

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

R. Knox McMahon, Circuit Court Judge

RECEIVED

MAY 16 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARVIN BROCK JOHNSON,

APPELLANT

APPELLATE CASE NO. 2014-002435

RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802-3368
(803) 642-1557

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (November 4, 2014).....	1
DISCUSSION OF PLEA OFFER.....	4
OPENING REMARKS BY COURT	8
OPENING STATEMENT BY MR. SLOCUM	15
OPENING STATEMENT BY MR GIBBONS.....	18
PRE-TRIAL <u>LYLE</u> HEARING	23
TESTIMONY	
PATSY SINGLETARY (IN-CAMERA)	
Direct Examination by Mr. Slocum.....	25
Cross Examination by Mr. Gibbons	36
Redirect Examination by Mr. Slocum	48
REBECCA POWELL (IN-CAMERA)	
Direct Examination by Mr. Slocum.....	50
ARGUMENT BY MR. GIBBONS	53
ARGUMENT BY MR. SLOCUM	53
RULING BY THE COURT.....	54
PARTIAL GUILTY PLEA	56
TESTIMONY	
PATSY SINGLETARY	
Direct Examination by Ms. Hall.....	62
Cross Examination by Mr. Gibbons	81
Redirect Examination by Ms. Hall	100
Recross Examination by Mr. Gibbons.....	102

REBECCA POWELL	
Direct Examination by Mr. Slocum.....	104
MAURA CARSTENS	
Direct Examination by Mr. Slocum.....	108
Cross Examination by Mr. Gibbons	112
LANDON TERRY	
Direct Examination by Mr. Slocum.....	115
Cross Examination by Mr. Gibbons.....	120
STATE RESTS	127
MARVIN BROCK JOHNSON	
Direct Examination by Mr. Gibbons	128
Cross Examination by Mr. Slocum.....	135
CLOSING ARGUMENT BY MR. GIBBONS.....	141
CLOSING ARGUMENT BY MR. SLOCUM.....	147
JURY CHARGE.....	150
VERDICT	162
SENTENCING	164
INDICTMENT	171
CERTIFICATE OF COUNSEL.....	173

1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3 Indictment No.: 2014-GS-02-01355
4

5
6 State of South Carolina,)
Plaintiff.)

7)
8 vs.)

Transcript of Record

9)
10 Marvin Brock Johnson,)
Defendant.)

11
12
13 November 4, 2014
Aiken, South Carolina
14

15
16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge and a jury.
18

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

20 Kevin Molony, Assistant Solicitor
Attorneys for the State

21 D. Grant Gibbons, Esquire
22 Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
To the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

	<u>I N D E X</u>	<u>Page</u>
3	Jury Voir Dire.....	4
4	Jury Selection.....	33
5	Opening Remarks by the Court.....	48
6	Opening Statements	
7	By Mr. Slocum.....	55
8	By Mr. Gibbons.....	58
9	Pretrial Motions.....	63
10	Patsy Singletary Siso	
11	Direct Examination In Camera by Mr. Slocum..	65
12	Cross-Examination In Camera by Mr. Gibbons..	76
13	Redirect Examination In Camera by Mr. Slocum	88
14	Rebecca Powell	
15	Direct Examination In Camera by Mr. Slocum..	90
16	Partial Guilty Plea.....	96
17	Patsy Singletary Siso	
18	Direct Examination by Ms. Hall.....	103
19	Cross-Examination by Mr. Gibbons.....	122
20	Redirect Examination by Ms. Hall.....	141
21	Recross-Examination by Mr. Gibbons.....	143
22	Rebecca Powell	
23	Direct Examination by Mr. Slocum.....	145
24	Maura Carstens	
25	Direct Examination by Mr. Slocum.....	149

1	Cross-Examination by Mr. Gibbons.....	152
2	Landon Terry	
3	Direct Examination by Mr. Slocum.....	155
4	Cross-Examination by Mr. Gibbons.....	161
5	Mid-Trial Motions.....	168
6	Marvin Brock Johnson	
7	Direct Examination by Mr. Gibbons.....	176
8	Cross-Examination by Mr. Slocum.....	183
9	Closing Arguments	
10	By Mr. Gibbons.....	191
11	By Mr. Slocum.....	197
12	Jury Charge.....	200
13	Verdict.....	212
14	Post-Trial Motions.....	214
15	Sentence.....	215
16	Certificate of Reporter.....	221
17	Keyword Index.....	222

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>PAGE</u>
21	S-1	Floor Plan of Belk Department Store....	71 107
22	S-2	Duffel Bag.....	71 116
23	S-3	Receipt for Merchandise.....	71 119
24	S-4	Photograph.....	71 115

1 MR. SLOCUM: Yes, sir, 0 to 10.

2 THE COURT: Thank you and thank you very much,
3 Solicitor.

4 Did I understand, earlier that Mr. Johnson engaged
5 in plea negotiations?

6 MR. GIBBONS: Your Honor, I was given several
7 pleas, plea offers and I did convey them to my client.

8 THE COURT: What was the most recent one, Mr.
9 Gibbons?

10 MR. GIBBONS: I believe the most recent one was
11 five years suspended to one year and probation and credit
12 for time served.

13 THE DEFENDANT: Four years, suspended to one.

14 MR. GIBBONS: Four years, suspended to one year,
15 credit for time served and drug treatment during probation.

16 THE COURT: So the most recent offer --

17 MR. GIBBONS: Yes, sir.

18 THE COURT: -- was five years?

19 MR. GIBBONS: My client says four. Four years --

20 THE COURT: Four years. Four years that would be
21 suspended to one year.

22 MR. GIBBONS: Correct.

23 THE COURT: And he would get credit for time
24 served?

25 MR. GIBBONS: Correct.

1 THE COURT: And drug treatment during probation?

2 MR. GIBBONS: Correct.

3 THE COURT: And how much time has Mr. Johnson
4 served?

5 MR. GIBBONS: My record shows 165 days, Your Honor.

6 THE COURT: Are you capable of telling me about how
7 much more he would have to serve?

8 MR. GIBBONS: Well, I haven't run it since last
9 month, but I ran it under the department of corrections
10 formula.

11 THE COURT: Yes, sir.

12 MR. GIBBONS: I believe December 14th is what it
13 said.

14 THE COURT: And what's the date today?

15 MR. GIBBONS: November the 3rd -- 4th.

16 THE COURT: November 4th.

17 MR. GIBBONS: Yes, sir.

18 THE COURT: And December 14th would be about a
19 month and ten days?

20 MR. GIBBONS: Correct.

21 THE COURT: And Mr. Johnson doesn't want to do
22 that?

23 MR. GIBBONS: That's what he tells me, Your Honor.

24 THE COURT: And he's facing up to 10 years?

25 MR. GIBBONS: He says he'd like to speak, Your

1 Honor.

2 THE COURT: He'd like what?

3 MR. GIBBONS: He'd like to speak with the Court.

4 THE COURT: All right. I'll be glad to hear from
5 you, Mr. Johnson.

6 THE DEFENDANT: Good morning.

7 THE COURT: Good morning, Mr. Johnson. How are
8 you?

9 THE DEFENDANT: I'm doing fine. Your Honor, I'm
10 not guilty of this case, okay. And I don't -- I'm hoping
11 that the jury would not find me guilty because I am not
12 guilty. Now, when I were guilty in those cases that I've
13 had, I had no problem taking a plea. I have no problem
14 admitting that I'm wrong when I'm wrong, but when I'm right
15 and when I know there is a possibility I get sentenced or
16 found -- due to my past, but I'm not here for my past
17 today, I'm here for what's going to happen today in court
18 and that's what I'm here for.

19 THE COURT: Well you need to -- you certainly are
20 entitled to a jury trial.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If that's what you want.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That's what you'll get.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. There's a lot at stake
2 between the jury trial and potentially getting out December
3 14th. You'll be out and back home before I'll be back
4 home.

5 THE DEFENDANT: Yes, sir, I understand.

6 THE COURT: All right. Thank you and thank you
7 very much.

8 How long are these motions going to take? We've
9 got a Lyle Motion and let's see -- there's no need for
10 Jackson v. Deno hearing.

11 MR. SLOCUM: That's correct, Your Honor. It's just
12 down to the Lyle issue.

13 MR. GIBBONS: You're right. Your Honor, there was
14 no law enforcement questioning that my client was party to
15 that I'm aware of. There was a statement made to a store
16 employee, but I don't believe that falls under Jackson v.
17 Deno.

18 THE COURT: All right. Well let's do the openings
19 and then I will release the jury for lunch and then we'll
20 hear our motions.

