25 MR. DENNISON: No, sir.

Jury Selection

17

1 THE COURT: Excuse me?

2 MR. DENNISON: No, sir.

3 THE COURT: Okay. Would you be able to disregard your
4 relationship to -- and what's his name?

5 MR. GALMORE: Jerome Randall.

6 MR. DENNISON: Jerome Randall.

7 THE COURT: Okay. Would you be able to disregard your
8 association with him in its entirety and base your decision in
9 this case exclusively on the testimony and evidence in this
10 case?

11 MR. DENNISON: It'd be hard.

12 THE COURT: It would be hard to?

13 MR. DENNISON: Yes.

14 THE COURT: Okay. All right. Mr. Dennison, I'm going to
15 go ahead and excuse you in this particular case. Please take
16 a seat. Thank you for bringing that to our attention.

17 MR. DENNISON: All right.

18 THE CLERK: Juror 202, Sandra Hatcher.
19 What say the State?

20 MS. RICHARDSON: Please present the juror.

21 THE CLERK: Defense?

22 MR. GALMORE: Please seat the juror.

23 THE CLERK: Please have a seat in the jury box.
24 Juror 132, Eileen Dunavant.
25 What say the State?

Jury Selection

18

1 MS. RICHARDSON: Please present the juror.

2 THE CLERK: Defense?

3 MR. GALMORE: Please seat the juror.

4 THE CLERK: Please have a seat in the jury box.

5 Juror 345, Glenda Owens.

6 What say the State?

7 MS. RICHARDSON: Please present the juror.

8 THE CLERK: Defense?

9 MR. GALMORE: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box. Thank
11 you.

12 Juror 403, Anna Sawyer.

13 What say the State?

14 MS. RICHARDSON: Please present the juror.

15 THE CLERK: Defense?

16 MR. GALMORE: Please seat the juror.

17 THE CLERK: Please have a seat in the jury box.

18 Juror 245, Patricia Kasko.

19 What say the State?

20 MS. RICHARDSON: Please excuse this particular juror.

21 THE CLERK: Okay. Ma'am, you can just have a seat back
22 in your seat. Thank you.

23 Juror 87, Anthony Collins.

24 What say the State?

25 MS. RICHARDSON: Please present the juror.

Jury Selection

19

1 THE CLERK: Defense?

2 MR. GALMORE: Please excuse the juror.

3 THE CLERK: Please have a seat, sir, back in your seat.

4 Thank you.

5 Juror 190, Jennifer Hall.

6 What say the State?

7 MS. RICHARDSON: Please present the juror.

8 THE CLERK: Defense?

9 MR. GALMORE: Please excuse the juror in the trial of
10 this case.

11 THE CLERK: Please have a seat back in your seat. Thank
12 you.

13 Juror 484, Sandra Williams.

14 What say the State?

15 MS. RICHARDSON: Please present the juror.

16 THE CLERK: Defense?

17 MR. GALMORE: Please seat the juror.

18 THE CLERK: Please have a seat in the jury box.

19 Juror 100, Clarence Cunningham, Cunningham, I'm sorry.

20 What say the State?

21 MS. RICHARDSON: Please present him.

22 THE CLERK: Defense?

23 MR. GALMORE: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.

25 Juror 171, Paige, oh, help me out here, Glerum, Glerum.

Jury Selection

20

1 MS. GLERUM: It's Glerum.

2 THE CLERK: Glerum, okay. Thank you.

3 What say the State?

4 MS. RICHARDSON: Please present her.

5 THE CLERK: Defense?

6 MR. GALMORE: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Juror 274, Gregory Lee.

9 What say the State?

10 MS. RICHARDSON: Please present him.

11 THE CLERK: Defense?

12 MR. GALMORE: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box.

14 Juror 107, Patrick Davis.

15 What say the State?

16 MS. RICHARDSON: Please present him.

17 THE CLERK: Defense?

18 MR. GALMORE: Please excuse the juror in the trial of

19 this case.

20 THE CLERK: Okay. Please have a seat, sir. Thank you.

21 Juror 279, Heather Lewis.

22 What say the State?

23 MS. RICHARDSON: Please present her.

24 THE CLERK: Defense?

25 MR. GALMORE: Please seat the juror.

Jury Selection

21

1 THE CLERK: Please have a seat in the jury box.
2 Juror 208, Beverly Hill.
3 What say the State?
4 MS. RICHARDSON: Please present her.
5 THE CLERK: Defense?
6 MR. GALMORE: Please excuse the juror in the trial of
7 this case.
8 THE CLERK: Please have a seat back. Thank you, ma'am.
9 Juror 272, Stuart Leblanc.
10 What say the State?
11 MS. RICHARDSON: Please present the juror.
12 THE CLERK: Defense?
13 MR. GALMORE: Please excuse the juror in the trial of
14 this case.
15 THE CLERK: Okay. You can just have a seat back in your
16 seat. Thank you, sir.
17 Juror 104, Christopher Danes.
18 What say the State?
19 MS. RICHARDSON: Please present him.
20 THE CLERK: Defense?
21 MR. GALMORE: Please seat the juror.
22 THE CLERK: Please have a seat in the jury box.
23 252, Paul King.
24 What say the State?
25 MS. RICHARDSON: Please present him.

Jury Selection

22

1 THE CLERK: Defense?

2 MR. GALMORE: Please seat the juror.

3 THE CLERK: Please have a seat in the jury box.

4 THE COURT: All right. Let's select one alternate. The
5 State gets one strike. The Defense gets two or one, two.

6 THE CLERK: Juror 27, Richard Beaudoin. Did I say that
7 correctly?

8 MR. BEAUDOIN: Uh-huh.

9 THE CLERK: Thank you.

10 What say the State?

11 MS. RICHARDSON: Please present him.

12 THE CLERK: Defense?

13 MR. GALMORE: Please seat the juror.

14 THE CLERK: Please have a seat, sir.

15 THE COURT: All right. Ladies and gentlemen, you will be
16 the jury that will preside over this case. I'm going to
17 excuse you back to the jury room for just a few minutes while
18 I release the jury panel, and while you're back in the jury
19 room, if I could get you to do me a favor and that is to
20 select a foreperson for this jury. If you're unable to select
21 a foreperson, don't worry about it. I can appoint someone to
22 serve as foreperson. Many judges appoint their own
23 foreperson, but I like to give the jury the opportunity to
24 select a foreperson on their own if they're able to do so.

25 Now, the foreperson has absolutely no more power, no more

Jury Selection

23

1 authority, no more influence than any other juror. The
2 function of the foreperson is to serve as a liaison between
3 the Court and the jury. If the jury has a question the
4 foreperson lets the Court know. If the jury has a need the
5 foreperson lets the Court know. When it's time to deliberate
6 the foreperson will preside over the deliberations, but other
7 than that the foreperson has no more influence, no more
8 importance and no more authority than any other juror. So if
9 you can select a foreperson please do so. Just write his or
10 her name on a sheet of paper with his or her jury number, give
11 it to the bailiff and we'll bring you back in the court at
12 that time. The only restriction is that Mr. -- is it
13 Beaudoin?

14 MR. BEAUDOIN: Beaudoin.

15 THE COURT: Beaudoin, you will not be eligible to serve
16 as foreperson because you are an alternate at this point in
17 time. As the alternate, when we come back in the courtroom,
18 if you would always occupy the seat where you now sit. The
19 foreperson, when you come back in, you will -- the foreperson
20 will always occupy the first seat on the front row closest to
21 the witness stand. The rest of you are at liberty to sit in
22 whatever seat you like. If you want to sit in the same seat
23 throughout the trial of the case you can do that, if you want
24 to alternate seats during the trial of the case you can do
25 that. The only restriction is that the foreperson sits in the

Motion to Continue

24

1 first seat on the front row. The alternate always sits in the
2 alternate seat unless and until you become a part of the 12
3 panel jury.

4 So I'm going to excuse you back to the jury room for just
5 a few minutes, see if you can select a foreperson and then
6 we'll bring you back out in just a moment.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Any challenges to the selection
10 or composition of the jury by the State?

11 MS. RICHARDSON: No, sir, Your Honor.

12 THE COURT: Any by the Defense?

13 MR. GALMORE: No, sir.

14 THE COURT: All right.

15 (Remaining jury panel excused.)

16 THE COURT: All right. Do we have any pretrial motions?

17 MS. RICHARDSON: Your Honor, we would just ask that Your
18 Honor would find that Ms. Alston did receive proper notice and
19 that she would be warned that we would proceed in her absence
20 should she not appear. We sent Ms. Alston a subpoena actually
21 to be here starting -- it says the court term starting
22 September 5th, which was the Friday, the first Friday, as well
23 as a card to be here, again starting on that September 5th.
24 She did, in fact, show up September 5th. Mr. Galmore, I
25 believe, was at a conference. Katie Owens was here

Motion to Continue

25

1 representing his office. Ms. Owens, as well as I, personally
2 told her that she was on the trial roster, we would get to her
3 case this week, the second Monday, for her to be here. She
4 did not show up on Monday. She has not been here any day this
5 week. As well, Your Honor, her bond paperwork did notify her
6 that -- which she signed -- that should she fail to appear we
7 would proceed in her absence.

8 THE COURT: All right. So she appeared on the 5th and you
9 told her to be here the week of the 15th; is that correct?

10 MS. RICHARDSON: Yes, sir, Your Honor.

11 THE COURT: Okay. All right. Mr. Galmore.

12 MR. GALMORE: Your Honor, I would move for a continuance
13 at this time. I have spoken with Ms. Alston. She has called
14 on a couple of different occasions throughout the week. She
15 has indicated that she is at a local hospital. I have not
16 attempted to verify independently whether she's in a hospital
17 or not, but she has contacted me as recently as yesterday
18 afternoon to tell me that she was in the hospital. For those
19 reasons we would ask the Court to continue the case, issue a
20 bench warrant for Ms. Alston, and once she's picked up, then,
21 then if she chooses to go to trial that's fine, and if she
22 chooses to take a plea at that point, that would be fine,
23 also.

24 THE COURT: Okay. Well, I'm not going to issue a bench
25 warrant if she's in the hospital. Did she tell you what

Motion to Continue

26

1 hospital?

2 MR. GALMORE: She told me that was in the hospital in
3 Charleston, sir.

4 THE COURT: Did she -- did you ask her what hospital or
5 did you --

6 MR. GALMORE: No, sir, I did not ask for a specific
7 hospital.

8 THE COURT: Have you got her number?

9 MR. GALMORE: She called me from a restricted number,
10 sir.

11 MS. RICHARDSON: Your Honor, if I can just respond to
12 that as well. Her sister called our office yesterday and
13 spoke with my assistant Gail Jordan. Her sister asked if she
14 was supposed to be here yesterday because we thought we were
15 going to start the trial yesterday. Ms. Jordan told her, yes,
16 absolutely she was supposed to be here yesterday morning. Her
17 sister responded, "Okay. Let me call her. She's just scared.
18 She doesn't want to go back to prison."

19 THE COURT: Okay. Now, do we have the sister's number?

20 MS. RICHARDSON: Not that I know of, Your Honor.

21 THE COURT: Okay.

22 MR. GALMORE: Ms. Alston is a local Conway resident. Her
23 address is just four or five blocks from the courthouse so.

24 THE COURT: Well, the fact of the matter is is if she's
25 in the hospital in Charleston under a medical condition then I

Motion to Continue

27

1 think that's ground to continue it, but if she's not really in
2 the hospital, we're going forward with it, and the question is
3 is how do we find out if she's really in the hospital in
4 Charleston or if she's lying so that she can get the case
5 continued so.

6 MR. GALMORE: She has not yet faxed any medical records
7 to me, sir.

8 THE COURT: Well, the -- was there any medical records
9 asked for? Does anybody live with her? Is there anybody at
10 her residence if you called her home?

11 MR. GALMORE: Her mother --

12 THE COURT: Okay.

13 MR. GALMORE: --- lives at that residence.

14 THE COURT: Let's do this. Let's take a break, go call
15 the mother, say, "Is she in the hospital? If so, what
16 hospital?"

17 MR. GALMORE: Yes, sir.

18 THE COURT: And then call the hospital and see if she --
19 well, of course, they're not going to be able to release
20 whether or not she's a patient in the hospital or not.

21 MS. RICHARDSON: Your Honor, if I may just so the record
22 is clear, I believe she informed Mr. Galmore on Monday that
23 she was in Conway Hospital, called his office yesterday to
24 find out what had happened with her case, and I believe, and
25 if I'm not mistaken, he asked her to be here today, told her

Motion to Continue

28

1 we were starting today and now she says she's in Charleston
2 hospital.

3 THE COURT: Okay. And I understand that, and I'm
4 inclined to believe that she's not really in the hospital. I
5 don't want to go through a whole trial though --

6 MS. RICHARDSON: Right. I understand.

7 THE COURT: -- and then find out that she actually was in
8 the hospital. So let's make some calls. I mean, Mr. Galmore,
9 do you know, do you think she's in the hospital? I know. I
10 know you don't want to tell on your client, but I mean, it's
11 got nothing to do with the case. It just has to do, you know
12 --

13 MR. GALMORE: I, I am not sure if she's in the hospital,
14 sir.

15 THE COURT: Okay. Can you go make one call --

16 MR. GALMORE: Yes, sir.

17 THE COURT: -- and just find out and say if they say
18 she's in the hospital say, "Well, what hospital is it?"

19 MR. GALMORE: Yes, sir.

20 THE COURT: Okay.

21 MR. GALMORE: Yes, sir.

22 THE COURT: All right. Let's take in -- plus they're
23 trying to pick a foreperson. So let's take about a 10-minute
24 break. Okay?

25 MR. GALMORE: Yes, sir.

Motion to Continue

29

- 1 MS. RICHARDSON: Thank you, Your Honor.
- 2 MR. GALMORE: Thank you.
- 3 THE COURT: All right. Thank you.
- 4 MS. RICHARDSON: Your Honor, I believe the detective is
- 5 going to send somebody by the house, too.
- 6 THE COURT: Okay. All right. Let's do that.
- 7 MR. GALMORE: Yes, sir.
- 8 THE COURT: Well, I mean, and I don't know, can, can a
- 9 hospital give out information about who's in it or not?
- 10 MS. RICHARDSON: Your Honor, I thought they could tell us
- 11 if they were, just not their condition or anything. Right.
- 12 They can't tell me what they're there for or anything like
- 13 that.
- 14 THE COURT: But they could say whether she was admitted?
- 15 MS. RICHARDSON: But I thought they could verify whether
- 16 or not she was there.
- 17 THE COURT: All right.
- 18 MS. RICHARDSON: Now, the only --
- 19 THE COURT: Well, Mr. Galmore --
- 20 MR. GALMORE: Yes, sir.
- 21 THE COURT: -- if you find the name of a hospital, let's
- 22 call the hospital and see if she's a patient there. Okay.
- 23 MR. GALMORE: Yes, sir. Yes, sir.
- 24 THE COURT: Thank you. I just don't want to go through
- 25 this whole thing and find out that she really is in the

Motion to Continue

30

1 hospital somewhere, which I doubt she is, but I won't know.