21 (WHEREUPON the jury entered the courtroom at 11:22
22 a.m.)

23 THE COURT: All right. Madame Clerk, of you would
24 swear our jury.

25 (WHEREUPON the jury was sworn at 11:23 a.m.)

1 THE CLERK: Thank you, you may sit down.

2 THE COURT: Is there any member of the jury panel
3 unable to take the oath; if so, please stand. Thank you.
4 Thank you very much.

5 **OPENING REMARKS BY THE COURT**

6 Ladies and gentlemen of the jury, the case we're
7 about to try is the case of The State versus Marvin Brock
8 Johnson seated to my front right, who has previously been
9 introduced to you. What I will say is intended to serve as
10 an introduction to the trial of this case. These remarks
11 are not an instruction on the law that applies in this
12 case. I will instruct you on the law that applies to the
13 case at the end of the trial before you retire to consider
14 your verdict. This is merely an explanation of the
15 procedures that we will follow in the trial of the case so
16 that you may better understand what may be happening during
17 the trial.

18 The Defendant is charged as I have previously told
19 you by an indictment filed in this Court with the crime of
20 shoplifting. The elements of which will be explained to
21 you later. The indictment, again, ladies and gentlemen, is
22 simply the charge by which the case is brought before the
23 Court and it is not in any sense evidence of any of the
24 allegations it contains. The defendant has pled not guilty
25 to the indictment, so the State, the party to my front

1 left, therefore, has the burden to prove each of the
2 elements of the indictment beyond a reasonable doubt and it
3 will be your duty, ladies and gentlemen, to decide whether
4 or not the State has met that burden.

5 Your purpose as jurors is to find and determine the
6 facts. You are the sole judge of the facts. If at any
7 time I make any comment regarding the facts of the case,
8 you must disregard them. You are to determine the facts
9 from the testimony you hear and other evidence, any other
10 evidence that may be introduced in the courtroom. It is up
11 to you to determine the inferences which you feel may
12 properly be drawn from the evidence.

13 It is especially important that you perform your
14 duty of determining the facts diligently and
15 conscientiously because ordinarily there is no way to
16 correct an erroneous determination of the facts by a juror.
17 On the other hand and with equal emphasis, the same law
18 that makes you the judges of the facts, make me the judge
19 of the law. The law that's given by the Court is the only
20 law you may consider and you must accept it and follow it
21 even though you may disagree with it. I cannot tell you
22 what the facts are and you cannot disagree with me about
23 what the law is or what the law should be. Your job is to
24 take the law as I give it to you and apply with the facts
25 as you find them to be from the testimony of the sworn

1 witnesses and any other evidence that is introduced. After
2 doing that you will render a verdict, a true and just
3 verdict under the solemn oath that you just took as jurors.

4 Until I advise you to begin your deliberations, you
5 must not discuss this case with anyone. That includes your
6 fellow jurors, family, friends or anyone else. After this
7 case is submitted to you, you may then discuss it only in
8 the jury room with your fellow jurors.

9 During the trial, do not read, listen to, or watch
10 any news reports about the case, should there be any, or
11 any past news reports about the case, should there have
12 been any. This includes anything that may be in the
13 newspaper or on the internet, radio, or television. You
14 must not consider anything you may have read or heard about
15 the case outside of the courtroom whether before or during
16 the trial.

17 It is important that you keep an open mind and not
18 decide any issue in the case until you've heard all the
19 evidence that is going to be presented, the parties have
20 made their closing arguments to you, and I have instructed
21 you on the law in the case.

22 It is your solemn responsibility to determine the
23 guilt or the innocence of the defendant. And your verdict
24 must be based solely on the evidence as it is presented to
25 you in this trial and on the law as I instruct you during

1 and at the close of the trial.

2 Now in just a moment, the solicitor will make
3 what's called an opening statement in which the solicitor
4 will explain to you the issues in this case or at least
5 what the solicitor thinks the issues are in the case. Mr.
6 Gibbons, the attorney for Mr. Johnson, may also make an
7 opening statement, although he is not required to do so. A
8 criminal defendant in South Carolina, regardless of the
9 seriousness of the charge, is always presumed to be
10 innocent and has no burden to prove himself or herself
11 innocent. The burden is in our state and always remains on
12 the State of South Carolina to prove its case beyond a
13 reasonable doubt.

14 What the attorneys tell you during their opening
15 statements is not evidence in the case, nor is their
16 closing arguments evidence. The questioning by the
17 attorneys is not evidence. It's the method we use to
18 extract the testimony from the witnesses that have been
19 sworn before you to tell what they saw, what they heard.
20 There -- that's the testimony, that's the evidence, not the
21 questioning, not the openings, not the closings. They're
22 very important, but is only their contention as to what the
23 issues are and what the evidence is.

24 From time to time during the trial, you may hear
25 one of the lawyers say something like, Your Honor, I

1 believe we have a question of law or matter of law to
2 discuss with you. Or they may say, Your Honor, may we
3 approach the bench. Sometime I might -- I myself might
4 find it necessary to excuse you from the courtroom for a
5 short while so the attorneys and I can discuss a matter of
6 law. The reason for this is because you are the judges of
7 the facts in this case and sometimes when I'm discussing
8 matters of law with the attorneys, it may be necessary for
9 me to make some comment as to the facts in connection with
10 ruling whether or not the particular law applies. I am not
11 and I will not tell you what I think the facts are. I have
12 no opinion about the facts in this case. So I will excuse
13 you from the courtroom while these discussions take place
14 so that in no way will you be influenced by anything that I
15 might say or do in connection with the facts.

16 In determining what the true facts are in this
17 case, you must decide whether or not the testimony of a
18 witness or the witnesses is believable. It will be my
19 responsibility to rule as a matter of law as to whether
20 certain testimony is admissible at all or not, but once
21 it's admitted, whether or not you believe it is solely up
22 to you the jury to determine. In deciding whether to
23 believe a witness, you have a right to consider the
24 interest of any witness, the bias of any witness, the
25 prejudice of any witness, the opportunity for the witness

1 to have seen the matters and things about which the witness
2 may testify and the manner, the demeanor, the way the
3 witness acts while on the witness stand. You have the
4 right to consider anything that is in the record that will
5 help you value what the testimony of the witnesses. That
6 means it will be your duty to pay close attention to these
7 witnesses, to observe them, to listen to the witnesses, pay
8 close attention to the attorneys and to the Court. Don't
9 let your thoughts wonder. Pay strict attention to the
10 testimony in this case so that at the end of all the
11 testimony, after the closing arguments by the attorneys and
12 instruction on the law by the Court, you will then be in a
13 position to determine what the true facts are and apply the
14 law to those facts and thus render a true and just verdict.

15 It will be your added responsibility, Mr. Foreman,
16 to preside in the jury room and be the jury spokesperson
17 here in Court. It will also be your duty to write the
18 verdict, but I will give you further instructions about
19 that at the conclusion of the testimony.

20 Just administrative issues, ladies and gentlemen,
21 during the trial of the case, I don't know what may or may
22 not be presented, if there are documents, photographs,
23 diagrams or the like, but sometimes those type of items may
24 be introduced into evidence and will be handed to the
25 foreperson while you're out here in the courtroom and

1 passed among the members of the jury while you're in the
2 jury box. If I allow a physical item into evidence, you
3 will also have that with you in your jury room at the time
4 of your deliberations. I tell you that with the
5 understanding that you look at it all you wish to look at
6 it in your jury box, but if it's in evidence, you'll have
7 it in your jury room with you. So out here in the
8 courtroom will not be the only option you get to see that
9 item.

10 Also from time to time, you may see me on my
11 computer or my law clerk also. I don't tweet, I don't
12 repeat, I don't e-mail, I stay focused on the trial. These
13 are very good trial attorneys and if I think I see a legal
14 issue perhaps lurking around the curve or something like
15 that, I will do some very general research in that regard.

16 If you cannot hear a witness, please let me know.
17 There is a sound system in the courtroom. If you can't
18 hear them, you won't be able to determine what happened.

19 Finally, what I am really in charge of, I'm in
20 charge of taking breaks. And the way I decide how to take
21 a break, if I want to take a break; we all take a break.
22 When you sit out here too long -- this is not some type of
23 judicial marathon. When you sit out here too long and you
24 need a break, odds are somebody else does too. Please
25 raise your hand. When y'all take y'all's break, we will

1 take ours. Please do that.

2 This may not be a lengthy trial, but the length of
3 the trial does not determine the importance of the trial.
4 It's a very important trial. It's an important trial to
5 Mr. Johnson and it's important trial to the State of South
6 Carolina and it's an important trial to our system of
7 criminal justice in South Carolina. So Court TV is not
8 here; not going to be here. That does not lessen
9 responsibility of the jury to reach a fair and impartial
10 jury in a search for the truth and render and true and just
11 verdict.

12 So please, please keep that in mind. Thank you so
13 much for being with us and for fulfilling your civic
14 service as a juror. What greater day to do that than on
15 Election Day.

16 With that being said, any objection to anything
17 I've told the jurors from the State?

18 MR. SLOCUM: None from the State.

19 THE COURT: Defense?

20 MR. GIBBONS: No, sir.

21 THE COURT: Solicitor, you may address the jury
22 panel.

23 **OPENING STATEMENTS**

24 MR. SLOCUM: Thank you, Judge, and may it please
25 the Court, Mr. Gibbons. Ladies and gentlemen of the jury,

1 thank y'all for being with us this morning. As I said
2 earlier, my name is Jay Slocum and with the help of
3 Solicitor, Ms. Cassie Hall, here, y'all are going to hear
4 the story today of what happened on May 24th of this year,
5 2014, up at Belks in North Augusta on Knox Avenue. You're
6 going to hear the story of shoplifting allegations against
7 Mr. Johnson here. And the Judge hit the nail on the head,
8 this is important, an important case for all of us, Mr.
9 Johnson and the State from whether the charge is murder or
10 shoplifting; we get twelve jurors. And that's the beauty
11 of this, that y'all can determine the facts here in this
12 case. It's not something that's CSI worthy or not any
13 blood or forensics or all that stuff you see on TV. This
14 is a good old-fashioned shoplifting.

15 And the Judge at the end of the case is going to
16 tell you what the law is on shoplifting. If anything I say
17 that may differ from what he tells you, please go with what
18 he tells you, but we all know what shoplifting is. We
19 learned as kids whether it was school or church or your
20 grandparents; it's stealing; it's taking from somebody;
21 something that's not yours that you take. I literally was
22 caught with my hand in the cookie jar at my grandma's house
23 and I learned very quickly, you can't take from other
24 people; it's not yours.

25 I'll try to be brief this morning. It's going to

1 be pretty quick and go in the afternoon, but I want you to
2 pay attention to what you hear from the witness stand, what
3 they tell you, the details they give you about what
4 happened on May 24th up in Belks in North Augusta.

5 You're gonna hear what we call in the legal field,
6 direct evidence and circumstantial evidence. Direct is
7 what you perceive from a person, what you hear, what you
8 see, what you can taste, what you can feel, stuff we can
9 all kind of relate to.

10 Circumstantial evidence is stuff that we may or may
11 not experience first-hand, but putting stuff -- putting
12 pieces together can lead us to a certain point. You look
13 in here and there are no windows whatsoever in this
14 building. But if you were to see somebody walk through
15 that door, the first two people come in holding a umbrella,
16 the third person comes in soaking wet with no umbrella, you
17 can deduce that it's possibly raining outside based on the
18 first two people with umbrellas and that third person being
19 wet. That's what I mean by circumstantial evidence, stuff
20 that's logically reached to lead you to a conclusion.

21 Lastly, we -- those questions we just all went
22 through together, going back to the importance of this
23 thing where, you know, to make sure that we had twelve fair
24 and impartial jurors that were able to put aside anything
25 that, that they may or may not have a bias for come in here

1 and make an informed decision unbiased towards one person
2 or the other.

3 But the one thing we didn't ask you to set aside
4 when you accomplish this, what makes sense. And I feel
5 like once you hear all the testimony today that that common
6 sense that you use every day, whether it's dealing with
7 somebody at the bank, or I mean, your office or your kids
8 or your grand kids. When you grand kids come to you with
9 or kids comes to you with chocolate on their face and you
10 ask them did they eat chocolate, if they tell you no,
11 that's one -- two things there. You can judge them right
12 at that moment their credibility, using your common sense
13 and also circumstantially you can see that chocolate around
14 their face, chances are they just ate the chocolate.

15 That's what I mean by all this. It's not rocket
16 science. It's not something that's going to -- you're
17 going to see on CSI. I'm just asking you, I thank you all
18 for being here. And I'll turn it over to Mr. Gibbons.

19 THE COURT: Thank you, Solicitor.

20 Mr. Gibbons.

21 MR. GIBBONS: Please the Court?

22 THE COURT: Yes, sir.

23 MR. GIBBONS: Mr. Slocum. Freedom is at stake
24 today for that. We've heard that for weeks now with the
25 elections coming up. And it's kind of appropriate that

1 we're here today on Election Day because today Mr.
2 Johnson's freedom is at stake. We all have a chance today
3 to brush shoulders with the Constitution, to do our duty,
4 to do what we felt was right and as a juror, you have a
5 duty as well. Your duty is to listen to the evidence as it
6 comes from that stand, put everything else out of your
7 mind. And after you've heard that evidence, you apply it
8 to the law the Judge is going to give you at the end of the
9 day.

10 You're not here as a champion either side. You're
11 not responsible for covering up bumps and -- and gaps for
12 either side. Your job is to listen to that evidence and
13 see if it establishes someone's guilt beyond a reasonable
14 doubt without you having to twist it, turn it, look at it
15 from a certain angle and jump over hoops to make it fit.
16 That's what you're here about today.

17 Now, the Judge is going to give you the law at the
18 end of this case and as the solicitor said, everybody knows
19 what shoplifting is, but if you listen to the indictment
20 being read, it's a lot of things. It talks about carrying
21 stuff away, hiding stuff, and concealing something, moving
22 something, taking packages of something; it's all of these
23 things. And who hasn't picked up something at the store,
24 got up to the register and decided they didn't want it and
25 put it back down. Well, under that definition of

1 shoplifting, that's shoplifting. So it's not just the
2 facts of the case. It's not just the conduct. Every
3 criminal case requires some level of intent and you have to
4 decide intent. So not only does the State have to prove
5 something happened, they have to prove beyond a reasonable
6 doubt that someone had intent along with that conduct in
7 order for them to be guilty of a crime.

8 Now, for instance, kidnapping in South Carolina is
9 holding someone against their will. Well, I guess the
10 Judge has kidnapped all of you here today, but there's not
11 the intent there. So you have to have both and it has to
12 be proven by the State. In this country, whether you're
13 charged with a fifteen count murder indictment or a
14 speeding ticket, you don't change the level of -- of proof.
15 You don't change the level of how you're going to look at
16 it and you don't change the level of what the State is
17 required to prove.

18 Freedom is freedom. Liberty is liberty. And as a
19 juror, you look at it the same whether it's a murder or a
20 speeding ticket. Has the State proven every element
21 including the intent element that something happened and
22 that the intent was there behind it. And you're going to
23 hear witnesses. You're going to listen to testimony. What
24 they say is important. What they do is important, but just
25 as important is what they may not say or what they didn't

1 do. That tells volumes as well.

2 We chose y'all because we knew you could be fair
3 and impartial. We got personal information about stuff.
4 We wanted to make sure we knew as much as we could about a
5 group of people and you are the ones we chose out of that
6 panel. And we're confident that once you hear all the
7 evidence and lack of evidence and apply it to the law the
8 judge gives you, we're confident that you will come to a
9 verdict of not guilty. And that verdict doesn't say
10 anything but they didn't do everything they had to do.
11 I thank you for your time and your service to our
12 community. Thank you.

13 THE COURT: Thank you. Thank you very much, Mr.
14 Gibbons.

15 Mr. Foreman, ladies and gentlemen of the jury, this
16 case is no different from any other cases. I have certain
17 matters that I must take up in pretrial before we begin
18 taking of the testimony in front of the jury. So what I'm
19 going to do now, rather than hold y'all captive any -- any
20 longer is I'm going to release y'all for your luncheon
21 recess and ask you to please report back at two o'clock,
22 1400 hours.

23 I must instruct you, however, that during this
24 recess, you may not discuss this case with others, that
25 includes your fellow jurors, lunch mates, family, friends

1 or anyone else. Do not read or listen to any news reports
2 about this case should there be any. You may not use your
3 computer, cellular phone, or any other electronic device
4 with communication capabilities while in attendance of the
5 trial or during deliberations. These devices may be used
6 during lunch breaks, but may not be used to obtain or
7 disclose information prohibited by the Court. Information
8 which is prohibited includes, but it is not limited to, the
9 following: Information about a party; a witness; an
10 attorney or a court officer; news accounts of the case,
11 past or present; information collected through juror
12 research on any topic raised or testimony offered by any
13 witness; or information collected through juror research on
14 any other topic the juror might think would be helpful in
15 deciding the case.