2 All right. Let's take about a 10-minute break.

3 MS. RICHARDSON: Thank you, Your Honor.

4 OFF THE RECORD

5 (On the record. The following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Mr. Galmore, were we able to
8 track down anyone?

9 MR. GALMORE: I, I, I was able to reach a family member
10 who said they hadn't seen Ms. Alston in three days, could not
11 verify if she was in the hospital or not.

12 THE COURT: Okay. All right. Under those circumstances
13 I'm going to deny your motion to continue. I'm going to find
14 that proper notice was given and, and we'll go forward. All
15 right. Now, the jury has selected Juror Number 132, Eileen,
16 is it -- Eileen Dunavant as the foreperson. Mark that as
17 Court's Exhibit One.

18 (Court's Exhibit Number One [Foreperson Selection]
19 appropriately marked.)

20 THE COURT: All right. Anything from the State before we
21 bring the jury in?

22 MS. RICHARDSON: No, sir, Your Honor.

23 THE COURT: Anything from the Defense?

24 MR. GALMORE: No, sir.

25 THE COURT: All right. Let's go ahead and bring the jury

Opening Instructions by Court

31

1 in. You going to place them under oath?

2 THE CLERK: Yes, sir.

3 THE COURT: Thank you. I'll give them the preliminary
4 charges, opening statements, then we'll start right into the
5 trial.

6 MS. RICHARDSON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right. Ladies and gentlemen, welcome
11 back. We're ready to begin the trial of this case. I
12 understand, Ms. Dunavant, you've been selected as foreperson;
13 is that correct?

14 FOREPERSON: Yes, sir.

15 THE COURT: All right. Thank you for serving in that
16 capacity. If you'd always occupy the seat where you now sit.
17 Mr. Beaudoin, if you'd always occupy your seat. As I told the
18 rest of you, you're at liberty to sit in whatever seat you
19 like, whether it be the same seat during the trial of the
20 case, alternating seats or whatever makes you feel more
21 comfortable.

22 Now, just like I told you during jury qualifications and
23 during voir dire questioning, jurors are constantly taking
24 oaths. So I'll please need everybody in the jury to stand and
25 raise your right hand while the clerk administers the oath for

Opening Instructions by Court

32

1 you to serve as jurors in this particular case.

2 (Jury sworn by clerk.)

3 THE COURT: Thank you very much. You may be seated. Is
4 there any member of the jury panel that did not respond to the
5 oath by saying, "I do," or "I will?" If so, please stand.

6 (No response.)

7 THE COURT: Thank you.

8 All right. Ladies and gentlemen, we're getting ready to
9 start the trial of the case of the State of South Carolina
10 versus Tracy Marshela Alston, but before we begin the trial, I
11 need to go over some preliminary charges with you so that
12 you'll know what's happening in this case and give you a
13 better understanding as to how we will proceed in this case.
14 I know from watching TV shows, movies, reading books, things
15 for entertainment, trials are often full of a lot of
16 excitement, a lot of anxiety, a lot of action, and while that
17 might be the case in this trial, it probably won't be. The
18 primary function of this trial is a search for the truth, what
19 actually happened, and that is often a slow, deliberate,
20 repetitive process, the exact opposite of what you might be
21 accustomed to when you watch or read about trials for
22 entertainment purposes, but I do hope you do find this trial
23 educational, and I hope you do find it entertaining, and I
24 want to thank you from the outset for serving as jurors in
25 this case.

Opening Instructions by Court

33

1 Now, the attorneys appearing before you are advocates for
2 the parties they represent, but first and foremost, they are
3 officers of the court. They're sworn to uphold the integrity
4 and the fairness of our judicial system and to help you in a
5 search for the truth in this case. You should expect them to
6 be professional, competent and ethical in the representation
7 of their clients' interests.

8 Now, what I now say to you is intended to serve as an
9 introduction to the trial of this case. These remarks are not
10 a charge on the law in this case. I will instruct you on the
11 law applicable to this case at the end of the trial before you
12 return or before you retire to consider your verdict in this
13 case. This is merely an explanation of the procedure that
14 we'll follow in the trial of the case so that you can better
15 understand what's happening.

16 Now, the Defendant is charged by an indictment. This is
17 the indictment, and this indictment charges the Defendant with
18 shoplifting. I'll explain the elements of that crime to you
19 at a later time. Now, the indictment is simply the charge by
20 which this case is brought into this court. It is not in any
21 sense evidence of any of the allegations contained in it. The
22 Defendant has pled not guilty to this indictment, and the
23 State, therefore, has the burden of proving each of the
24 elements of the indictment beyond a reasonable doubt. It'll
25 be your duty, ladies and gentlemen, to determine whether or

Opening Instructions by Court

34

1 not the State has met that burden. Your purpose as jurors is
2 to find and determine the facts of this case. You are the
3 sole judge of the facts of this case. If at any time I make a
4 comment which leads you to believe that I have an opinion
5 about the facts of this case, you're to disregard my comments.
6 You are to determine the facts of this case from the testimony
7 you hear and the other evidence introduced in court. It is up
8 to you to determine the inferences which you feel may properly
9 be drawn from that evidence.

10 It is especially important that you perform your duty of
11 determining the facts diligently and conscientiously because
12 ordinarily there is no way to correct an erroneous
13 determination of the facts by a jury. On the other hand, and
14 with equal emphasis, the same law that makes you the judge of
15 the facts in this case makes me the judge of the law. The law
16 as given by the Court is the only law that you can consider.
17 You must accept and follow the law as I give it to you, even
18 though you may disagree with it. Just as I cannot tell you
19 what the facts of this case are, you cannot disagree with me
20 about the law to be applied in this case. Your job is to take
21 the law as I give it to you and apply it to the facts as you
22 find those facts to be from the testimony of the witnesses and
23 any other evidence that is introduced. After doing that you
24 can then render your verdict, a true and just verdict under
25 the solemn oath that you just took as jurors.

Opening Instructions by Court

35

1 Now, until I advise you to begin your deliberations, you
2 must not discuss this case with anyone, whether that be your
3 fellow jurors, your friends, your family members or anyone
4 else involved in the case. After the case is submitted to
5 you, you can then discuss the case, but only in the jury room
6 with your fellow jurors. The attorneys and the parties in
7 this case have been advised that they're not to talk to you
8 about the case. So they're not being rude either. They're
9 just following the instructions of the Court.

10 Now, during the trial you're not to read or listen to or
11 watch any news reports about the case, if there is any. This
12 includes anything that might be in the newspaper or on the
13 internet or the radio or the television. You cannot consider
14 anything that you may have read or heard about the case
15 outside of the courtroom, whether that be before or during the
16 trial of the case. It's important that you keep an open mind
17 and not decide any issue in this case until all of the
18 evidence has been presented to you. After that, the parties
19 will make their closing arguments. I will instruct you on the
20 law in the case and then you can begin your deliberations, but
21 not until then. It is your solemn responsibility to determine
22 the guilt or the innocence of the Defendant, and your verdict
23 must be based solely on the evidence as it is presented to you
24 in this trial and on the law as I instruct you during and at
25 the close of the trial.

Opening Instructions by Court

36

1 Now, in just a moment the Solicitor will make what's
2 called an opening statement in which the Solicitor will
3 explain to you the issues in this case, or at least what the
4 Solicitor thinks the issues in this case are. The attorney
5 for the Defendant may also make an opening statement, although
6 he is not required to do so. What the attorneys tell you
7 during their opening statements is not evidence in this case.
8 It is only their contention as to what they think the issues
9 in this case are. The evidence in this case will be presented
10 to you by testimony of sworn witnesses from the witness stand
11 and any other exhibits that may be introduced into evidence.

12 Now, in determining what the true facts are in this case
13 you must decide whether or not the testimony of a witness is
14 believable. It'll be my responsibility to rule as a matter of
15 law as to whether certain testimony is admissible at all or
16 not, but once testimony is admitted into evidence, whether or
17 not you believe it is solely for you to determine. In
18 deciding whether to believe a witness, you have the right to
19 consider the interest of any witness, the bias of any witness,
20 the prejudice of any witness, the opportunity for the witness
21 to have seen the matters and things about which the witness
22 may testify, and the way the witness acts on the witness
23 stand. You have the right to consider anything that is in the
24 record that will help you to evaluate the testimony of these
25 witnesses. That means that it is your duty to pay close

Opening by State

37

1 attention to the witnesses, to observe them, to listen to them
2 and to pay close attention to the attorneys and to the Court.
3 Please do not let your thoughts wander, but give strict
4 attention to the testimony in this case so at the end of all
5 of the testimony, after the arguments of counsel and after a
6 charge of the law by the Court you will then be in a position
7 to determine what the true facts of this case are and to apply
8 the law to those facts and thus render a true and just
9 verdict. All right. Is there any challenges or additional
10 charges by the State?

11 MS. RICHARDSON: No, sir, Your Honor.

12 THE COURT: Any by the Defense?

13 MR. GALMORE: No, sir.

14 THE COURT: All right. Ladies and gentlemen, we'll begin
15 the trial of the case at this point in time with the opening
16 statements by the attorneys, and as I told you these opening
17 statements are not evidence. It's just their contention as to
18 what the evidence will be in this case.

19 All right. Ms. Richardson.

20 MS. RICHARDSON: Thank you, Your Honor. May it please
21 the Court?

22 THE COURT: Yes, ma'am.

23 MS. RICHARDSON: Good morning, ladies and gentlemen.

24 Ms. Alston has been charged and indicted for shoplifting.
25 This case is not going to be that long. Please don't mistaken

1 the brevity of this case or the simplicity of this case as
2 being not important. Obviously this case is very important.
3 It's important to the State of South Carolina, it's important
4 to the Defendant and it's important to our community.

5 The testimony you're going to hear will be fairly simple.
6 You're going to hear from the manager of the Dollar General,
7 Mr. Sellers. He's going to tell you that he -- it's -- he's
8 -- he manages the, the store. It's his routine practice to go
9 back at the end of the day or at the end of a couple of days
10 and just review the security video. As he's doing that, he
11 notices Ms. Alston shoplifting. He doesn't call the police.
12 He doesn't know who she is. He doesn't know her name. He
13 doesn't know anything to be able to give that officer to go
14 out and arrest somebody. He just knows it's a lady
15 shoplifting.

16 A couple of days later Ms. Alston comes back to his store
17 again. There's a common characteristic here. She's got a
18 boot on her, on her foot, and you'll be able to see the video.
19 So it sparks something in him, and he says, "Wait, this is the
20 same lady that was in here a couple of days ago shoplifting."
21 He calls -- then he calls the police. The police come. They
22 detain her for a little while. The police officer watches the
23 video and says, "Yep. That's her." He doesn't arrest her
24 then, and you'll get to hear about why. Legally he, he can't
25 arrest her then. He has to go out and get a warrant for her

Opening by Defense

39

1 arrest and that takes a couple of days. So they do end up
2 arresting her. She is served with that warrant.

3 That is pretty much the case. We just ask that you give
4 us your time and attention, and again, don't mistaken the
5 brevity of it for the seriousness of it. Thank you.

6 THE COURT: Mr. Galmore.

7 MR. GALMORE: Yes, sir.

8 This morning I'd like to talk to you very briefly about
9 roles and responsibilities because everyone in this courthouse
10 today has a role, has a job to play, has a responsibility with
11 regard to this case. Everyone in this courtroom has a job.
12 You've already met the deputies and their role is your safety
13 and security and courthouse safety and security. So they're
14 here for your protection as they escort you back and forth to
15 your jury room on your lunch break or wherever you happen to
16 go. It's for that specific purpose, for your safety, for your
17 protection.

18 Madam Court Reporter has a very important job in the
19 courtroom today, also. Her job is to take a record of
20 everything that is being said here, so everything the Court
21 says, everything I say, all the testimony from the witness
22 stand, everything is being recorded by Madam Court Reporter,
23 that is her job, that is what she is supposed to do, and I
24 could keep going. The Clerk of Court, the Judge, we all have
25 jobs to do here today. Most importantly, you have a job to do

1 here today.

2 Now, there are some beliefs or misconceptions or myths
3 about what your job is. People think that jurors are supposed
4 to find out what happened. People think jurors are supposed
5 to decide if this person's guilty or not guilty. I submit to
6 you that your job as jurors is very simple. Your job is to
7 evaluate the State's case. That means, "The State of South
8 Carolina, the Solicitor, did you prove your case? Did you
9 prove what you said you were going to prove?" And that's a
10 very important thing because I submit to you that the State
11 has not done their job. They didn't do it months and weeks
12 ago. They didn't do it today. They're not going to do it
13 when they present you evidence, and when we go to closing
14 arguments I'm going to show you that the State has not done
15 their job. Why is this important? Because the State is
16 asking you to do a job as jurors. They're asking you to find
17 someone guilty, and I submit that you can't do that job if
18 they didn't do their job. So that's what this whole case is
19 about. It's not about who did what. It's about did the State
20 of South Carolina carry its burden of proof, and what do I
21 mean by the words burden of proof? In every case someone
22 alleges something. In this case the State has accused Ms.
23 Alston of shoplifting. With that said, the burden of proof is
24 on the State of South Carolina to prove what they said. Ms.
25 Alston doesn't have to prove anything. The State has accused

Opening by Defense

41

1 her. So the State has to prove it, and the way they have to
2 prove it is by presenting evidence in the form of testimony or
3 whatever else, but they have to present you evidence that
4 leaves you, the juror, firmly convinced of the guilt of the
5 accused.