16 Again, you decide the case based on the facts as
17 you find them to be from the testimony of the witnesses
18 testifying under oath from the witness stand. You find the
19 facts, you compare them to the law as I tell you the law is
20 that you cannot disagree with me on and you reach a true
21 and just verdict of either guilty or not guilty.

22 So please, please follow my instructions which I
23 know that you will do under the oath that you have just
24 taken. Again, two o'clock.

25 Is there any questions? Thank you. Thank you very

1 much for being with us this morning. I'll see you back
2 promptly at two p.m., and I hope you have a pleasant lunch.

3 THE JUROR: May I ask you a question? Can we take
4 notes?

5 THE COURT: Yes, ma'am, you can. I'll give you
6 further instructions on that when you come back. Okay.
7 Thank you so much.

8 (WHEREUPON the jury left the courtroom at 11:47
9 a.m.)

10 PRETRIAL MOTIONS

11 THE COURT: All right. What motions do we have
12 now.

13 MR. GIBBONS: Your Honor, I would just like to
14 clarify some, more like stipulations that were made prior
15 to this trial getting started.

16 THE COURT: All right.

17 MR. GIBBONS: Mr. Johnson does have a significant
18 prior record. We would put on the record that no mention
19 can be made of his prior convictions or arrests until such
20 time as he testifies. At that time when it's appropriate
21 that would be brought before the Court.

22 THE COURT: Yes, sir, we'll have a hearing about
23 those.

24 MR. GIBBONS: I understand there was some prior bad
25 acts testimony that the State was going to introduce. We'd

1 like to have a proffer of that at this time.

2 THE COURT: Thank you, Mr. Gibbons.

3 Solicitor.

4 MR. SLOCUM: That's correct, Your Honor. There are
5 witnesses that are going to testify about two previous
6 Saturdays of May 10th and May 17th leading up to this May
7 24th arrest for which we are here today. That testimony is
8 going to include details that will form a common plan or
9 scheme leading up to the May 24th shoplifting incident.
10 The testimony is going to be identical to the same thing
11 the defendant tried to do on the 24th. He was successful
12 in doing on two Saturday's prior.

13 THE COURT: All right.

14 MR. SLOCUM: We feel like it would come in under
15 the absence of mistake and common plan or scheme arguments.

16 THE COURT: All right. You may call your witness,
17 Solicitor.

18 MR. SLOCUM: Thank you, Your Honor.

19 The State first calls Ms. Patsy Singletary.

20 THE COURT: All right. If you'd come up and be
21 sworn for us please, Ms. Singletary.

22 PATSY SINGLETARY,

23 having been sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box, stating
25 your full name.

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 THE WITNESS: Okay. My name is Patsy

2 Singletary Siso.

3 **DIRECT EXAMINATION - IN-CAMERA**

4 BY MR. SLOCUM:

5 Q Ms. Singletary, good morning.

6 A Good morning.

7 Q Where is it you are currently working right now?

8 A Lowe's.

9 Q And where were you working before Lowe's?

10 A Belks.

11 Q And in what capacity did you work at both Lowe's
12 and Belks?

13 A Loss prevention for Belk. As lead and now a
14 department manager for loss prevention and safety
15 enhancement at Lowe's.

16 Q Okay. How long have you been in loss capacity
17 total in your two jobs there?

18 A Approximately about 18 months.

19 Q Okay. Does that include both Belks and Lowe's?

20 A Yes, Belks about 14 months.

21 Q All right. And what did you do prior to working at
22 Belks?

23 A Police officer for the State of Georgia. Richland
24 County Board of Education was my last duty session.

25 Q Okay. And what were your duties in the Richland

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 County Sheriff's Office?

2 A Deputy Sheriff for Richland County Sheriff's
3 Office.

4 Q Okay. Were you a road deputy or --

5 A Yes, sir, I was, and then I went over to Richland
6 County School Board was the last assignment.

7 Q All right. Thank you.

8 A You're welcome.

9 Q May 24th, 2014, of this year, where were you
10 working?

11 A Belk Department Store in North Augusta.

12 Q All right. And do you have any training or
13 certifications to work in loss prevention at Belk?

14 A Yes, sir, I do. Upon being released to make
15 apprehensions at Belk, we're certified through Belk
16 Department Store through our loss prevention training
17 program.

18 Q And how long is that program?

19 A It's approximately about six weeks or so.

20 Q All right. And what does it teach you?

21 A They teach you apprehensions. There are policies
22 that we must follow, five steps before we can make a
23 apprehension.

24 Q Okay.

25 A Handcuff training as well.

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 Q What are those five steps?

2 A You have to see the subject enter the store, select
3 the merchandise, conceal the merchandise, pass all the
4 points of sales without rendering payment for the
5 merchandise, and then exit the store.

6 Q Okay. Tell us what happened on May 24th --

7 A Sure.

8 Q -- how did you get involved with all that?

9 A I was, I came into work and I was monitoring CC TV,
10 which is a closed circuit television, and I noticed Mr.
11 Johnson in the men's department. This was around 11:30
12 that morning of May 24th.

13 Q Please, I'm sorry, I don't mean to cut you off.
14 Could you please clarify Mr. Johnson -- who do you mean by
15 that?

16 A Mr. Johnson here.

17 Q He would be the defendant in this case?

18 A Yes, sir.

19 Q Would you please describe what he's wearing?

20 A Yes, sir. A plaid shirt, blue pants.

21 MR. SLOCUM: Your Honor, for the record, please let
22 the record reflect that the witness has identified the
23 defendant?

24 THE COURT: So reflected

25 BY MR. SLOCUM:

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 Q Please go on; you saw him come in your store?

2 A Yes, sir. I saw him enter the men's department
3 store by CHAPS. I observed Mr. Johnson select several
4 items. I observed Mr. Johnson while on television, conceal
5 the items into a camouflage bag. At this point, I came off
6 camera and came to the floor where Mr. Johnson was heading
7 towards the exit door passing all points of sales without
8 paying for the merchandise. I approached Mr. Johnson once
9 I --

10 Q Where did you approach him?

11 A I approached him at the door, the home door exit.

12 Q Okay.

13 A I observed, we went back to the LP Office and at
14 that time -- well, I saw him in real time at the door --

15 Q What happened there at the door?

16 A Once I approached Mr. Johnson at the door, he was
17 already at the back clearance, which is the area right by
18 the home exit door. I identified myself upon approaching
19 him, I was in plain clothing, Mr. Johnson was at the back
20 with the duffle bag removing merchandise from the bag at
21 this point.

22 Once I got to Mr. Johnson, I identified myself with
23 both ID, verbally and with Belk ID, and explained to him
24 that we needed to discuss the items that he did not pay for
25 and that I need him to go with me to the LP Office.

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 Q Why did you confront Mr. Johnson on the 24th; what
2 was it about his activities, based on your training that
3 lead you to do that?

4 A Sure. I had observed Mr. Johnson two Saturdays in
5 a row prior, same time, same scenario. I had observed Mr.
6 Johnson enter into the men's department, select men's
7 merchandise, place them into a bag, the first bag was a
8 purple laundry bag. At that time, Mr. Johnson exited very
9 quickly. By the time I got to the door, he had already
10 gone. He had left in a green -- green van.

11 Q Where was that van parked?

12 A Parked right outside the main exit door. Parked
13 driver's side to the door, which reversed into the parking
14 space about the second space closest to the door. By the
15 time I reached Mr. Johnson, he had already left.

16 The following Saturday around the same time, which
17 was the 17th, Mr. Johnson entered again into Belk, into the
18 men's department store. I received a text from Rebecca
19 Powell, which is also an employee of Belk, indicating that
20 she had just observed Mr. Johnson as well in --

21 Q Don't tell me what she may have relayed to you.

22 A Sure.

23 Q Were you notified Mr. Johnson was in the store on
24 May 10th?

25 A Yes, as well, I was on camera watching him at this

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 time.

2 Q And based on receiving that information, what did
3 you attempt to do, or what did you do that day?

4 A I observed Mr. Johnson again place merchandise into
5 his -- into a bag. I proceeded to go to the department
6 where Mr. Johnson was located to make the apprehension. By
7 the time I got to the back of the department, Mr. Johnson
8 had already exited out the main home exit doors, got into
9 the green van and sped off.

10 Q Was he in the same green van both on May 10th and
11 on May 17th?

12 A Yes, sir, it was the same van, same parking space.

13 Q Did you see that van on May 24th?

14 A Yes, sir, I did.

15 Q Did you -- were you able to identify what clothing
16 items he left the store with on May 10th and May 17th?

17 A On May 10th and 17, no, sir, just the department
18 that the clothing items came from.

19 Q What department was that?

20 A The men's department.

21 Q What about May 24th?

22 A May 24th, yes, I was because I was able to retrieve
23 those items back.

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

25 THE COURT: Yes, sir.

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 (WHEREUPON State's Exhibits 1, 2, 3, and 4 were
2 marked for identification.)