6 Now, firmly convinced means you don't have to be 100
7 percent. We've heard the phrase beyond a shadow of a doubt.
8 You do not have to be convinced beyond a shadow of a doubt
9 because that's an impossibility. I could say I'm not
10 convinced that there are fish in the Waccamaw River. I doubt
11 that there are fish in the river, and you would probably say,
12 "James, that's kind of a stupid doubt," but we're not talking
13 about fish in the river. We're talking about evidence in a
14 court of law, and this evidence comes with consequences. So
15 before you vote to convict a person you must be firmly
16 convinced of the guilt of the accused.

17 I like to say it in terms of football. It's football
18 season, got a lot of football fans, people seem to understand
19 what I'm saying when I talk in terms of football. So the
20 court system, let's imagine it as a hundred yard football
21 field from end to end. Okay. Now, we have different types of
22 court cases. We have civil cases or as the Court would say
23 Common Pleas cases. These are cases like auto accidents or
24 something along those lines where a person is suing for money,
25 "You hurt me, therefore, you need to pay me." In those cases

1 the burden of proof, the standard that -- of evidence that
2 must be proven is what's called a greater weight or
3 preponderance of the evidence. What does all that mean?
4 Remember the picture of the scales of justice and liberty
5 standing there blind holding a scale up like this. You've
6 seen that image before. There's a reason why lady liberty is
7 holding that scale. That's because the scale weighs the
8 evidence, and when we talk about a preponderance of the
9 evidence that means the greater weight of the scale must tip
10 in one party's favor or the other, not by much. The scale
11 doesn't have to drop down like that. It just has to tip in
12 one favor or the other. If it was a football field, I would
13 say that the State has to prove that evidence up to the 50
14 yard line and just get one toe across the other side. Now,
15 the end zone is way down there. They don't have to prove it
16 by that standard. All they have to do is get it across the 50
17 yard line. All they have to do is the greater weight or
18 preponderance of the evidence, but today's case is a criminal
19 case, and you've heard the Court refer to it as General
20 Sessions. That means nobody's suing for cash. That means in
21 this case someone is being threatened with the possibility of
22 prison time, and because this is a criminal case then we need
23 more evidence than the 50-yard line and just one toe across.
24 What we need is up here somewhere. I can't tell you where
25 exactly it is, at 98.2 percent or 99 and 44/100 of a percent.

Opening by Defense

43

1 I can't tell you that. No one can tell you exactly what
2 beyond a reasonable doubt means, but you must be convinced of
3 Ms. Alston's guilt beyond a reasonable doubt in order to
4 convict her. Reasonable doubt means something like my team is
5 here just four or five yards outside the end zone, and I'm 100
6 percent confident that the next play is going to be a score.

7 Now, as a long-time Redskins fan, I have to tell you,
8 I've sat there many Sundays and I'm not always convinced that
9 just because we're down here that we're about to score on the
10 next play. So you need to apply that same concept to this
11 case. You'll see what evidence the State has, and when you
12 see that evidence, you'll find yourself right here, right here
13 at the ten yard line, five yard line, looks like a slam dunk,
14 looks like a touchdown, but you have to ask yourself that same
15 question, are you firmly convinced of the guilt of the
16 accused, has the State proven its burden beyond a reasonable
17 doubt, have they proven their case, and I submit to you today
18 that the State cannot and will not prove the guilt of Ms.
19 Alston. Therefore, we're asking you to listen attentively.
20 She is correct. This is not going to be a long case. We ask
21 you to listen and pay attention and we ask you to render a
22 verdict that speaks the truth to whether or not the State has
23 proven its case, whether the State has carried its burden of
24 proof. We ask you to listen to the evidence. We ask you to
25 pay attention and I thank you for your time and attention.

John Sellers, II - Direct by State

44

1 THE COURT: All right. Ladies and gentlemen, we'll begin
2 the trial of this -- the evidentiary portion of this trial
3 with the calling of the State's first witness.

4 MS. RICHARDSON: Thank you, Your Honor. The State would
5 call John Sellers, II.

6 Whereupon, John Charles Sellers, II, was called to the
7 stand, duly sworn by the clerk and testified as follows:

8 THE CLERK: Please be seated. State your full name,
9 spell your last name for the Court, please.

10 MR. SELLERS: John Charles Sellers, II, S-E-L-L-E-R-S.

11 THE COURT: All right. Ms. Richardson.

12 DIRECT EXAMINATION

13 BY MS. RICHARDSON:

14 Q Mr. Sellers, where are you employed?

15 A Dollar General.

16 Q How long have you been employed there?

17 A Three and a half, four years.

18 Q What, what position do you hold with the Dollar General?

19 A Store manager.

20 Q And how long have you had that position?

21 A Two and a half years.

22 Q And what do your duties consist of as a store manager?

23 A Anything from inventory, payroll, training, safety,
24 sales, reports, meetings, a pretty large list.

25 Q Okay. Now, did you have occasion to come in contact with

John Sellers, II - Direct by State

45

1 Tracy Alston on November 18th, 2013?

2 A Yes, ma'am.

3 Q And what did that contact consist of, and again, I'm
4 talking about on the 18th.

5 A No, ma'am. The 18th I was at home and apparently she was
6 shoplifting in my store. I was watching the camera, I guess,
7 on the 19th. I have certain cameras with certain items that
8 apparently get stolen more often than others, and I just like
9 to play the security camera back to see who all's in my store,
10 also just to make sure my people are doing procedures
11 correctly throughout the evening and doing their tasks as
12 well.

13 Q Okay. So tell us about your security system, the camera
14 system. What is that? What is it?

15 A It's kind of like a DVR, I guess. I can go in and look
16 at the different camera views from so far back.

17 Q Where are the cameras located?

18 A Throughout the entire store, mostly towards the front
19 entrance, safety reasons and cash handling procedures with
20 cashiers and that sort of things, high theft items, HBA, which
21 is cosmetics, health and beauty, medicines.

22 Q Okay. So I just want to make sure we're clear. You
23 weren't working on the 18th?

24 A I probably did but it was the morning shift. I did not
25 have contact with her that day.

1 Q Okay. So if I -- from what you just testified to, on the
2 19th you were reviewing video?

3 A Yes, ma'am.

4 Q From the day before?

5 A Yes, ma'am.

6 Q And that's something common that you do?

7 A At least every other day. I do it throughout the day of
8 like who all was in my store. If I do suspect someone I just
9 play my video back. I always want to make sure if I approach
10 anyone for shoplifting that I already know a hundred percent
11 that they've shoplifted. I don't -- I could lose my job if I
12 accuse someone and I'm wrong. So it's just not worth my job
13 to accuse someone if, you know, if I'm not a hundred percent
14 sure.

15 Q Okay. I'm sorry. I'm going to ask that you speak up
16 just a little bit. I'm just having a little bit of a hard
17 time hearing you and I know this motor is running.

18 A Okay.

19 Q I'm going to show you something and see if you can --
20 well, just a second. I'm going to show you what's been marked
21 as State's Exhibit One. Can you identify that?

22 A Yes, ma'am. It's CD from my work, I guess. We can burn
23 a copy of pretty much anything we need to from our DVR system.

24 Q Okay. And how do you know that that's what this is?

25 A Because I initialed it at the top.

John Sellers, II - Direct by State

47

1 Q Okay. Have you had a chance to review this video?

2 A Yes, ma'am.

3 Q And is it a fair and accurate representation of what you
4 saw?

5 A Yes, ma'am.

6 Q Has it been changed or altered in any kind of way?

7 A No, ma'am.

8 MS. RICHARDSON: Your Honor, the State would seek to
9 admit State's Exhibit One and publish it to the jury.

10 THE COURT: Any objection?

11 MR. GALMORE: Yes, sir. I would object. I, I do not
12 believe a proper foundation has been laid. The witness
13 indicated that he wasn't there on that day. He has not
14 indicated that he made this videotape himself.

15 THE COURT: Okay. All right. I'm going to admit it.
16 State's Exhibit One admitted into evidence over Defendant's
17 objection.

18 (State's Exhibit Number One [CD] admitted into evidence
19 and appropriately marked.)

20 MS. RICHARDSON: Thank you, Your Honor. The State would
21 request to publish at this time, Your Honor.

22 THE COURT: All right.

23 MS. RICHARDSON: I don't know if I can pause it, James.

24 MR. GALMORE: I would object, Your Honor. This, this
25 tape, this tape is hearsay and is being offered for the truth

John Sellers, II - Direct by State

48

1 of the matter asserted, also this statement is testimonial in
2 nature and no hearsay exception exists for the introduction of
3 this evidence.

4 THE COURT: Okay. I've already admitted it over
5 Defendant's objection.

6 MR. GALMORE: Yes, sir.

7 (Whereupon, State's Exhibit Number One played in open
8 court.)

9 BY MS. RICHARDSON:

10 Q Mr. Sellers, I'm going to back up just a little bit.
11 What county is your store located in?

12 A Horry.

13 Q And where is it located?

14 A Across from Food Lion by the post office, 701, Main
15 Street.

16 Q Now, the video we just watched, is that what you recall
17 seeing?

18 A It is.

19 Q What to the best of your knowledge was taken on that day,
20 on the 18th?

21 A A bra and a pack of shirts.

22 Q Do you know the value of that property?

23 A About \$12.00 total.

24 Q To your knowledge and with you reviewing the video, did
25 Ms. Alston ever make an attempt to pay for that property?

John Sellers, II - Direct by State

49

1 A Absolutely not.

2 Q Now, why didn't you call the police that day?

3 A I didn't know, you know, other than what she looked like,
4 I didn't get a tag number or anything. If I can't really give
5 them any information other than a description, there's really
6 not a lot that can be done. So unless they're still in the
7 store when the police can get there, I just try to keep my
8 eyes open for them the next time they come in.

9 Q And did you notice Ms. Alston return to your store?

10 A Yes, ma'am.

11 Q When was that?

12 A I believe about two days later.

13 Q So November 20th?

14 A I believe so, yes, ma'am.

15 Q What happened that day?

16 A Once I seen her in my store, if I recall correctly, I
17 just went ahead and called the cops.

18 Q Did you approach her at all?

19 A Actually I can't recall a hundred percent if I approached
20 her. A lot of times if I approach someone, then they'll leave
21 the store. It's easier just to call the cops and let them
22 walk around, do their thing until the cops get there.

23 Q Now, what about her grabbed your attention?

24 A Just the way she carried herself through the store. They
25 didn't really purchase anything. A lot of times if I have

1 people in my store and they don't purchase anything I'll just
2 check my cameras just to see if maybe they didn't find what
3 they want or if they found it and just didn't want to pay for
4 it.

5 Q Okay. Let me be a little more specific. I'm sorry. On
6 the 20th you said you noticed her when she came back in?

7 A Yes, ma'am.

8 Q Why did you notice her?

9 A It was only two days later, she's got a big black boot on
10 her foot from I guess she broke it or some sort of condition
11 and she had a bad limp.

12 Q So you called the police?

13 A Yes, ma'am.

14 Q Is that correct? And the police respond?

15 A Yes, ma'am.

16 Q Okay. And you don't recall whether or not you said
17 anything to her?

18 A I can't recall that.

19 MS. RICHARDSON: The Court's indulgence just a moment.

20 THE COURT: All right.

21 A I remember on the 18th when I was at the front of the
22 store and then she walked out moments afterwards she spoke to
23 me on the 18th and actually almost struck up a conversation
24 being nice to me and she was just kind of overly nice.

25 Q Okay. I'm going to stop you for a minute. You testified

John Sellers, II - Cross by Defense

51

1 earlier that you weren't working on the 18th. Do you recall
2 differently now?

3 A Yes, ma'am.

4 Q Were you, in fact, working on the 18th?

5 A Yes, ma'am.

6 Q There was a gentleman in that video that looked sort of
7 like you. Was that you?

8 A Yes, ma'am.

9 Q Okay. So let's go back a little bit just so we, we can
10 be perfectly clear for the jury. Do you remember anything
11 about Ms. Alston on the 18th in, in your store besides the
12 conversation you just told us about?

13 A Once she was walking out and just being overly nice to me
14 before she walked out, I just went and played the camera back
15 and realized what she had done. Weren't really anything I
16 could do at that point, and when she came back in a few days
17 later or two days later just went ahead and called the police.

18 MS. RICHARDSON: Nothing further from this witness, Your
19 Honor.

20 THE COURT: Mr. Galmore.

21 CROSS EXAMINATION

22 BY MR. GALMORE:

23 Q Just a few questions, Mr. Sellers, about the video
24 equipment. When did you install that equipment at the store?

25 A I'm sure it was installed when the store was built. I

1 did not install it.

2 Q Okay. You did not install it?

3 A No, sir.

4 Q Do you know the name of the equipment?

5 A I'm sure it has a name.

6 Q Okay.

7 A I don't.

8 Q You don't know what it is?

9 A No.

10 Q All right. Have you been to any classes that teach you
11 how to operate this video equipment?

12 A I was trained from day one as a key holder to learn how
13 to use this equipment.

14 Q Okay. So how many hours of training did you have in
15 video-recording equipment usage?

16 A I have to use it every single day.

17 Q That's sort of on the job?

18 A Yes, sir.

19 Q Okay. But did anyone say -- take you to a specified
20 location for training on use of the video equipment?

21 A I went to Charleston for two weeks for training.

22 Q That was for your management training?

23 A For management, partly being using the DVR. We did not
24 actually use one during that training, but I know how to use
25 it.

John Sellers, II - Cross by Defense

53

1 Q Okay. So now, the person that we saw on the camera who
2 appeared to be wearing a Dollar General uniform you're saying
3 that was you?

4 A Yes, sir.

5 Q Okay. And your previous testimony was that you weren't
6 there but now you're testifying that you were there?

7 A Yes, sir.

8 Q Okay. So when this alleged shoplifting occurred it
9 appeared that whoever did the stealing walked directly past
10 you?

11 A Yes, sir.

12 Q Would that be fair to say?

13 A Yes, sir.

14 Q So did you see the shoplifting when it occurred in the
15 store?

16 A No, sir.

17 Q Were you the only cashier working that day?

18 A I can't recall.

19 Q Okay. The two camera angles that we saw, are those the
20 only two camera angles in the store?

21 A No, sir.

22 Q How many camera angles -- how many cameras do you have in
23 your store?

24 A Ten.

25 Q Ten. Okay. So there are ten different angles of what's

1 going on?

2 A No, sir.

3 Q Some cameras won't pick up anything if she's not in that
4 location?

5 A Pretty much.

6 Q Okay.

7 A Uh-huh.

8 Q We've got ten cameras in that store?

9 A Uh-huh.

10 Q Okay. And you have brought with you two of them today?

11 A Yes, sir.

12 Q On November 18th of 2013 did you ask any employees if they
13 rung up Ms. Alston?

14 A No, sir. I was at the front of the store.

15 Q And she walked by you and out the front door?

16 A Uh-huh.

17 THE COURT: Is that a yes?

18 A Yes, sir.

19 Q Now, on that video we saw several people walk in and walk
20 out.

21 A Yes, sir.

22 Q Have you accused any of them of stealing?

23 A No, sir.

24 Q So you didn't actually see her steal anything? You said
25 you went back and reviewed your videotape later?

John Sellers, II - Cross by Defense

55

1 A Yes, sir.

2 Q And when you determined that you thought she might have
3 stolen something you did not call the police?

4 A No, sir.

5 Q As a manager at a Dollar General do they not train you to
6 call the police when a theft occurred?

7 A We have a lot of theft. I would actually have to keep an
8 officer on site if I were to call them over every single one.

9 Q Okay. Does Dollar General have metal detectors?

10 A No, sir.

11 Q Does Dollar General have those little things that they
12 put on clothing to prevent theft?

13 A Some do.

14 Q Some do?

15 A Uh-huh.

16 Q Okay. Were there any in your store that day?

17 A No, sir.

18 Q So sometimes there's theft where you all do not call the
19 police?

20 A Yes, sir.

21 Q Have you worked at other Dollar Generals or just that one
22 at -- on 701 North?

23 A Other ones.

24 Q Have any of the Dollar Generals you've worked at had
25 metal detectors at the door?

1 A No, sir.

2 Q Well, I guess I'm using the wrong phrase when I say metal
3 detectors. I guess they are anti-theft devices, that will
4 pick up those little anti-theft devices that are on clothing?

5 A No, sir.

6 Q So your stores don't have that, the several stores that
7 you've worked at?

8 A Not the ones I've worked at.

9 Q Does Dollar General have those in some stores but not in
10 others?

11 A I have no idea. I don't know if they have any of them.

12 Q Now, how many cash registers are in that store?

13 A Three.

14 Q On the video we just saw, did that video cover any of the
15 cash registers?

16 A Yes, sir.

17 Q How many cash registers did that video cover?

18 A One.

19 Q One. So there are two other cash registers in the store
20 that could have been used that aren't seen on video?

21 A My register is number two. That's register one. That's
22 the main register. Anybody's checking out I would have either
23 checked them out on number two or our cashier would have
24 checked them out on number one.

25 Q Okay. So we have two cashiers including you and three

John Sellers, II - Cross by Defense

57

1 cash registers?

2 A No, sir. Probably just me and a cashier if there was a
3 cashier there.

4 Q Right.

5 A Uh-huh.

6 Q Right. We're saying the same thing.

7 A Okay.

8 Q Okay. And the video camera covered you and, and it
9 showed one cash register?

10 A Yes, sir.

11 Q Okay. Do you know the name of the other cashier that was
12 working that day?

13 A I do not know if there was a cashier at that moment.

14 Q Okay. Now, at first you didn't know if you were there.

15 A Right.

16 Q So let me go back to that. Were you at the store on
17 November 18th or not?

18 A Yes, sir.

19 Q Okay. Now, at first you said you had worked earlier, you
20 were at home and some other person was working. Do you recall
21 if there was another person working with you on November 18th?

22 A At some point there would be. I'm never there by myself
23 all day. I don't recall if there was someone at that moment.

24 Q Do you recall if there was someone on that shift with
25 you?

1 A On that shift at some point, yes, sir, there would be.

2 Q Okay. But you do not recall who that person was?

3 A No, sir.

4 Q So just to be clear, there was a second cashier that day?

5 A At some point.

6 Q Okay. Now, there are ten different camera angles in the
7 store. We can't possibly see everything that Ms. Alston was
8 doing just off this one camera angle. Could we? Because
9 there are ten different angles.

10 A Absolutely, right.

11 Q If say for example Ms. Alston was to take those items and
12 throw them on the floor and walk out the door and decide, "I
13 don't want to steal this stuff," that would be on one of those
14 other eight camera angles if it was there at all. Would that
15 be true?

16 A Anything's possible.

17 Q Okay. I don't have any further questions. Thank you.

18 THE COURT: Redirect?

19 MS. RICHARDSON: Thank you, Your Honor, just briefly.

20 REDIRECT EXAMINATION

21 BY MS. RICHARDSON:

22 Q When you went back and reviewed the videotape, did you
23 review all camera angles?

24 A Yeah.

25 Q Did you notice Ms. Alston throw those items down on the

John Sellers, II - Redirect by State

59

1 ground and say she don't want to shoplift these things?

2 A No, ma'am. And I would have still called the police even
3 if she had told me that or anything else. Once she concealed
4 it I would have called the police anyhow.

5 Q Well, let's talk about that just briefly. Mr. Galmore
6 hit on that just briefly. You said that you wouldn't call the
7 police for every shoplifter.

8 A Yes, ma'am.

9 Q Why is that?

10 A A lot of times I don't know the information. They've
11 already left the store. A lot of the shoplifters I've caught
12 it's just on the camera. They're already gone. So I know it
13 happens and I don't always call the police. Sometimes they're
14 walking out the front door and I will confront them if I've
15 seen it, and they just keep going. I'll just call the police
16 back and tell them not to worry about it because they're gone
17 and they can't really do anything. There's several reasons
18 why I wouldn't. Sometimes they'll actually give me the
19 merchandise back and act remorseful. I'll just tell them they
20 can't come back, which solves my biggest problem is just not
21 having them in my store to shoplift. It's not really always
22 to call the police to have someone arrested. If I see someone
23 coming back over and over shoplifting, I just as soon
24 prosecute them and get them out my store completely.

25 MS. RICHARDSON: Nothing further, Your Honor.

Jason Eden - Direct by State

60

1 THE COURT: All right. You may step down. The State can
2 call their next witness.

3 MS. RICHARDSON: Your Honor, the State would call Officer
4 Jason Eden.

5 THE COURT: All right.

6 Whereupon, Jason Russell Eden was called to the stand,
7 duly sworn by the clerk and testified as follows:

8 THE CLERK: Please be seated. State your full name,
9 spell your last name for the Court, please.

10 MR. EDEN: My name is Jason Russell Eden, E-D-E-N.

11 DIRECT EXAMINATION

12 BY MS. RICHARDSON:

13 Q I called you Officer Eden, but you're actually Trooper
14 Eden now; is that correct?

15 A Yes, ma'am.

16 Q Your uniform would tell me you work with highway patrol?

17 A Yes, ma'am.

18 Q November 20th of 2013 where were you employed?

19 A The City of Conway, Conway Police Department.

20 Q Okay. How long were you employed with the Conway Police
21 Department?

22 A Six years.

23 Q And why did you make the switch to highway patrol?

24 A I wanted to focus specific on traffic.

25 Q Going back to November 20th of 2013, did you have occasion

Jason Eden - Direct by State

61

1 to respond to the Dollar General Store?

2 A Yes, ma'am. In reference to shoplifting complaint.

3 Q Okay. Tell us about that.

4 A When I received the call I was advised through dispatch
5 that there's a shoplifter that was in the store. I didn't
6 know if it had taken place then or previously. So my thought
7 was get to the store and get information and find out what's
8 going on. I immediately actually ran to Ms. Alston as she's
9 walking out the door. She's with two other people, and they
10 seem kind of rushed. That seemed kind of odd. What I did was
11 went ahead and detained her, didn't place under arrest, but
12 detained her and then informed her that she was being detained
13 because of a shoplifting complaint. I advised her I needed to
14 speak with a manager, find out what's going on and we was
15 going to pursue it from there. I did get her name and
16 information before I reviewed the video just so I'd have that.
17 I also let her know that if it was not her and everything's
18 okay then I'd allow her to continue about her business. I met
19 with Mr. Sellers. We went in the back. I reviewed the
20 footage, and I can positively ID that the woman that I had
21 standing in front of me is the same woman that was in the
22 video and she's seen concealing merchandise within her person.
23 Q Tell me about Ms. Alston. What was her physical
24 description?

25 A She was roughly about five foot six, five foot eight, a

1 little more heavy side. I'd say by meeting her maybe 220,
2 240. She definitely had that, that black boot that is on her
3 right leg. The day that I met with her when she's at the
4 store I cannot recall if she still had a cane or not. I know
5 she still had the boot though.

6 Q Okay. I'm sorry. You can't recall if she still had the
7 boot or you think so?

8 A She had the -- she still had the boot.

9 Q Okay.

10 A I just can't recall if she still had that cane.

11 Q The cane. Okay. I'm sorry. I missed that altogether.
12 Sorry. Okay. So you watched the video?

13 A Yes, ma'am.

14 Q And you saw that she still met that physical description?

15 A That's right.

16 Q How did you identify Ms. Alston?

17 A She gave me her name and date of birth. At that point I
18 just jot that information down. I did inform her that she was
19 the same person in that video, that she was shoplifting. I
20 also informed her I was going to do a follow-up and make sure
21 that's who she says she is because I can't put it down in a
22 report unless I a hundred percent know that's going to be her.
23 So I just got her, like I said, I got her information. I let
24 her know that it was her on the video and a warrant would be
25 issued. I did not take her to jail that day, and the reason

Jason Eden - Direct by State

63

1 why I didn't take her that day is because it wasn't freshly
2 committed. By law I'm prohibited to do that. We also allow
3 her to use the restroom at that point and then she was allowed
4 to leave.

5 Q You said that you wanted to verify that it was her.

6 A Yes, ma'am.

7 Q How do you do that?

8 A I check with my dispatch by running the name and
9 information. I also look on if they've been previously
10 arrested before I use their, their information, get the
11 picture for myself.

12 Q Okay. What county did all of this occur in?

13 A Horry County.

14 Q Okay. Sorry. I knew there was something else I wanted
15 to follow up with you on. Now, you said that you didn't
16 arrest her that day because it wasn't freshly committed and
17 you're prohibited by law?

18 A Yes, ma'am.

19 Q What does that mean?

20 A Well, first of all, I mean, I do know that person is the
21 one that committed it. It wasn't committed right away.
22 Therefore, we can't place them under arrest. We can detain
23 them, get their information, but then there's another process.
24 Just because they tell you who they are you still got to
25 follow up and make sure a hundred percent before you put your

1 name on documentation on the report, yes, this is exactly the
2 same person that's gave me the same information. So I have to
3 go ahead and get that information, allow her to leave and then
4 follow up and make sure that the name she gave me, everything
5 is correct before we pursue with the case.

6 Q Okay. And you, you got a warrant for her arrest?

7 A That's right, a warrant was issued.

8 Q Do you know when that warrant was served? Did you serve
9 the warrant?

10 A No. I don't recall serving a warrant. No, ma'am.

11 Q Okay. Do you know if that warrant was served?

12 A Yes, ma'am.

13 MS. RICHARDSON: Nothing further from this witness.

14 THE COURT: Cross examination.

15 CROSS EXAMINATION

16 BY MR. GALMORE:

17 Q Trooper Eden, when you are telling the jury about your
18 meeting Ms. Alston that would have been on November 20th, 2013;
19 is that correct?

20 A Yes, sir.

21 Q Okay. Well, what did you do in regards to this case on
22 November 18th of 2013?

23 A I didn't know there was a shoplifting occurred until the
24 20th.

25 Q Okay. So you were not contacted on the 18th?

Jason Eden - Cross by Defense

65

1 A No, sir.

2 Q Okay. Do you know if dispatch was contacted at all and
3 perhaps some officer responded on the 18th?

4 A I was never aware of that, sir.

5 Q Okay. So to the best of your knowledge no one was
6 contacted about the alleged theft on November 18th?

7 A No, sir. Just the 20th.

8 Q Okay. Now, when you responded on the 20th you asked for
9 her name. Did she give it to you?

10 A Yes, sir. She, she was forthcoming.

11 Q Okay. And she cooperated with you?

12 A Very cooperative. Yes, sir.

13 Q Did she try to run off or --

14 A Well, the way her demeanor is she didn't want to stay in
15 the store. She was being cooperative, but at the same time
16 she didn't want to stay there. So it seemed like something
17 else is going on. That's the reason why I went and
18 immediately detained her. Therefore, I could find out exactly
19 what, what was the issue, what was going on that day.

20 Q And she was still wearing that boot on her leg?

21 A Yes, sir.

22 Q Okay. Did she try to assault you or any Dollar General
23 employees?

24 A Absolutely not.

25 Q All right. But would it be fair to say that she was

- 1 cooperative with your questions?
- 2 A To the extent, yes, sir
- 3 Q Did you find any stolen items on Ms. Alston?
- 4 A That day?
- 5 Q Yes, sir.
- 6 A No, sir.
- 7 Q Okay. Did you search her on this day?
- 8 A No, sir. We didn't have any females that day.
- 9 Q Okay.
- 10 A Within the -- we didn't have a complaint that it happened
- 11 that day. So there was no reason for me to do that.
- 12 Q Right. Because it didn't happen that day.
- 13 A Right.
- 14 Q Okay. Now, this video that we've seen, you said that you
- 15 saw it in the store on November 20th?
- 16 A Yes, sir.
- 17 Q And the video that was played in court today, did you
- 18 create that video disk, that CD?
- 19 A No, sir.
- 20 Q Okay. Did you have any input into what was put on the
- 21 CD?
- 22 A No, sir.
- 23 Q Okay. So I guess what I'm saying is if there are 10
- 24 different camera angles you didn't tell anybody which camera
- 25 angles to put on the CD and which camera angles not to put on

Jason Eden - Cross by Defense

67

1 the CD?

2 A No, sir.

3 Q Did you cut and paste the CD?

4 A No, sir. I have --

5 Q You had nothing to do with it?

6 A I, I don't touch a CD whatsoever. Soon as they made the
7 copy, hand it to me, I place it in evidence and it goes from
8 there.

9 Q All right. In your six years as a Conway Police Officer,
10 have you had other occasions to report to that Dollar General
11 for a shoplifting case?

12 A Yes, sir.

13 Q And on those occasions is it when the shoplifting occurs
14 or is it two days afterwards?

15 A Most of the time it's when it occurs.

16 Q Okay.

17 A Because it -- a lot of times they'll be able to see it
18 take place. That's, that's the thing. They see it take place
19 then they, they immediately call us.