3 BY MR. SLOCUM:

4 Q Ms. Patsy?

5 A Yes, sir.

6 Q I am showing you what has been marked for
7 identification purposes only and only for this hearing as
8 State's Exhibits 1, 2, 3, and 4. Would you please take a
9 look at State's Exhibit 1; do you recognize that?

10 A Yes, sir, it's Belk's floor plan.

11 Q And have you seen that Belk's floor plan prior to
12 today?

13 A Yes, sir.

14 Q Has -- has that -- is that depiction of the floor
15 plan, fairly and accurately depict the floor plan on May
16 24th of this year?

17 A Yes, sir.

18 Q Has it been changed, altered, or deleted in any
19 way, shape, or form?

20 A No, sir.

21 Q Now, I want to show you what's been marked as
22 State's Exhibit 3; do you recognize that?

23 A Yes, sir.

24 Q And what is it?

25 A It is the receipt of the items that Mr. Johnson had

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 concealed in his bag.

2 Q And is that receipt -- does it fairly and
3 accurately depict the receipt that was provided to law
4 enforcement on May 24th of this year?

5 A Yes, sir.

6 Q Has it been changed, altered, or deleted in any
7 way, shape, or form?

8 A No, sir.

9 Q State's Exhibit 4; do you recognize that?

10 A Yes, sir.

11 Q And what is it?

12 A This is the main exit door to Belk.

13 Q Is it a picture?

14 A It is.

15 Q And does that picture fairly and accurately depict
16 the interior looking out inside the Belk's Department Store
17 on May 24th of 2014?

18 A Yes, sir, it does.

19 Q Does it contain any changes, alterations or
20 deletions of any form from, that are different from May
21 24th of this year?

22 A No, sir.

23 Q And last is State's Exhibit 2; do you recognize it?

24 A Yes, sir.

25 Q And what is it?

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 A That's the bag, the bag that Mr. Johnson had, the
2 camouflage army bag that he concealed the third time he was
3 in the store.

4 Q The same bag he used on May 24th of this year?

5 A Yes, sir.

6 Q Your Honor, the State would move into evidence for
7 this hearing only, State's Exhibit 1 through 4 as Exhibits
8 for the purpose of this hearing?

9 THE COURT: All right.

10 MR. GIBBONS: No objection for this hearing, Your
11 Honor.

12 THE COURT: They're in evidence for the purposes of
13 this hearing.

14 MR. SLOCUM: Thank you, Judge.

15 I beg the Court's indulgence, Your Honor.

16 BY MR. SLOCUM:

17 Q Ms. Singletary?

18 A Yes.

19 Q Do you know Mr. Johnson prior to the encounter with
20 him at Belks, any encounter?

21 A No, sir.

22 Q When was your first time coming in contact with
23 him?

24 A On the 10th of May, May 10th.

25 Q When was your next time coming in contact with him?

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 A May 17th.

2 Q And the last time?

3 A May 24th.

4 Q On May 24th, you told the Court that you saw him
5 come in the store watching it on surveillance video CCTV
6 you said?

7 A Yes, sir.

8 Q Okay. After that, what did you do?

9 A I went to the floor once I had concealment, once
10 Mr. Johnson concealed the items, I left out of LP Office,
11 went down to the men's department area where he was.

12 Q After you left the floor, where did you go?

13 A After I left the floor, I went down to the CHAPS
14 area where I saw the concealment take place. Mr. Johnson
15 was trailing the back walls of the clearance and I began to
16 walk to the main exit.

17 Q After you confronted him there at the door, where
18 did you then relocate to?

19 A The LP Office.

20 Q Were you able to look back at the closed circuit
21 television?

22 A Yes, sir, once I got Mr. Johnson back into the
23 office, I was able to confirm all the five steps, what we
24 need to move forward with the apprehension on CCTV.

25 Q You confirmed what you saw in real life on video

Patsy Singletary Siso - Direct Examination In-Camera by Mr. Slocum

1 surveillance?

2 A Yes, sir.

3 Q Did you provide that video surveillance to law
4 enforcement?

5 A I did.

6 Q Have you since had a chance to look at the video
7 given to law enforcement from that day?

8 A Not since.

9 Q Not since?

10 A Yes, sir.

11 MR. SLOCUM: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: Yes, sir.

14 BY MR. SLOCUM:

15 Q Ms. Patsy, were you here this morning before lunch?

16 A Yes, sir.

17 Q Did you have a chance to view a video?

18 A Yes, sir.

19 Q Is this the video you viewed on this computer this
20 morning?

21 A That's the video from May 24th.

22 Q So you have reviewed it since May 24th?

23 A Yes.

24 Q Okay. That's -- that's all I wanted to get at.

25 What does that video -- does that video show what happened

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 on May 24th?

2 A On that video, it's about an hour after what
3 happened or so.

4 Q So it wasn't the video of the actual incident, it
5 was after the incident?

6 A Somehow that got, that video wasn't recorded and
7 the one that they had was an hour or so after the fact.

8 Q Okay. Were you able to retrieve the correct video?

9 A That video erases about 90 days or so after, so I
10 wasn't. I thought they had the correct video because I had
11 marked the video myself.

12 Q Okay. So it got recorded over?

13 A Yeah, it got recorded over; it got mixed up.

14 MR. SLOCUM: Your Honor, for purposes of law,
15 that's the only questions for Ms. Singletary.

16 THE COURT: All right. Thank you.

17 Mr. Gibbons.

18 **CROSS-EXAMINATION - IN-CAMERA**

19 BY MR. GIBBONS:

20 Q Ms. Singletary, you say there are five requirements
21 that have to be met before you can make an apprehension?

22 A There are.

23 Q And on the 10th of -- of that month of May --

24 A Yes, sir.

25 Q Did you have those five elements?

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 A I did not.

2 Q What element did you not have?

3 A I did not have the exit, I'm sorry, the entrance.
4 I apologize. I had the concealment and the exit up to
5 three steps.

6 Q All right. Now, why wouldn't you have entrance on
7 video?

8 A That was the call that Mr. Johnson was exiting the
9 building on the 10th with a purple sack.

10 Q Right.

11 A And that time, I was not on camera watching Mr.
12 Johnson, I was surveilling another department.

13 Q So is there only one camera in the store.

14 A No, there are several.

15 Q And don't they have fixed cameras on entrances and
16 exits in most stores?

17 A We do. In the men's department however, it is a
18 PVT where you have to zoom into that particular area.

19 Q So there's no permanent fixed camera pointing on
20 the exit at that place?

21 A Yes, sir, the exit, yes.

22 Q Well, entrance or exit?

23 A Yes, entrance and exits, yes.

24 Q So you couldn't have gone back and gotten a copy of
25 that video?

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 A For May 10th.

2 Q Yes, ma'am.

3 A I could have if it was required at the time?

4 Q Well, you're saying there was a crime committed
5 that day?

6 A I said there was an exit with Mr. Johnson that
7 helped me to identify him --

8 Q Right.

9 A -- to the two times afterwards.

10 Q What you told me was you didn't have him entering
11 the store?

12 A I did not, not on the 10th.

13 Q But you couldn't have gone back in the tapes and
14 pulled it?

15 A I could have, but at that time, he wasn't being
16 charged and I didn't have steps to make the apprehension.

17 Q Well you're confusing me. You said all but step
18 number one?

19 A I have to meet five to make an apprehension.

20 Q Right, and you said you had all but the first one,
21 him entering the store, on May 10th?

22 A Yes, I had the exit, I had the concealment, I had
23 the selection. However, if I do not have all five steps,
24 there was no need for me to look at May 10th at that time.

25 Q Well, I'm just asking you, on May 10th, you

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 couldn't have gone back and got the camera shots of him
2 entering?

3 A For what purpose?

4 Q That would be your 5th step?

5 A No, I -- I did not have Mr. Johnson in
6 apprehension. He had already left. He came in and exited
7 very quickly. So I would have had no one to apprehend.

8 Q Well, I didn't see apprehension as on your list?

9 A Well, apprehension is the -- what we do in loss
10 prevention.

11 Q All right.

12 A So I need five steps to make an apprehension.

13 Q All right. So you could have got him entering on
14 the video, correct?

15 A Uh-huh (affirmative response).

16 Q And step number two is receiving goods or taking
17 goods?

18 A Selection.

19 Q Selection. Number three I think would be exit?

20 A No, concealment.

21 Q Concealment, you had that on the 10th?

22 A Uh-huh (affirmative response).

23 Q You've got all three so far, right? The fourth
24 one, passing all points of sale, you got that; he left the
25 store?