20 Q Okay. But that was not the case here?

21 A No. He -- no, sir.

22 Q All right. You were contacted two days after the alleged
23 event?

24 A Yes, sir.

25 Q All right. Thank you very much, sir. No further

1 questions.

2 THE COURT: Redirect?

3 MS. RICHARDSON: No, sir, Your Honor.

4 THE COURT: All right. You may step down.

5 A Yes, sir.

6 THE COURT: The State can call their next witness.

7 MS. RICHARDSON: Your Honor, the State would call
8 Detective Nesmith.

9 Whereupon, Tyres Nesmith was called to the stand, duly
10 sworn by the clerk and testified as follows:

11 THE CLERK: Please be sated. Can you spell your first
12 and last name for the Court and the court reporter?

13 MS. NESMITH: Sure. Yes, ma'am. My first name is
14 spelled T-Y-R-E-S, last name is N-E-S-M-I-T-H.

15 DIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q Good morning, Detective.

18 A Good morning.

19 Q Where are you employed?

20 A Conway Police Department.

21 Q We'll just jump right in on it. Did you have an occasion
22 to serve a warrant on Ms. Tracy Alston?

23 A I did not serve the warrant.

24 Q Okay.

25 A I obtained the warrant.

Tyres Nesmith - Direct by State

69

1 Q You obtained the warrant.

2 A Correct.

3 Q Okay. For Officer Eden?

4 A Correct.

5 Q And is that a common practice?

6 A It is.

7 Q Okay. Now, did you have occasion to come in contact with
8 Ms. Alston on November 22nd, 2013?

9 A I did.

10 Q Okay. And what was your extent of your contact with her?

11 A Ms. Alston came into the judge's office. She was served
12 actually by a different detective. That was Detective
13 Johnson, and I obtained her fingerprints prior to her bond
14 hearing.

15 Q So she voluntarily turned herself in?

16 A She did.

17 Q Now, do you know Ms. Alston through the community?

18 A I've had contact with her before.

19 Q And the woman that you had contact with on that day that
20 you fingerprinted is that who you know to be Tracy
21 Alston?

22 A Definitely.

23 MS. RICHARDSON: Nothing further, Your Honor.

24 THE COURT: Cross examination.

25

CROSS EXAMINATION

1 BY MR. GALMORE:

2 Q Detective Nesmith, did you report to the Dollar General
3 on November 18th of 2013?

4 A I did not.

5 Q Did you report to the Dollar General on November 20th,
6 2013?

7 A I did not.

8 Q Did you recover any stolen items?

9 A No, sir.

10 Q No further questions.

11 THE COURT: All right. Redirect?

12 MS. RICHARDSON: No, sir, Your Honor.

13 THE COURT: All right. You may step down.

14 The State can call their next witness.

15 MS. RICHARDSON: Your Honor, that would be the extent of
16 the State's case. The State would rest at this time.

17 THE COURT: All right. All right. Ladies and gentlemen,
18 the State has rested their case. Now is the time of the trial
19 where I have to take up some matters of law with the
20 attorneys, and I'll need to do it outside the presence of the
21 jury. So I'm going to excuse you for just -- for a little
22 while. We may want to go ahead and break for lunch, and I
23 tell you why we excuse you. It's not that we're trying to
24 hide anything from you. It's just that as I told you in your
25 opening charges you and you alone decide the facts of this

Tyres Nesmith - Cross by Defense

71

1 case. I decide the law to be applied in this case. Well, at
2 this point in time it requires the attorneys and myself as the
3 Judge to discuss some of the law to be applied in this case
4 since the State has now rested their case. Oftentimes when we
5 discuss the law it requires us to reference factual matters.
6 Well, what we say during our discussions is not evidence. So
7 we do not want you to be influenced by anything that I might
8 say regarding the facts or anything the attorneys might say
9 regarding the facts when we discuss which law to apply. So
10 that's why we excuse you to the jury room is so that you base
11 your decision on what factually happened in this case
12 exclusively on the testimony and evidence presented and not on
13 anything that I say as the Judge or that the attorneys say.
14 So that's why we excuse you. It's a quarter till 12. I'm
15 going to let you go ahead and go to lunch. Please be back in
16 the jury room at 1:30 and we'll try to get started with the
17 remainder of the case at that time. Do not discuss the case
18 even among yourselves at this point in time. It's too early
19 for deliberations. Don't conduct any independent
20 investigations, don't go looking on the internet or through
21 the newspaper to try to find anything out about the case. I
22 hope everybody has a good lunch and we'll see you back at
23 1:30. Thank you very much.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

Motions

72

1 THE COURT: All right. Any motions?

2 MR. GALMORE: Yes, sir, Your Honor. I would make a
3 motion for a directed verdict at this time just based on the
4 existence or non-existence of the evidence. What we have is a
5 videotape that cannot be confirmed. There's no independent
6 person that says, "I saw Ms. Alston engaged in shoplifting."
7 We do not have a, a -- any items that have been recovered that
8 were allegedly stolen by Ms. Alston. We do not have any
9 indication that whether or not she would -- she had returned
10 those items or attempted to pay for those items. The
11 videotape in and of itself is not a complete picture of what
12 occurred, and therefore, I think that it is not sufficient
13 evidence to submit this case to the jury.

14 THE COURT: All right. Ms. Richardson.

15 MS. RICHARDSON: Thank you, Your Honor, just briefly.
16 The videotape, I believe, and we also heard from Mr. Sellers,
17 he, he testified that he watched all other angles. She never
18 at once attempted to, to pay for those or attempted to put
19 those items back. Your Honor, she very clearly in the video
20 stuffed those items up her shirt. We see --

21 THE COURT: See, I need -- and I'm, I'm going to be
22 honest with you, I need to look at that video again --

23 MS. RICHARDSON: Okay.

24 THE COURT: -- because I was looking at it from an angle
25 here.

Motions

73

1 MS. RICHARDSON: Okay.

2 THE COURT: And I didn't really even see anything.

3 MS. RICHARDSON: Okay.

4 THE COURT: Maybe I just wasn't paying attention at that
5 point in time. So I need to look at that, too, but go ahead
6 and finish your argument.

7 MS. RICHARDSON: Okay. Your Honor, again, you can
8 clearly see her stuff that up her shirt. She leaves the
9 store. She has no bags with her. She hasn't attempted to
10 cash out at that store. Your Honor, and the State's position
11 is that her concealing it and moving it is shoplifting.

12 THE COURT: Okay. All right. Can we go ahead and drop
13 the -- can you --

14 MS. RICHARDSON: Sure, absolutely.

15 THE COURT: -- fire that back up and let me get around in
16 front of it so I can --

17 MS. RICHARDSON: Well, Your Honor, I can bring you my
18 computer if you want to see it that way. It doesn't matter.

19 THE COURT: Do you have an objection one way or the
20 other?

21 MR. GALMORE: No, sir.

22 THE COURT: All right. Which would be the easiest?

23 MS. RICHARDSON: It doesn't matter, Your Honor.

24 THE COURT: I can step around.

25 MS. RICHARDSON: Okay.

Motions

74

1 THE COURT: Let me step out and I'll just walk around and
2 take a look at it.

3 MR. GALMORE: You don't have to.

4 MS. RICHARDSON: It's just going to take it just a
5 second, Your Honor, to warm up.

6 THE COURT: All right. And if you can just narrow it on
7 where the State is saying that occurred. I saw her walking
8 out of the store.

9 MS. RICHARDSON: Okay.

10 THE COURT: I just never did pick up the part where you
11 say that she stuff -- stuck it up under her shirt.

12 (State's Exhibit Number One played in open court.)

13 MS. RICHARDSON: Your Honor, I don't exactly know how to
14 fast forward it, but it is -- you will see her in just a
15 second.

16 THE COURT: And she starts out on that aisle to the
17 right.

18 MR. GALMORE: Right, allegedly.

19 THE COURT: Yeah.

20 All right. That's it.

21 All right. Anything further from the State?

22 MS. RICHARDSON: No, sir, Your Honor.

23 THE COURT: Anything further from the Defense?

24 MR. GALMORE: No, sir.

25 THE COURT: All right. I'm going to deny the motion for

Motions

75

1 a directed verdict. All right. Anything from the State
2 before we recess?

3 MS. RICHARDSON: No, sir, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. GALMORE: No, sir.

6 THE COURT: All right. Do you have anything you want to
7 present?

8 MR. GALMORE: No, sir.

9 THE COURT: Let's go ahead and break for lunch, come back
10 at 1:30 and I guess we just do closing arguments and jury
11 charge.

12 MR. GALMORE: Yes, sir.

13 THE COURT: Deliberation, go with that.

14 MR. GALMORE: Okay.

15 MS. RICHARDSON: Yes, sir, Your Honor.

16 THE COURT: All right. Sounds good. We'll be in recess
17 till 1:30.

18 MS. RICHARDSON: Thank you, Your Honor.

19 MR. GALMORE: Yes, sir. Thank you.

20 THE COURT: Thank you.

21 OFF THE RECORD

22 (On the record. Whereupon, the following takes place
23 outside the presence of the jury.)

24 THE COURT: All right. Anything from the State before we
25 bring the jury in?

1 MS. RICHARDSON: Just briefly, Your Honor. I know we had
2 a conversation yesterday about the two prior shopliftings and
3 we agreed up at the bench that Defense would stipulate to the
4 jurisdiction of the General Sessions Court, thus her having
5 two prior shopliftings, but we've never actually done that on
6 record.

7 THE COURT: All right. Is that a stipulation?

8 MR. GALMORE: Yes, sir. It is.

9 THE COURT: All right. All right. So we'll stipulate
10 that there are at least two prior property crimes which puts
11 it under the enhancement statute, but that issue won't go
12 before the jury. Is that correct?

13 MS. RICHARDSON: That is correct.

14 MR. GALMORE: Yes, sir.

15 THE COURT: Okay. All right. Anything from the State
16 before we bring the jury in?

17 MS. RICHARDSON: Nothing else, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. GALMORE: No, sir.

20 THE COURT: Okay. You should have been given a copy of
21 the proposed charges and verdict form, and the reason I did
22 the verdict form is so that they would not be getting the
23 indictment that says shoplifting third or subsequent crimes so
24 we can do it on the verdict form. I'll give you an
25 opportunity after I charge the jury to raise any objections or

Motions

77

1 additional charges because I know sometimes it sounds
2 differently when you hear it read versus when you read it on
3 the paper. So I'll give you another opportunity at that
4 time, but at this time is there anything the State wants to
5 raise?

6 MS. RICHARDSON: No, sir, Your Honor.

7 THE COURT: Anything the Defense wants to raise?

8 MR. GALMORE: No, sir.

9 THE COURT: All right. Let's go ahead and bring the jury
10 in.

11 Mr. Galmore, do you want me to ask on the record when
12 they get in here if you want to present a defense?

13 MR. GALMORE: No, sir.

14 THE COURT: Or do you want to just go straight into
15 closing arguments?

16 MR. GALMORE: Yes, sir. We -- well, Defense would rest
17 just for the record, but --

18 THE COURT: Okay.

19 MR. GALMORE: -- no, we, we don't have to do that.

20 THE COURT: Okay.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right. Ladies and gentlemen, welcome
24 back. Hope everyone had a good lunch. We're ready to proceed
25 with the trial of this case. Now, all of the evidence in this

1 case that's going to be presented in the case has now been
2 presented to you, and the only thing left is for the attorneys
3 to make their closing arguments and for me to charge you on
4 the law to be applied in this case. Now, just like their
5 opening statements these closing arguments by the attorneys is
6 not evidence in this case. It is simply their contention as
7 to what they think the evidence has shown in this case. So
8 anytime -- at anytime the attorneys make reference to a
9 factual matter that is different from the facts as you find
10 them to be or references the law that is different from the
11 law as I will charge you at the end of their arguments then
12 you're to disregard that portion of their closing arguments
13 because this is not evidence. It's just their contention as
14 to what they think the facts in this case are and the law to
15 be applied in this case. All right. Ms. Richardson.

16 MS. RICHARDSON: Thank you, Your Honor.

17 I'll do my best not to talk to you longer than the
18 witnesses actually talked to you. I'll try to keep it short.
19 You've heard a lot about shoplifting. What is actually
20 shoplifting? Now, the Judge is going to instruct you on the
21 law. If I tell you anything different than what he says, you
22 go with him. He wears the black robe. He's the one in
23 charge. He's the instructor on the law, but shoplifting means
24 to take or carry away, to conceal it. Theoretically, you can
25 shoplift and never actually leave the store. You have to have

Closing Argument by State

79

1 intent to deprive the owner. Under the statute, and listen to
2 the statute, it is to take it, to conceal it and to carry it
3 away from one area of the store to another area of the store,
4 to deprive the owner, with intent to deprive the owner.

5 Now, what is intent to deprive the owner? How do we know
6 what somebody's intent is? Listen, there's no way you're
7 going to be able to show somebody's intent beyond all doubt
8 because nobody can get in somebody else's mind and know what
9 they were thinking at that point in time, but the law allows
10 you to look at the circumstances surrounding the case,
11 surrounding the incident and ask -- and take those
12 circumstances in mind when you're trying to establish intent.
13 Part of that the law says if somebody conceals it, if somebody
14 stuffs it up their shirt, stuffs it in their pocketbook,
15 stuffs it under their jacket, puts it down their pants, that's
16 an intent to deprive the owner, and the Judge will instruct
17 you on that.

18 Now, let me talk to you a little bit about beyond a
19 reasonable doubt. You folks are reasonable people. We're all
20 reasonable people. The Defense attorney used a football field
21 as his explanation, and it's not here, our burden of proof is
22 not here. Our burden of proof is down here, and we throw out
23 these legal terms and I'll tell you, we learned -- we took a
24 whole semester on what a reasonable doubt is. The Judge will
25 tell you, and it's the best we can sum it up, it's firmly

1 convinced. If you are firmly convinced that she took an item
2 from that store and had the intent to deprive the owner of it
3 she is guilty of shoplifting. That's what shoplifting is.
4 Reasonable doubt.

5 Now, there's ten different camera angles, and, and the
6 Defense attorney'll get -- be able to get up here and talk to
7 you after I do. That's the way the rules of evidence goes.
8 Okay? I won't be able to get to reply to what he says. It's
9 just the way the rules are, ten different camera angles. So
10 some of what I'm telling you I'm going to have to assume are
11 what he's going to argue. Okay? Ten different camera angles.
12 Why didn't we see all the camera angles? The owner told -- I
13 say owner. He's not the owner. He's the manager. The
14 manager told you, "I looked. I didn't see her on any other,
15 other camera angles. I never saw her put the merchandise
16 back. I never saw her put it anywhere else or decide she
17 didn't -- that, you know, she wasn't going to shoplift."
18 Ladies and gentlemen, is it reasonable, again, reasonable, is
19 it reasonable that somebody would stuff something up their
20 shirt and decide that they're going to take it out and now,
21 "I'm going to pay for it," because that's reasonable. We all
22 carry things around up underneath our shirt and then take it
23 to the cash register, pull it out to pay for it. Is that
24 reasonable? I submit to you that it's not. Did she pay for
25 it? We saw her walking out. She didn't have a bag in her

Closing Argument by State

81

1 hand. Mr. Sellers says, "There might have been one person
2 there with me. I don't remember." He really doesn't
3 remember. He was honest with you. He doesn't remember. He
4 says, "We have shopliftings there all the time." That's
5 unfortunate. It really is unfortunate, but he says, you know,
6 he, he didn't -- he honestly didn't even remember being at
7 work that day, but he did, and, and there's been a big deal of
8 why the police wasn't called that day. Well, he told you, "If
9 I called the police every time I had a shoplifter, the police
10 would be up there all the time," and what's he going to tell
11 the police? "There's some black lady who shoplifted. She's
12 maybe forties. I, I don't know her name. I don't know her
13 birth date. I don't know her Social Security Number. I don't
14 know anything about her, but she shoplifted." He told you,
15 "If I did that somebody would be up there every single day. I
16 can't do that." He doesn't want to do that. He doesn't have
17 anything against Ms. Alston. He even said, "People I catch
18 shoplifting, if they're remorseful and they don't come back to
19 my store, I don't even call the cops." He doesn't have
20 anything against Ms. Alston. This isn't some big vendetta
21 against her. Okay. He doesn't want her to come back to the
22 store. She has the audacity because she got away with it the
23 first time she thinks to come back two days later, and then he
24 says, "No, I'm not. We're not going to tolerate this. You're
25 not going to keep on shoplifting from me. I'm going to call

1 the police." So then the police come and they investigate it.
2 He asks her her name, her information. She gives it to
3 him. He then checks through dispatch to make sure that what
4 she's telling him meets what dispatch has, and it does, and he
5 tells you legally he can't arrest her right then. The law
6 doesn't allow for that. A crime has to be freshly committed
7 in an officer's presence or you have to have a warrant for
8 them. So he goes and he seizes his warrant for her, and then
9 a couple of days later when Ms. Alston finds out -- he told
10 her he was going to get a warrant for her. He said, "I'm --
11 you're on video. I've seen you. I've watched you. I saw you
12 shoplift. It meets you. That's who you are. No doubt about
13 that. So I'm going to get a warrant for you. There's going
14 to be a warrant for you." A couple of days later she calls
15 the police to say, "Is there a warrant for me?" "Yes." She
16 comes in. She turns herself in. She didn't put up a fight,
17 but hey, she ain't charged with resisting. She's charged with
18 shoplifting.

19 I asked the lady who booked her, "Is the person who you
20 booked who you know to be Tracy Alston?" "Yes. The same
21 person." So no doubt about it, that person on that video is
22 Tracy Alston. That's the person that was arrested for it.

23 Now, the Defense attorney got up here and told you in the
24 beginning, and I, I work every day with Mr. Galmore. I think
25 a lot of him, but he got up here in the beginning and he said,

Closing Argument by State

83

1 "This case ain't about who did what. This case is about what
2 South Carolina didn't do. What law enforcement didn't do."
3 Ladies and gentlemen, the only thing this case is about is who
4 did what. Tracy Alston is the one charged with the crime.
5 That's what this case is about, who did what. Did Tracy
6 Alston shoplift. If that's your -- if your answer to that is
7 yes, that's what this case is about. That's the only question
8 that's before you.

9 I don't know what else possibly could have been done in
10 the case. Mr. Sellers doesn't see her actively doing it. He
11 can't call the police right then. He doesn't notice it until
12 he goes back and reviews his tapes. Then he sees it. He
13 says, "If I falsely report somebody for shoplifting I can lose
14 my job." So it's not something he takes lightly. He's not
15 going to just throw wild accusations out there, but when she
16 comes back again, when she comes back that second time he says
17 enough is enough. "You got away with it one time, you're not
18 going to get away with it another time. I'm calling the
19 police," and the police come. They review the video, and he
20 says, "That's her. She shoplifted." It's on video, doesn't
21 get too much more reasonable than that, okay.

22 I submit to you that the State of South Carolina not only
23 made it to the end zone, made it to -- I'm trying to think of
24 how a football field is arranged, the three yard line, I about
25 said hundred yard line. You can tell how much football I

1 watch; right? The three yard line, I submit to you, that we
2 scored a touchdown, and if I could do my little touchdown
3 dance I would, but I'll save you that.

4 She's on video, folks. She's on video entering the
5 store. She's on video putting it under her shirt. She's on
6 video walking out of the store. Ladies and gentlemen, she's
7 guilty of shoplifting. Thank you for your time very much.

8 THE COURT: Mr. Galmore.

9 MR. GALMORE: Earlier today I told you that this was a
10 case about roles and responsibilities and that everyone had a
11 job to perform and that includes you. As jurors you have no
12 friends to reward. You have no enemies to punish. You should
13 not feel bad if you convict Ms. Alston. You should not feel
14 bad if you say not guilty in Ms. Alston's case. Why? Because
15 your job is to evaluate the evidence that has been presented
16 to you. Now, I know apparently the Solicitor and I have
17 disagreements about what the role of the jury is, but each and
18 every one of you came here and took an oath and then took
19 another oath and then took another oath saying that you would
20 well and truly try the issues in this case.

21 Now, everybody's job here today is dependent on Mr.
22 Sellers, the store manager. I can't do my job if you didn't
23 do your job. Trooper Eden's here, Officer Eden at the time.
24 There's nothing he can do if no one calls 911. The Solicitor
25 has tried, but there's nothing she can do if the evidence is

Closing Argument by Defense

85

1 not collected. So he is limited in what he's given, and she
2 is limited in what she can do with what she has because he's
3 given limited information and then it passes up the food chain
4 to you. Each and every one of you are now being asked to
5 decide this case, and you can't do your job either because
6 they're giving you the limited information that they received.

7 First of all, Mr. Sellers could not even remember if he
8 was working that day or not. His testimony was, "I was off
9 that day. I just review tapes on a regular basis because I'm
10 the store manager." Well, that sounds all fine and good until
11 we look at the tape and see him on the tape. Then he says,
12 "Oh, yes. I remember I was working that day." Well, not
13 trying to pull the wool over anybody's eyes, I'm not trying to
14 waste anybody's time, we just need some clear and concise
15 information. If you're working that day or if you're not
16 working that day, and if you are working that day now we see a
17 videotape where you're claiming that Tracy Alston stole some
18 stuff and walked right past you on the video, and he says, "I
19 didn't see it." Okay. So he's just reviewing tapes. I don't
20 know about that. I'm calling into question his credibility as
21 a witness. He can't even remember if he was at work or not.
22 I can tell you that if he thought somebody was stealing he
23 didn't see it on that tape because he -- she walks right past
24 him.

25 Now, what else did we see on that tape? We saw a lot of

1 people walk right past Mr. Sellers. The Solicitor has said,
2 "Well, walked out and didn't have a bag." We watched the
3 tape. It's probably four or five people that walk out the
4 store without a bag, and nobody's being accused of stealing,
5 got ten camera angles and, you know, she's not on the others.
6 It's physically impossible. I suspect that if you left this
7 courtroom, walked down the hallway, got on the elevator, went
8 downstairs, out the front door and into the parking lot, you'd
9 be covered by 10, 12 different camera angles, and we would
10 have them all available to show every step that you took as
11 you walk down the hallway, down the steps and out the door.
12 You wouldn't have, "Oh, well, there's Juror 19 walking out the
13 front door." Two minutes later, "Oh, there's Juror 19 in the
14 parking lot." How did this juror get from the front door to
15 the parking lot? We can assume that he or she walked out, but
16 that's not the standard in the law. The law doesn't say you
17 are allowed to assume. When the Judge gives you his jury
18 instructions in a few minutes I dare say the word assume's not
19 going to be in there at all. We didn't come to court to deal
20 with assumptions. We came to court to deal with facts and
21 evidence, and the fact is every square inch of that, of that
22 store is covered by a video camera. If there was some
23 stealing involved we should be able to see from the moment she
24 walks in the store every aisle she walks up and down and going
25 out the store. That's why I can say, "Sir, do you know if she

Closing Argument by Defense

87

1 paid for those items?" "No. I don't." "Why don't you know?"
2 "Because it's not on video." You got videos that cover the
3 cash registers, but you don't have anyone -- any video showing
4 her going to a cash register. You don't have any video
5 showing her walking away from a cash register. So we don't
6 know. "Sir, did she return the items?" Did she pull them out
7 of her bra, just throw them on the ground and say, "Forget
8 this. I'm not interested in stealing this stuff?" We don't
9 know. We have ten camera angles that cover every part of the
10 store so we would have clearly been able to see it, or in the
11 alternative, we would clearly be able to not see it, but it
12 wouldn't be a question here today, and therein lies the
13 problem because it is a question that the State cannot answer.
14 Therefore, the State has not met its burden of proof. Again,
15 they are the people that are accusing Tracy Alston of theft.
16 They're the people that have to show she stole something. Do
17 you have any stolen items? No. Well, had the police been
18 called on the 18th maybe they'd have stolen items. Maybe they
19 would have seen Ms. Alston in the parking lot or a block away
20 from the store with the bra stuffed down her shirt, but if the
21 call's not made the police can't go out there and try to do
22 their job, and because they can't do their job she can't do
23 her job and because she brings us half a case with holes in it
24 that Galmore's more than happy to fill, then we have
25 reasonable doubt. Let me say it like this, the State is the

1 one accusing her of stealing; right? Can you prove to me that
2 she put the stuff back or not? They can't prove it. Case
3 closed. That's it. They can say, "Yeah. She didn't put it
4 back." Well, do you have her outside with stolen items? No.
5 Do you have her walking past the cash register and not paying?
6 No. Do you have her on the video in the store walking and not
7 putting the stuff back down? No. Well, how can you say that
8 it wasn't returned? How can you say she didn't abandon this
9 idea? How can you say she didn't pay for it? They're
10 guessing. They're assuming, and like I said, the Judge is not
11 going to use the word assume not one time. So when we talk
12 about evidence, the presentation of evidence and the weight to
13 be given to the evidence, we also talk about the lack of
14 evidence, what is not presented. That is just as important as
15 what is presented because it gives you just as much
16 information as what is presented to you in court. So when you
17 put what you have presented before you and you put what you --
18 what was not presented before you, and you put all of that
19 stuff together you have to ask yourself if it meets the
20 State's burden of proof.

21 Now, the burden of proof in a criminal case, I tried to
22 explain it to you a little bit earlier. We talked about
23 beyond a reasonable doubt and the football thing and it's
24 supposed to be down here somewhere, three yard line. The
25 problem with this three yard line, just like with my Redskins,

Closing Argument by Defense

89

1 nobody is guaranteed a victory. This is where the questions
2 are. No question it's down there. I could say, "Hey, what
3 proof is there that that's Tracy Alston?" What proof have
4 they presented? A police officer says, "Yeah. I know that's
5 Tracy Alston." Okay. I could question that. That would be
6 back here. That would be one of the basic issues, but I'm not
7 trying to waste your time. We're going to the issues that
8 matter, the issues that are here at the end zone. Is there
9 any proof that she walked out the door with stolen items? The
10 only thing that I saw on the tape is a person walking out the
11 door. I didn't see her with any stolen items in her hand. I
12 couldn't see under the shirt. Therefore, what we needed was a
13 police officer or some other person standing on the outside
14 saying, "Yes. We stopped her. Here she is. We pulled a bra
15 out of her bra. She stole a bra." We don't have that. So we
16 have an incomplete case, an inclusive case, and you're being
17 asked to decide it. It's kind of unfair to you because you're
18 being asked to do something and you're not being given the
19 tools to do it.

20 And one thing that I'd like to mention to you before we
21 sit down, in case you haven't noticed, Ms. Alston is not
22 seated next to me today. I want you to think back to your
23 history classes, U.S. History class in high school and civics
24 classes in junior high school, and you probably studied the
25 United States Constitution just a little bit, Declaration of

1 Independence, Bill of Rights, heard about all that stuff
2 somewhere in sixth, seventh grade. Now, the Constitution says
3 that a person has the right to remain silent. Why is that
4 important today? Because part of that right to remain silent
5 means that Ms. Alston does not have to explain herself. When
6 a person's put on trial they don't have to say, "I didn't do
7 it. Here let me prove to you that I didn't do it." That's
8 because the State is the party that is accusing. Therefore,
9 the State has the burden of proving what happened. The client
10 doesn't have to disprove anything. The reason for that is
11 simple. If I didn't know anything about a shoplifting, say
12 I'm in -- living in California at the time and don't know
13 anything about the store on 701 that had been stolen or been
14 robbed, I could not possibly defend myself against a crime
15 that I know nothing about, and that also means she doesn't
16 have to be in this courtroom today. Where Ms. Alston is is
17 not for me to say, and it is not for you to speculate upon.
18 Your job has not changed at all whether or not Tracy Alston is
19 sitting in this courtroom today. You still have taken the
20 same oath. You still have the same evidence. The State still
21 has to prove it, and whether Ms. Alston is sitting at that
22 table or not they have still given you half a case. The Judge
23 will tell you you can't hold it against her if she's not here.
24 He'll tell you not your place to wonder where she is or why
25 she isn't here or what she would have said if she was here.

Closing Argument by Defense

91

1 All of that is improper. You take the evidence that you have.
2 You take the lack of evidence that you have. You take it in
3 the back and you make a determination for yourself, each and
4 every one of you whether or not the State has met the burden
5 of proof that they have set out to meet.