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 THE COURT: She's already testified several times
2 she didn't have entrance.

3 MR. GIBBONS: Well, she said she could have going
4 to back and got it off the camera, Judge.

5 THE COURT: No, that's not the policy. She's
6 already said several times, she didn't have entrance.

7 MR. GIBBONS: Well, she said she could have got it,
8 Your Honor, that's what I'm asking her.

9 THE COURT: That's not the policy. Law enforcement
10 could have investigated and perhaps gone back and got it,
11 but she says she had to have entrance.

12 BY MR. GIBBONS:

13 Q I guess what I'm asking is, it existed, you just
14 didn't pull it?

15 A I -- I really don't understand your questioning
16 because my job is simply to make a apprehension with five
17 steps. If I don't have them, I don't make the
18 apprehension. I don't make them up; I don't look for them.
19 They have to be there during the time of the apprehension.
20 So I really don't understand your question. I didn't have
21 it, I couldn't make the apprehension.

22 Q Fair enough. So that would be the same answer to
23 the second one on the 17th, correct?

24 A The second incident, he was able to leave before I
25 could reach him. But the second incident I had all five

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 steps, but Mr. Johnson had left before I had an opportunity
2 to reach him.

3 Q And it's store policy that although you have the
4 five steps, if you don't actually catch him, you don't call
5 law enforcement and make a charge?

6 A No, sir, I have no one to charge. So if I don't
7 have a person there, I can't make a apprehension, which I
8 don't have a case, I guess.

9 Q All right. So you had a van ID'd?

10 A Yes.

11 Q But you didn't go any further because you couldn't
12 put your arms around the guy?

13 A Once they're gone, they're gone, sir. They'll come
14 back the next time.

15 Q All right. Now, let's turn your attention to the
16 24th.

17 A Okay.

18 Q Did he make it out of the store?

19 A He did not.

20 Q So did he exit the store?

21 A He did not.

22 Q Is that one of your requirements?

23 A He made it to the exit position past all points of
24 sale.

25 Q That's number four and then you said he has to make

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 an exit?

2 A The exit is past all points of sale. He went to

3 the exit door.

4 Q All right. Hang on a minute now.

5 A Okay.

6 Q See him enter, that's step one?

7 A Uh-huh (affirmative response).

8 Q Make selection, that's step two?

9 A Yes.

10 Q Conceal, that's step three?

11 A It is.

12 Q Pass all points of sale, step four?

13 A Yes.

14 Q Exit the store, step five?

15 A Yes.

16 Q Did he exit the store?

17 A He went to the exit door to exit the store.

18 Q Did he exit the store?

19 A Yes, that's exit.

20 Q He got outside?

21 A He got to the exit door proceeding out the door,

22 yes.

23 Q So that's what exit the store means, you get up to

24 the door?

25 A Exit is past all points of sale.

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 Q That's four?

2 A Uh-huh (affirmative response), and proceeding to
3 exit out the door. Either you're at the door or either
4 you're on the sidewalk; that's exit.

5 Q All right. Let's go to the 24th now. Did you see
6 him put items in a bag?

7 A I did.

8 Q And was that by camera or in person?

9 A That was by camera.

10 Q And so you went, then you went out to the floor,
11 correct?

12 A I did.

13 Q Did you see him with that same bag?

14 A I did.

15 Q And did you see, when you stopped him at his point
16 of exit, was the stuff in the bag?

17 A No, he was proceeding to take the stuff out of the
18 bag at that point.

19 Q So at the point you got to him was there anything
20 in the bag?

21 A No, he had cleared it. It was beside him.

22 Q And did you see that, him clearing the bag?

23 A Yes.

24 Q Was that on camera or was that in person?

25 A That was in person.

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 Q And how far away from the exit did he do that?

2 A He was at the exit door.

3 Q So right there on the floor by the door?

4 A Yes, sir.

5 Q And what was the closest point of sale to that door
6 he was at?

7 A There isn't one. The registers are located in the
8 home department and the men's department. There were no
9 registers by the -- Mr. Johnson at that time. He had
10 passed all points of sales.

11 Q All right. Well, let's turn your attention to the
12 video. It's your job to, you were asked to make a video of
13 what happened on the 24th, correct?

14 A Yes.

15 Q And did you physically do that or did you have
16 someone else do that?

17 A I do it.

18 Q And so you made this video?

19 A Uh-huh (affirmative response).

20 Q Did you hand it straight over to the police
21 officers or what did you do with it?

22 A Yeah, once I make the video, I turn it over North
23 Augusta Police Department.

24 Q And did you look at it before you turned it over to
25 them?

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 A Yes.

2 Q And you saw it was the right video?

3 A I presumed it was at that time.

4 Q You presumed it was?

5 A Yes.

6 Q Did you watch it?

7 A As I record, it plays my --

8 Q Ma'am?

9 A My recording, it plays so I was, you know thinking
10 that it was recording that particular time and not the hour
11 after.

12 Q So you didn't physically see Mr. Johnson on the
13 video as you were making that recording?

14 A I saw him on the monitor, but the recording is
15 recording while it's playing. While it's recording, the
16 video was playing while it's recording.

17 Q But when you make the -- when you make the DVD --

18 A Uh-huh (affirmative response).

19 Q You didn't watch it again when you did that?

20 A No, I didn't.

21 Q And you never went back to check and law
22 enforcement never contacted you saying it was the wrong
23 one?

24 A No.

25 Q When was the first time you heard about it being

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 the wrong time?

2 A Yesterday.

3 Q Had they come back to you a week later, could you
4 have fixed that, got the right video?

5 A Yes.

6 Q What about a month later?

7 A Yes.

8 Q Up to 90 days, correct?

9 A Yes, sir.

10 Q No one ever approached you about doing that?

11 A No, sir.

12 Q Did you make a statement for law enforcement on
13 this date?

14 A I did.

15 Q Did you write down the details of the prior
16 interactions or prior seeing Mr. Johnson?

17 A I'm not sure. I'd have to see the statement. I
18 don't remember.

19 Q Did you mention it to the officers?

20 A I would have to see the statement. I don't
21 remember.

22 Q At that point in time, the officers could have
23 gotten those prior incident tapes too since it hadn't been
24 90 days, correct?

25 A Well, what's the relevance to it.

Patsy Singletary Siso - Cross-Examination - In-Camera by Mr. Gibbons

1 Q I'm just saying could they have gotten it?

2 A I don't know. I mean if they wanted to prosecute.
3 Belk wouldn't have prosecuted.

4 Q I'm asking the question could they have said make
5 me copies of those other two days, other two times, you
6 could have done it, right?

7 A I guess, my question is why would they.

8 Q I'm not asking you that, I'm asking you could have
9 if they had asked you, right?

10 A I guess.

11 Q You guess or yes or no?

12 A Yes, if --

13 Q Okay.

14 A -- it was in 90 days.

15 Q All right. And did you ever get a license plate
16 number on the van, from the van?

17 A Yes.

18 Q You got the license plate?

19 A I did. It was left in the parking lot at Belk.

20 Q I mean on the 10th and the 17th, did you get a
21 license plate?

22 A No, on the 17th, I was able to see the van pull off
23 and I got a partial plate or something, but I don't
24 remember getting the entire plate.

25 Q All right. Now are there cameras out in the

Patsy Singletary Siso - Redirect Examination - In Camera by Mr. Slocum

1 parking lot too?

2 A There aren't.

3 Q They're not?

4 A Some may zoom some points, but no.

5 Q All right. And do you know what items were taken
6 on the 10th and the 17th?

7 A They were CHAP, well no, I just know the area, but
8 I didn't see the items.

9 Q So you didn't see anybody put items in a bag?

10 A Yeah, he concealed items which were men's shirts,
11 but I can't say what brand they were or the price they
12 were, but they were men's shirts. Some labels were Red
13 Camel, some were Courtures. I couldn't describe how many.
14 There were several. There were stacks of them.

15 Q On the 10th and the 17th?

16 A Yes.

17 Q You don't know how many though?

18 A No.

19 MR. GIBBONS: One moment. That's it, Your Honor.
20 Thank you.

21 THE COURT: Redirect?

22 MR. SLOCUM: Very briefly, Your Honor.

23 **REDIRECT EXAMINATION - IN-CAMERA**

24 BY MR. SLOCUM:

25 Q Ms. Singletary, State's Exhibit 1 shows the floor

Patsy Singletary Siso - Redirect Examination - In Camera by Mr. Slocum

1 plan of Belks.

2 A Okay.

3 Q Could you mark on that where the Loss Prevention
4 Office is and where the doors that Mr. Johnson left on May
5 24th, May 10th, and May 17th? For the Court, what sides of
6 the store is the Loss Prevention Office and the doors which
7 he exited, are they both on; are they on the same side or
8 opposite sides?

9 A They're on the opposite sides.

10 Q Was Mr. Johnson closer -- were you closer to Mr.
11 Johnson or to the doors that he went out of when you first
12 walked to the floor?

13 A When I came out of the LP office, is that where
14 you're asking? Mr. Johnson was closest to the doors.

15 Q Okay.

16 A And I was closer to the --

17 Q To the office?

18 A Yes, sir.

19 Q Essentially he beat you to the door; is that
20 correct?

21 A Yes.

22 Q Is that why you didn't apprehend him?

23 A Yes.

24 Q Thank you.

25 THE COURT: Recross?

Rebecca Powell - Direct Examination - In-Camera by Mr. Slocum

1 MR. GIBBONS: No, sir.

2 THE COURT: Thank you. Thank you, Ms. Singletary.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Solicitor, you may call
5 your next witness.

6 MR. SLOCUM: Thank you, Your Honor. The next
7 witness will be Ms. Rebecca Powell.

8 THE COURT: All right. Please come around, Ms.
9 Powell, and be sworn.

10 REBECCA POWELL,

11 having been duly sworn, testified as follows:

12 THE CLERK: Please have a seat in the witness box.
13 State your full name for the Court and spell your last?

14 THE WITNESS: My name is Rebecca Powell,
15 P-O-W-E-L-L. I work at the Belk Department Store.

16 **DIRECT EXAMINATION - IN-CAMERA**

17 BY MR. SLOCUM:

18 Q Thank you, Ms. Powell. You work at Belks now?

19 A I do.

20 Q How long have you been at Belks?

21 A With that company, I've been at two different
22 locations, but I've been there a total of seven years.

23 Q Okay. And how did you become involved in this
24 case?

25 A I observed him on the sales floor on the 17th.

Rebecca Powell - Direct Examination - In-Camera by Mr. Slocum

1 Q Okay. And what day was that prior to May 24th?

2 A That was the weekend before.

3 Q All right.

4 A The Saturday before.

5 Q And how did you get involved?

6 A I had worked that day. I got off a little early
7 and my husband met me at the store to shop and we were in
8 the men's department and I observed some suspicious
9 behavior. So I alerted Pasty.

10 Q What was that behavior?

11 A Selecting random merchandise without regard for
12 size, not looking at price tickets, just throwing over the
13 arm, just random selection.

14 Q Do you recall about how many items you saw this
15 individual pick up?

16 A At that particular point, I observed about three or
17 four pieces thrown over his left arm.

18 Q How did you alert Ms. Singletary?

19 A I sent her a text message.

20 Q And what did you do after that?

21 A I let her know what the location that I observed
22 him and I dropped it after that.

23 Q Were you able to get a good look at that
24 individual?

25 A Yes.

Rebecca Powell - Direct Examination - In-Camera by Mr. Slocum

1 Q Do you see that individual in the courtroom?

2 A Yes, I do.

3 Q Would you please describe what he's wearing?

4 A A plaid shirt.

5 Q Sitting at the table on your right over there?

6 A He is.

7 MR. SLOCUM: Your Honor, please let the record
8 reflect she's identified the defendant in this case."

9 THE COURT: So reflected.

10 BY MR. SLOCUM:

11 Q Did you have any involvement in the other two
12 incidents?

13 A I did not.

14 Q Okay. All right. Are you also trained in loss
15 prevention?

16 A I am.

17 MR. SLOCUM: I beg the Court's indulgence, Your
18 Honor.

19 That's all the questions we have for Ms. Powell.

20 THE COURT: All right. Thank you.

21 Mr. Gibbons?

22 MR. GIBBONS: No questions, Your Honor.

23 THE COURT: Thank you. Thank you, Ms. Powell, you
24 may step down.

25 All right. Solicitor.

1 MR. SLOCUM: Your Honor, for purposes of Lyle and
2 prior bad acts, that will be all the witnesses that will
3 testify to that event.

4 THE COURT: All right. Thank you. Thank you,
5 Solicitor.

6 Mr. Gibbons, does the Defense intend to present any
7 evidence or testimony?

8 MR. GIBBONS: No, sir.

9 THE COURT: Thank you.

10 MR. GIBBONS: We would move under Rule 403 to
11 exclude theses as being more prejudicial than probative.

12 THE COURT: I think I have to make that analysis
13 anyway, don't I?

14 MR. GIBBONS: Yes, sir.

15 THE COURT: Any -- any, it's your motion to
16 exclude. Do you have any other --

17 MR. GIBBONS: Your Honor, I would just base it on
18 prejudicial effect. There was no documentation other than
19 the testimony of these individuals. He was not properly
20 ID'd by being apprehended. They didn't even identify the
21 tag on any car that he was in. There were no pictures.
22 Even though there are three kinds at that point.

23 THE COURT: Thank you.

24 Solicitor?

25 MR. SLOCUM: Your Honor, the State would argue that

1 Ms. Singletary positively identified him as the same
2 individual on the 10th, the 17th, and the 24th. That was
3 confirmed by Ms. Powell's testimony as him being the same
4 individual on the 17th. We feel like it is very probative
5 in terms of a common plan or scheme. Specifically having
6 to anticipate any potential defense, even though the law
7 doesn't -- it doesn't matter if they make it out the door
8 or not, we feel like it's probative to prove what his
9 intent was, which is the basis for Mr. Gibbons' argument,
10 pretty much for the -- as a guess -- attempt to guess his
11 position for the trial. We feel like it's very, very
12 probative.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Well, I would begin my analysis on the
15 404(b) looking at the similarities. And these similarities
16 are between the events of the 10th, the 17th, and the 24th.
17 First, you have the same victim with each of these days,
18 which is Belk Department Store. You have the same day of
19 the week, which is a weekend day; I believe it was a
20 Saturday. You have generally the same time of the day and
21 you have the department, the men's department within the
22 store.

23 As I understand it from the testimony, you have the
24 same dark green van in the same location on the 10th and
25 17th, and then van was located in the parking lot on the

1 24th although there is no testimony as to exactly where it
2 was parked in the Belk parking lot. The officer -- Ms.
3 Singletary did testify that she got the tag to the van
4 while it was in the parking lot on the 24th. You, of
5 course have the same items and you have the same modus
6 operandi. He has a bag, a purple laundry bag on, I believe
7 that was the 10th. And then what was described as a duffle
8 bag and a camo bag on the 24th. Basically what you have is
9 a race to exit and the officer was unable to apprehend Mr.
10 Johnson on the 10th and 17th.

11 And, of course, their antenna would have been up
12 with Mr. Johnson thereafter. You also have cooperation of
13 Officer Singletary by Ms. Powell on the 17th. The only --
14 the only difference as I see is he happened to be able to
15 get to the car and the 24th he knew it and that's why he
16 was dis-gouging himself from that bag of the ill-gotten
17 booty he had concealed that was in the bag.

18 I think there is clear and convincing evidence
19 under 44(b) and then analyzing, I find that it's
20 admissible. I then do the prejudice analysis required
21 under Rule 403. The probative value of the evidence
22 following one of the basic sections must substantially
23 outweigh the danger of unfair prejudice to the defendant.
24 I think this has a very high degree of probative value both
25 as to a common plan and scheme and as to a motive in the

1 case which -- or intent I should say -- in the case. With
2 him being past all the points of payment in the case, as I
3 say, my opinion is dis-gouging himself of the shoplifting
4 items is intent to not be guilty of that.

5 So with that being said, I think the incident of
6 the 10th and the incident of the 17th are admissible and
7 they are highly probative and substantial. They do not
8 have -- the danger of unfair prejudice is substantially
9 outweighed by the high probative value in the case.

10 All right. Are there any other motions.

11 MR. SLOCUM: None from the State.

12 THE COURT: From the defense?

13 MR. GIBBONS: No, sir.

14 THE COURT: All right. Thank you. Thank you very
15 much. We'll be in recess until 2 p.m..

16 MR. SLOCUM: Thank you, Judge.

17 THE COURT: Thank you. Thank you. Thank you,
18 Solicitor.

19 (WHEREUPON court was in recess for lunch.)