6 I told you at the beginning that they could not meet that
7 burden of proof. I tell you again that they could not meet
8 that burden of proof. I'm not even sure that a shoplifting
9 occurred. You have Mr. Sellers here. "Did you call 911?"
10 "No." I give you list of reasons why I didn't call 911. The
11 bottom line is he didn't call 911. If I'm parked at the beach
12 access and having a good time with my honey, and we get back
13 from the beach and I find that my car has been broken into and
14 my 2010 Nikon Camera with extended telescopic lens has been
15 stolen, I got two choices. I could call the police and report
16 a crime or I could not call the police and keep going about my
17 business. That's what Dollar General did. I asked Mr.
18 Sellers, "Do you have metal detectors at the door, anti-theft
19 devices? Do you have the pins that they put on clothes to
20 keep people from stealing them?" "Some stores do. Some
21 stores don't. I don't know. We didn't have it." You didn't
22 have it and you didn't call the police you ain't worried about
23 it. If you were that concerned you'd call 911 even if you
24 don't have any description except black female. Maybe the
25 police say, "Oh, we just got another call 20 minutes ago with

1 a black female. Oh, we can put this together. Oh, we can
2 look at the video and maybe we know who that person is," but
3 they're not given that opportunity if you don't make the call,
4 and if you don't make the call you're not concerned. So I
5 think it's a little disingenuous to come in here today
6 suddenly concerned.

7 Each of you has a job to do. Each of you has to decide
8 for yourself whether or not the State of South Carolina has
9 met its burden of proof. Is that Tracy Alston? Is something
10 being stolen? Did she walk out the store with those stolen
11 items, and you should look at this evidence and you look at
12 those questions and you make a determination. I submit to you
13 that your verdict should be not guilty. I ask you and implore
14 you to return a verdict of not guilty.

15 I thank you for your time and attention. You've been an
16 excellent jury, can't complain about you at all, but thank you
17 for coming. We appreciate you being here. This system does
18 not work without you. All of us would be without a job if it
19 weren't for you. So your role is important. Your job here is
20 the most important job in this courtroom today. I'd like to
21 think I have an important job, but I really don't. It's
22 really about you and your decision and your interpretation of
23 what evidence has been given to you and your interpretation of
24 what evidence hasn't been given to you. So, again, I thank
25 you for your jury service. In a moment the Judge will

Charge

93

1 instruct you on the law and this will be your case to decide.
2 Again, we urge you to decide not guilty. Thank you very much.

3 THE COURT: Excuse me. All right. Ladies and gentlemen,
4 all of the evidence to be presented in this case has now been
5 presented to you. The attorneys have made their closing
6 arguments and now is the time of the trial when I charge you
7 with the law to be applied in this case.

8 The indictment in this case charges the Defendant with
9 shoplifting. I remind you that the fact that the Defendant
10 was arrested, charged and indicted in this case is not
11 evidence in this case and cannot be considered by you as
12 evidence of guilt in this case, nor does the Defendant's
13 arrest, charge or indictment create any presumption or
14 inference of guilt. The indictment is simply the formal
15 written instrument which contains the charge made against the
16 Defendant. It is the formal document by which this case is
17 brought into this court.

18 The Defendant pleads not guilty to the indictment. That
19 plea puts the burden on the State to prove the Defendant
20 guilty. A person charged with committing a criminal offense
21 in South Carolina is never required to prove her innocence. I
22 charge you that an important rule of the law is that the
23 Defendant in a criminal trial, no matter what the seriousness
24 of the charge may be, will always be presumed to be innocent
25 of the crime for which the indictment was issued, unless guilt

1 has been proven by evidence satisfying you of that guilt
2 beyond a reasonable doubt. This presumption of innocence does
3 not end when you begin your deliberations, but it accompanies
4 the Defendant throughout the trial until you reach a verdict
5 of guilt based on evidence satisfying you of that guilt beyond
6 a reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the Defendant.
9 It remains with the Defendant until it has been stripped from
10 the Defendant by evidence satisfying you of the Defendant's
11 guilt beyond a reasonable doubt. The presumption of innocence
12 is not a mere legal theory. It is not just a legal phrase.
13 It is a substantial right to which every Defendant is entitled
14 unless you, the jury, are satisfied from the evidence of the
15 Defendant's guilt beyond a reasonable doubt.

16 Now, what is a reasonable doubt in the law? A reasonable
17 doubt is the kind of doubt that would cause a reasonable
18 person to hesitate to act. Proof beyond a reasonable doubt is
19 proof that leaves you firmly convinced of the Defendant's
20 guilt. We know very few things in this world with absolute
21 certainty, and in criminal cases the law does not require
22 proof that overcomes every possible doubt. If, based on your
23 consideration of the evidence, you are firmly convinced that
24 the Defendant is guilty of the crime charged, you must find
25 the Defendant guilty. If on the other hand, you think a real

Charge

95

1 possibility exists that the Defendant is not guilty, you must
2 give the Defendant the benefit of that doubt and find her not
3 guilty.

4 I remind you that, during this trial, you and I have
5 certain duties to perform. As the Trial Judge, my
6 responsibility is to preside over the trial of this case. I
7 also have the duty to rule on the admissibility of evidence
8 offered during this trial. You are to consider only the
9 competent evidence before you. If any testimony was ordered
10 stricken from the record in this case during this trial, you
11 must disregard that testimony. You're to consider only the
12 testimony which has been presented from the witness stand, any
13 exhibits which have been made a part of the record in this
14 case and any stipulations of counsel. I have the additional
15 duty to charge you the law applicable to this case. As the
16 presiding judge, I am the sole judge of the law of this case.
17 Your duty as jurors is to accept and apply the law as I now
18 state it to you. If you have any idea as to what the law is
19 or what the law ought to be and your idea is different from
20 what I now tell you the law is, you must disregard your idea
21 of what the law is or ought to be because you are sworn to
22 accept the law and apply the law exactly as I state it to you.

23 In every case tried in this court before a jury, the jury
24 is the sole and exclusive judge of the facts in a case. A
25 trial judge cannot intimate, state, comment on or make any

1 statement to a trial jury about the facts in a case. Since
2 you, the jury, are the sole judge of the facts in this case,
3 you are not to infer from what I have said during the progress
4 of this trial in ruling upon the admissibility of evidence, or
5 otherwise, or anything that I say now during the course of
6 this instruction to you, that I have any opinion about the
7 facts in this case. The law does not allow me to have an
8 opinion about the facts of this case. This is a matter solely
9 for you, the jury, to determine. As jurors, your duty is to
10 determine the effect, value, weight and truth of the evidence
11 presented during this trial.

12 Necessarily, you must determine the credibility of
13 witnesses who have testified in this trial. Credibility
14 simply means believability. Your duty as jurors is to analyze
15 and to evaluate the evidence and determine which evidence
16 convinces you of its truth. In determining the believability
17 of witnesses who have testified in this case, you may believe
18 one witness over several witnesses or several witnesses over
19 one witness. You may believe a part of the testimony of a
20 witness and reject the remaining part of the testimony of that
21 same witness. You may believe the testimony of a witness in
22 its entirety or reject the testimony of a witness in its
23 entirety. You may consider whether any witness has exhibited
24 to you any interest, bias, prejudice or other motive in this
25 case. You may also consider the appearance and manner of the

Charge

97

1 witness while on the witness stand.

2 I instruct you and emphasize that the fact that the
3 Defendant did not testify in this case is not a factor to be
4 considered by you in any way in your deliberation and in your
5 consideration on the question of guilt or innocence of the
6 Defendant. The Defendant's failure to testify must not be
7 considered by you in any manner whatsoever. A Defendant has
8 the constitutional right to remain silent, and the assertion
9 of this right must not be considered by you in your
10 deliberations. I repeat, under your oath, you are to draw no
11 conclusion whatsoever from the fact that the Defendant in this
12 case did not testify. The fact that this Defendant did not
13 testify should not even be discussed in the jury room. The
14 burden of proof, as I have stated to you, is on the State to
15 prove the Defendant's guilt beyond a reasonable doubt. The
16 Defendant is not required to prove her innocence. The burden
17 of proof remains on the State to prove the Defendant's guilt
18 beyond a reasonable doubt.

19 Now, under the laws of this state, the Defendant may be
20 tried even if the Defendant does not attend the trial, but the
21 fact that the Defendant is not present may not be considered
22 against the Defendant in any manner whatsoever.

23 In order to establish criminal liability, criminal intent
24 is required. For example, the mental state required to be
25 proven by the State for a particular crime might be purpose,

1 intent, knowledge, recklessness or criminal negligence.
2 Criminal intent must be proven by the State beyond a
3 reasonable doubt. Criminal intent is always a matter that
4 must be determined by the jury from the circumstances
5 surrounding the situation. Now, no way exists to prove intent
6 to a mathematical certainty. Medical science cannot dissect a
7 person's brain and determine what the person had in mind, so
8 the law says that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you make a
10 determination of whether or not the element requiring intent
11 is present. Intent does not have to be established by direct
12 and positive evidence. Intent may be established by inference
13 in the same way as any other fact by taking into account and
14 consideration the acts of the parties and all the facts and
15 circumstances of the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. You must determine what the Defendant intended to
18 do based on the circumstances shown to have existed. Criminal
19 intent can arise from an action or a failure to act. It may
20 arise from negligence, recklessness or an indifference to duty
21 or to consequences that is considered by law to be the
22 equivalent of criminal intent.

23 An issue in this case is the identification of the
24 Defendant as the person who committed the crime charged. The
25 State has the burden of proving identity beyond a reasonable

Charge

99

1 doubt. You must be satisfied beyond a reasonable doubt of the
2 accuracy of the identification of the Defendant before you may
3 convict the Defendant.

4 Identification testimony is an expression of belief or
5 impression by a witness. You must determine the accuracy of
6 the identification of the Defendant. You must consider the
7 believability of each identification witness in the same way
8 as any other witness. Once again, I instruct you, the burden
9 of proof is on the State and it extends to every element of
10 the crime charged, and this specifically includes the burden
11 of proving beyond a reasonable doubt the identity of the
12 Defendant as the person who committed the crime. If, after
13 examining the testimony, you have a reasonable doubt as to the
14 accuracy of the identification, you must find the Defendant
15 not guilty.

16 The Defendant is charged with shoplifting. To convict
17 the Defendant of this crime the State must prove beyond a
18 reasonable doubt that the Defendant took possession of,
19 carried away, transferred from one person to another or from
20 one area of the store to another area, or caused to be carried
21 away or transferred merchandise with the intent to deprive the
22 merchant of the possession, use or benefit of the merchandise
23 without paying the full retail value. Full retail value means
24 the merchant's stated or advertised price for the merchandise.
25 Merchandise means any goods, chattels, foodstuffs or wares of

1 any type and description, regardless of the value.

2 Merchant means the owner or operator of the store or any
3 agent, employee, lessee, consignee, officer, director,
4 franchisee or independent contractor of the owner or operator.

5 Intent means willful; intending the result which actually
6 occurs; not accidentally or involuntary. Intent may be shown
7 by acts and conduct of the Defendant and other circumstances
8 from which you may naturally and reasonably infer intent.

9 If the Defendant willfully concealed un-purchased goods or
10 merchandise on the premises, outside the premises of the
11 store, on the Defendant's person, among the Defendant's
12 belongings, on the person of another person or among the
13 belongings of another person, you may consider this as
14 evidence that the Defendant has concealed the merchandise with
15 the intent to convert it to his own use without paying the
16 purchase price.

17 Conceal means to hide merchandise on the person or among
18 the belongings of a person so that, although there may be some
19 notice of its presence, it is not visible through ordinary
20 observation.

21 Now, there are two possible verdicts which you may find
22 in this case. No significance whatsoever should be given to
23 the order in which I state these possible verdicts to you. I
24 simply have to state one first and one second. The possible
25 verdicts in this case are either guilty or not guilty. Ladies

Charge

101

1 and gentlemen, your verdict must be a unanimous one.

2 Ms. Dunavant, when the jury agrees on a verdict you will
3 check the appropriate verdict on the verdict form, then sign
4 your name as the foreperson. At that time knock on the door,
5 advise the bailiff that the jury has reached a verdict and
6 we'll bring you back into the courtroom at that time.

7 Now, I'm going to excuse you back to the jury room at
8 this time, but please do not begin your deliberations. I have
9 to check with the attorneys to see if they have any challenges
10 or additional charges that I need to give to you. If they do
11 and I deem them appropriate, I'll bring you back into the
12 courtroom and give you those additional charges or those
13 corrective instructions. On the other hand, if there are none
14 or I deem that there are none, we'll send the verdict form and
15 the exhibits back to the jury room for you to review and the
16 bailiff will instruct you that you can begin your
17 deliberations at that time. So I'm going to excuse you back
18 to the jury room, but please do not begin your deliberations
19 until the bailiff has instructed you to do so. All right.
20 Thank you very much.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. Any exceptions or additional
24 charges from the State?

25 MS. RICHARDSON: No, sir, Your Honor.

Charge

102

1 THE COURT: Any from the Defense?

2 MR. GALMORE: No, sir.

3 THE COURT: All right. Here's the verdict form. Take it
4 in there, just got that. Let's take that and the verdict
5 form. In fact, let them take a look at the verdict or I gave
6 you a copy of the verdict form.

7 MR. GALMORE: Yes, sir.

8 MS. RICHARDSON: Yes, sir.

9 THE COURT: All right. Go ahead and take it back and you
10 can tell them they can begin their deliberations. Also --

11 MS. RICHARDSON: Your Honor, sorry. Go ahead. I think
12 that's what you're about to do, sorry.

13 THE COURT: Okay. Bring Mr. Beaudoin -- how do you
14 pronounce it -- Beaudoin, Beaudoin, okay. Bring him out,
15 please, as the alternate.

16 MS. RICHARDSON: Thank you. Sorry to interrupt you, Your
17 Honor.

18 THE COURT: Oh, that's no problem.

19 (Alternate discharged by Court.)

20 THE COURT: All right. We'll stand in recess until we
21 hear something.

22 (Deliberations begin at 2:22 p.m.)

23 OFF THE RECORD

24 (On the record. Verdict reached at 2:46 p.m. The following
25 takes place outside the presence of the jury.)

Verdict

103

1 THE COURT: All right. I understand the jury has reached
2 a verdict. Anything from the State before we bring the jury
3 in?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: Oh, we got to wait for Tammy. Where is she?
6 Let's wait till she gets here. All right. Anything from the
7 State before we bring the jury in?

8 MS. RICHARDSON: No, sir, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. GALMORE: No, sir.

11 THE COURT: All right. Let's bring the jury in.

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: Ladies and gentlemen, welcome back. Ms.
15 Dunavant, I understand the jury has reached a verdict; is that
16 correct?

17 MS. DUNAVANT: Yes, sir.

18 THE COURT: Have you completed the verdict form?

19 MS. DUNAVANT: Yes.

20 THE COURT: All right. If you'd please hand it to the
21 bailiff.

22 (Complies with request and Court reviews.)

23 THE COURT: Thank you. All right. I'll ask the Clerk if
24 she'd please publish the verdict.

25 THE CLERK: General Sessions Court, Fifteenth Judicial

1 Circuit, case number 2014-GS-26-1346, the State of South
2 Carolina, County of Horry, State of South Carolina versus
3 Tracy Marshela Alston, shoplifting, we, the jury, find the
4 Defendant, Tracy Marshela Alston, guilty, signed by
5 foreperson, Eileen T. Dunavant, September the 18th, 2014.

6 Ladies and gentlemen of the jury, if this is your
7 verdict, please signify by raising your right hand.

8 (All jurors raise right hand.)

9 THE COURT: All right. Let the record reflect that all
10 jurors raised their right hand. Any polling of the jury by
11 the Defense?

12 MR. GALMORE: No, sir.

13 THE COURT: All right.

14 (Jury discharged by Court.)

15 THE COURT: All right. Any post-trial motions?

16 MR. GALMORE: Your Honor, I would make a motion for a new
17 trial. I would also make a motion for an order in arrest of
18 judgment. These motions are just based on the insufficiency
19 of the evidence presented. These motions are based on the
20 insufficiency of the indictment. Your Honor, we'd ask you to
21 consider these motions and enter a judgment of not guilty for
22 Ms. Alston.

23 THE COURT: All right. Your motions are noted. I'm
24 going to deny them. Anything further?

25 MR. GALMORE: Just in sentencing, Your Honor, I would

Sentencing

105

1 just take a moment to give the Court some information, some
2 background about Ms. Alston if you want to hear that now.

3 THE COURT: Okay. I will. Any reason why we can't go
4 ahead and impose sentence at this time?

5 MR. GALMORE: No.

6 THE COURT: With her not being here it will be under
7 seal, but I'll go ahead and hear any mitigating factors you
8 want to present at this time.

9 MR. GALMORE: Yes, sir. I just want the Court to
10 consider that Ms. Alston is a mother. Ms. Alston is a
11 grandmother. I have represented her many times since I've
12 been at the Public Defender's office, and unfortunately it's
13 always been for similar type conduct, shoplifting cases, and
14 it's, it's -- really just defies explanation why she would
15 engage in this kind of behavior. I don't know if it's just
16 for the attention. I don't know if it's the recognition that
17 people, you know, give her if she, if she gets a hold of
18 something and sells it and they pay her for it, and, and, you
19 know, there might be a financial incentive here, but I think
20 more than that I think it's just the, the appreciation that
21 people show her when, when, when she does this type of thing.
22 It's for the attention. Your Honor, Ms. Alston has done this
23 a few times in the past. I would just ask the Court to
24 consider that the bottom line is that we're, we're talking
25 about \$12 worth of items, and I know that, you know, the court

1 system looks at it and doesn't really look at the price of the
2 items and look at the behavior and trying to change and
3 improve upon her behavior, but I would just ask the Court how
4 much time does she need to do in jail just given that there's
5 a small amount of stuff that was taken. We would ask the
6 Court to perhaps consider something in the one year, 18 month
7 range.. There was a plea offer for five years that was issued,
8 that was given by the Solicitor's Office at one point, but
9 we'd just ask you to have what mercy you could on Ms. Alston.
10 The reason why she's not here today is fear. It's not, you
11 know, disrespect for the Court or for the court system. She
12 was aware that she had to be in court. She's called, called
13 me pretty much every day just checking on the case and
14 checking on the status of it, and I, I, I think the problem is
15 she's just scared. She knows that she doesn't have a defense.
16 She doesn't have an explanation for why she does these things,
17 and she knows she's facing time. So she's just scared to come
18 up here today. We'd ask the Court to just not hold that
19 against her.

20 THE COURT: All right. Thank you. Is the victim present
21 or wish to say anything?

22 MS. RICHARDSON: No, sir, Your Honor. I would like to go
23 over her past record if I possibly could.

24 THE COURT: Okay. Yeah. Prior record?

25 MS. RICHARDSON: Your Honor, it started back in '87 with

Sentencing

107

1 an assault and battery, an '88 larceny, '89 grand larceny,
2 shoplifting, resisting, assault and battery, disorderly, '90
3 shoplifting, '91 shoplifting two counts, '93 shoplifting, '97
4 shoplifting, 2003 shoplifting, disorderly conduct, 2004 four
5 counts of shoplifting, 2005 a property third, 2010 another
6 property third. Your Honor, the 2005 she received five years.
7 She came out in 2010, received yet another property third for
8 which she got six years. The State, to induce her to plead,
9 did offer her five years, Your Honor. We would ask for
10 something -- she was arraigned on that, told it would not get
11 any better than that -- we would ask for something definitely
12 in excess of the five years.

13 THE COURT: All right.

14 MS. RICHARDSON: I'm going to also hand up Your Honor the
15 two prior certified copies just for your record.

16 THE COURT: Now, what are these?

17 MS. RICHARDSON: Those are certified convictions of
18 priors, Your Honor --

19 THE COURT: Oh.

20 MS. RICHARDSON: -- that we just obtained just to
21 establish the jurisdiction.

22 THE COURT: All right. All right. We'll place the
23 sentence under seal. There you go. Here's the indictment and
24 then the sentence. Just put the sentence sheet, put it under
25 seal. Do we issue a bench warrant?

Sentencing

108

1 MS. RICHARDSON: Yes, sir, Your Honor.

2 THE COURT: Any reason why we shouldn't issue a bench
3 warrant?

4 MR. GALMORE: No, sir.

5 THE COURT: Okay. All right. I'll authorize the
6 issuance of a bench warrant. When she's picked up she'll be
7 brought back before the Court. The sentence will be unsealed
8 and imposed at that time.

9 MS. RICHARDSON: Thank you, Your Honor.

10 MR. GALMORE: Yes, sir.

11 THE COURT: Anything further from the State?

12 MS. RICHARDSON: No, sir, Your Honor.

13 THE COURT: Anything further from the Defense?

14 MR. GALMORE: No, sir.

15 THE COURT: All right.

16 (Trial Adjourned.)

17 OFF THE RECORD

18 (On the record, November 12, 2015, sentencing, before
19 Honorable Roger E. Henderson.)

20 MS. RICHARDSON: Your Honor, this is the State of South
21 Carolina versus Tracy Alston. She was tried in her absence,
22 Your Honor, back on September 18th, 2014, in front of the
23 Honorable Culbertson. She was found guilty. A jury of her
24 peers did find her guilty on true-billed indictment 2014-GS-
25 26-1346 charging her with shoplifting under the enhancement

Sentencing

109

1 statute. Your Honor, again, she was tried in her absence.
2 Judge Culbertson did seal her sentence, and we are here for
3 the revealing of that sentence.

4 THE COURT: Okay. Thank you, ma'am.

5 Anything from you, Mr. Galtmore, before I read the
6 sentence?

7 MR. GALTMORE: No, sir, Your Honor.

8 THE COURT: All right. You are Tracy Marshela Alston?

9 MS. ALSTON: Marshela, yes, sir.

10 THE COURT: Marshela Alston?

11 MS. ALSTON: Yes, sir.

12 THE COURT: Okay. Ms. Alston.

13 MS. ALSTON: I never have a sentence like this.

14 THE COURT: All right. Ms. Alston, the sentence of the
15 Court by Judge Culbertson is that you be committed to the
16 State Department of Corrections for a term of seven years.

17 MS. ALSTON: Seven years?

18 MS. RICHARDSON: Thank you, Your Honor.

19 THE COURT: Yes, ma'am.

20 MS. ALSTON: Okay.

21 MR. GALTMORE: Your Honor, we would move to ask the Court
22 to reduce the sentence at this time. I understand that you
23 weren't the trial judge, but we would just ask the Court to
24 take into consideration that Ms. Alston has never been in a
25 trial in absentia before and doesn't really know the

1 procedures of what's going on. We just ask for any leniency
2 you could allow.

3 MS. ALSTON: Please, Your Honor? I've never been this --
4 I've never skipped court before or anything, Your Honor. I
5 just didn't get my paperwork. I never, Judge.

6 MS. RICHARDSON: Your Honor, if I may, just for the
7 record, obviously the trial record is -- will be there for any
8 sort of appeals or anything as well, I personally told Ms.
9 Alston to be here at roll call that Friday, that her trial was
10 going to start on that Monday, not only did Judge Culbertson
11 find that she was also properly notified. As far as her never
12 been in this kind of situation before, Your Honor, just for
13 the record, I'm sure this was the basis of Judge Culbertson's
14 decision, she has an '87 assault and battery, '88 larceny,
15 '89 grand larceny, shoplifting, resisting, assault and
16 battery, disorderly, a '90 shoplifting, '91 two counts of
17 shoplifting, '93 shoplifting, '97 shoplifting, 2003
18 shoplifting, public disorderly, 2004 four counts of
19 shoplifting, 2005 a property third enhancement for which she
20 received five years, a 2010 shoplifting third for which she
21 received six years.

22 THE COURT: Okay.

23 MS. RICHARDSON: Thank you, Your Honor.

24 MS. ALSTON: Your Honor, I -- can I say?

25 THE COURT: You can say something.

Sentencing

111

1 MS. ALSTON: Sir?

2 THE COURT: What do you want to say?

3 MS. ALSTON: Your Honor, I never been in any -- I've
4 always been in trouble for shoplifting. I had a -- I have a
5 drug addiction and nobody sees to -- I ask for help but I
6 never got any help for it. I can't afford to go in a rehab on
7 my own because I don't have the money, and Judge, I've never,
8 I've never skipped bond. I have never -- I took -- whenever I
9 got this charge I turnt myself in. I've never ran from the
10 Court, Your Honor, never, never ran from the courts.

11 THE COURT: Okay.

12 MS. ALSTON: I was working and everything, sir. At the
13 time of my arrest I was working.

14 THE COURT: All right. I am certainly not going to
15 reduce Judge Culbertson's sentence. He's much more familiar
16 with these circumstances and he heard the case tried. So I'm,
17 I'm not going to do anything. The sentence stands as issued
18 by Judge Culbertson.

19 MS. RICHARDSON: Thank you, Your Honor.

20 (Adjourned.)

21

22

23

24

1 C E R T I F I C A T E

2

3

4 I, the undersigned, Grace L. Hurley, Official Court
5 Reporter for the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate and complete Transcript
7 of Record of the Trial held in the case of State of South
8 Carolina versus Tracy Marshela Alston, held in the Court of
9 General Sessions for Horry County, Horry County Courthouse,
10 Conway, South Carolina, on September 18, 2014, and sentencing
11 held on November 12, 2015.

12 I do hereby certify that I am neither of kin, counsel,
13 nor interest to any party hereto.

14

15

16

17

18

Grace L. Hurley, CVR-CM-M

19

Official Reporter

20

21

22

23

24

25 February 19, 2016.

13

WITNESSES

Jason Eden Conway Police Department

DOCKET NO. 2014-GS-26-0346

The State of South Carolina

County of Horry

Lauree Richardson

13H05979

COURT OF GENERAL SESSIONS

MARCH, 2014 TERM

ARREST WARRANT NUMBER

2013A2620400753

CDR: 2877 16-13-0110(A)

DOA: 11/22/2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 20 2014

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

Tracy Marshela Alston
B/ F

DOB:
SSN:

ATTORNEY: Galtmore, James Cullen

Indictment for

SHOPLIFTING 3RD OR SUBSEQUENT

Jimmy A. Richardson, II, Solicitor

ORIGINAL

2014 SEP 18 AM 9:17
CLERK OF COURT
DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on MARCH 20, 2014, the Grand Jurors of Horry County present upon their oath:

SHOPLIFTING
THIRD OR SUBSEQUENT OFFENSE
VALUE \$2000 OR LESS

CDR: 2877 16-13-0110(B)(1)

That Tracy Marshela Alston did in Horry County on or about November 18, 2013, take possession of, carry away, transfer to another area of the store, or cause to be carried away or transferred, alter, transfer, or remove the price label or tag on, and/or did transfer from its container to another container, merchandise displayed, held, stored or offered for sale by Dollar General, to wit: children's undergarments and female undergarments, having a value of two thousand (\$2000) dollars or less, in violation of Section 16-13-110(B)(1), S.C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense, in violation of Section 16-01-0057, S.C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.
Tracy Marshela Alston
AKA:
Race: BLACK Sex: F Age: 45
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45
w/minor 1st or Lewd Act)

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

Richardson, Lauree SCB76142 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing: ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS 115

INDICTMENT/CASE#: 2014GS2601346
A/W#: 2013A2620400753
Date of Offense: 11/18/2013
S.C. Code: § 16-13-0110(A)
CDR Code #: 2877

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

PTUP _____ days/hours Public Service/Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning ☐
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 12/12/2022
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: Melanie Huggins-Ward
Court Reporter: Shirley Hurley
SCCA/217(03/2011)

Presiding Judge: Margaret C. B. Smith
Judge Code: 2148
Sentence Date: Sept. 18, 2014

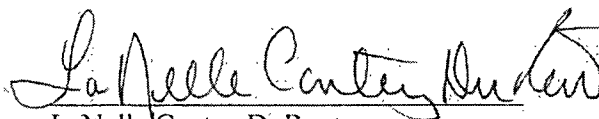
more - item - up - exposed by defendant.

2014 SEP 18 AM 9:33
Horry County
CLERK OF COURT
Horry County
CERTIFIED COPY
2015 NOV 16 AM 9:46

CERTIFICATE OF COUNSEL FOR APPELLANT

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

May 19, 2016



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

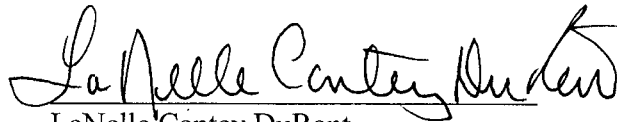
MAY 19 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

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

May 19, 2016



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

MAY 19 2016

SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

MAY 19 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

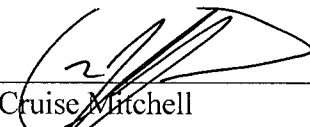
TRACY ALSTON,

APPELLANT

APPELLATE CASE NO. 2015-002430

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Ms. Tracy Alston, #254384, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 19th day of May, 2016.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
This 19th day of May, 2016.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.