20 **PARTIAL GUILTY PLEA**

21 **MARVIN BROCK JOHNSON,**

22 having been duly sworn, testified as follows:

23 MR. SLOCUM: Your Honor, before the Court is Mr.
24 Marvin Brock Johnson, represented by Mr. Grant Gibbons with
25 the Public Defender's Office. Mr. Johnson's before you on

1 Indictment 2014-GS-02-01355. That is an indictment,
2 true-bill indictment for shoplifting under the enhancement
3 statute of 16-157.

4 As you heard this morning we began the trial of
5 this case, Your Honor, and just a little while ago over the
6 break Mr. Gibbons came to me and indicated that his client,
7 Mr. Johnson, would like to plead guilty to this shoplifting
8 3rd charge and here we stand before you.

9 THE COURT: Thank you. Thank you very much,
10 Solicitor.

11 Mr. Gibbons, you represent Marvin Brock Johnson?

12 MR. GIBBONS: I do, Your Honor.

13 THE COURT: Have you explained to him the charge,
14 the elements of the charge and possible punishments and his
15 rights including his right to a jury trial?

16 MR. GIBBONS: Yes, Your Honor, we talked about
17 that.

18 THE COURT: In your opinion, does he understand
19 those things?

20 MR. GIBBONS: Yes, sir.

21 THE COURT: How does he indicate he tends to plead
22 to shoplifting 3rd or subsequent valued less than \$2,000.

23 MR. GIBBONS: Your Honor, he indicated to me at
24 this time he'd like to enter a plea of guilty.

25 THE COURT: Are you Marvin Brock Johnson?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Johnson, before I can accept your
3 plea of guilty, it's necessary for me to determine your
4 plea has been given freely and voluntary. Therefore, I
5 need to ask you some questions. If you do not understand
6 my questions, please let me know and I'll try to explain
7 them to you. At any time you wish to talk with your
8 lawyer, please let me know and I'll allow you to do so. Do
9 you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How old are you?

12 THE DEFENDANT: 55.

13 THE COURT: Say it again?

14 THE DEFENDANT: 55.

15 THE COURT: 55. How much education do you have?

16 THE DEFENDANT: Ninth grade.

17 THE COURT: What type of work do you do?

18 THE DEFENDANT: Landscaping, short-order cook,
19 painting, a little bit of carpentry, a little bit of
20 plumbing.

21 THE COURT: Where are you short-order cook at?

22 THE DEFENDANT: Well, when I worked, I was
23 short-order cook at the University of Miami. And about
24 four or five years of waxing and stripping floors.

25 THE COURT: Today are you under the influence of

1 any medication, drugs or alcohol?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you aware of any mental, emotional
4 or nervous problem that keeps you from understanding what
5 you're doing today?

6 THE DEFENDANT: No, sir.

7 THE COURT: You heard Mr. Gibbons, your lawyer,
8 tell me that he's explained to you the charge, the elements
9 of the charge, of the possible punishments, and your
10 constitutional rights and that you understand these things;
11 is that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I've been handed up this indictment
14 2014-GS-02-1355. It basically alleges that on or about May
15 24th of '14, you did take or carry away or attempt to
16 transfer certain merchandise displayed for sale in Belk
17 Department Store located at Knox Avenue, North Augusta,
18 with the intent to permanently deprive the owner of such
19 merchandise. You have previously been twice convicted of
20 offenses which have a term depending upon the value of the
21 property. That is an indictment for shoplifting 3rd or
22 subsequent for which you could receive a sentence up to 10
23 years. Do you understand that charge and that particular
24 punishment?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Johnson, when you plead guilty, you
2 give up certain very important constitutional rights. You
3 give up your right to remain silent. You give up a right
4 to a jury trial and you give up your right to confront or
5 be confronted by the witnesses against you. Do you
6 understand those rights?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand a jury has already
9 been selected for the trial of this case; you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand that when you plead
13 guilty, you give up your right to have a jury trial and all
14 these constitutional rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do?

17 THE DEFENDANT: I guess so.

18 THE COURT: You understand you will not get a jury
19 trial if you plead guilty?

20 THE DEFENDANT: Uh-huh (affirmative response). I
21 understand that.

22 THE COURT: Understanding then the nature of the
23 charge, shoplifting 3rd or subsequent, and the potential
24 punishment, how do you plead to that charge, guilty or not
25 guilty?

1 THE DEFENDANT: I plead guilty.

2 THE COURT: Are you guilty?

3 THE DEFENDANT: I'm not guilty, but I'm pleading
4 guilty. I'm not guilty.

5 THE COURT: Well, I'm not going to take your plea.
6 Thank you very much.

7 Thank you. Thank you, Mr. Johnson.

8 MR. GIBBONS: Your Honor, would you entertain an
9 Alford Plea.

10 THE COURT: No, sir. I don't, I don't, I don't
11 typically take -- I very rarely take Alford pleas unless
12 there is some showing of factual foundation that there is
13 no memory of -- of the offense.

14 MR. GIBBONS: All right.

15 THE COURT: Thank you. Thank you, Mr. Gibbons.

16 All right. Anything before we bring in our jury
17 from the State?

18 MR. SLOCUM: Nothing from the State.

19 THE COURT: Defense?

20 MR. GIBBONS: No, sir.

21 THE COURT: Thank you. Thank you, Sheriff.

22 (WHEREUPON the jury entered the courtroom at 2:04
23 p.m.)

24 THE COURT: If you want a pad, please raise your
25 hand.

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 bearing the burden of proof has the burden -- the party
2 bearing the burden of proof goes first in a case such as
3 this. I would advise you and ask you to please give the
4 parties your complete and undivided attention.

5 Solicitor, you may call your first witness.

6 MS. HALL: Your Honor, the State calls Patsy
7 Singletary.

8 THE COURT: All right. Come around and be sworn
9 for us please, Ms. Singletary.

10 PATSY SINGLETARY,

11 having been duly sworn, testified as follows:

12 THE CLERK: State your full name for the Court and
13 spell your last.

14 THE WITNESS: My name is Patsy Singletary-Siso.
15 Last name is spelled S-I-S-O.

16 **DIRECT EXAMINATION**

17 BY MS. HALL:

18 Q Good afternoon..

19 A Hi.

20 Q Ms. Singletary, where are you currently working?

21 A Lowe's Department Store.

22 Q Okay.. And how long have you been there?

23 A About four months.

24 Q And what is your position at Lowe's?

25 A Department Manager, Loss Prevention Safety and

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 HAZMAT.

2 Q Okay. And how long have you been working in a loss
3 prevention capacity even outside of Lowe's?

4 A Approximately 18 months.

5 Q Okay. And where did you work prior to working at
6 Belk?

7 A Belk Department Store.

8 Q Okay. And prior to working at Belk, where were you
9 working?

10 A A police officer for the State of Georgia, Richland
11 County School Board as well as Richland County Sheriff's
12 Office.

13 Q Okay. How long did you do that?

14 A Approximately four years.

15 Q Okay. All right. Do you remember about how long
16 you were working Belk?

17 A About fourteen months.

18 Q All right. And were you working at the Belk in
19 North Augusta on May 24th, 2014?

20 A Yes.

21 Q Okay. And what sort of training or certifications
22 did you have to go through to be employed in loss
23 prevention at Belk?

24 A At Belk there's a training program that you have to
25 do approximately about six weeks where you're trained in

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 loss prevention, the use of force and also handcuff
2 training and apprehensions. They have a step -- a
3 five-step process that you have to become certified before
4 you can make a apprehension on a shoplifter.

5 Q Okay. What is that five-step process?

6 A The first step is you have to see the subject
7 enter. The second is you have to see them select the
8 merchandise. The third is conceal the merchandise. The
9 fourth is pass all points of sales without rendering
10 payment for the merchandise. And the fifth step is to
11 exit.

12 Q Okay. And are you trained to look for shoplifters
13 in this certification that you did?

14 A Yes, ma'am, suspicious activities.

15 Q Okay. And what was your daily uniform at Belk?

16 A Plain clothing as I am now.

17 Q Okay. Did you have any sort of ID badge or tag for
18 your shirt, lanyard or anything like that?

19 A No, ma'am, the objective is to blend in.

20 Q Okay. And where was the -- what's the street
21 address of that Belk?

22 A 1163 Knox Avenue, North Augusta, South Carolina,
23 29841.

24 Q Okay. And is that within Aiken County?

25 A Yes, ma'am, it is.

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 Q All right. And how many times have you testified
2 in shoplifting trials?

3 A Approximately sixty or so.

4 Q Okay. And have you been involved in other
5 shopliftings at the Belk in North Augusta?

6 A Yes, I'm the only loss prevention at the store
7 during that time --

8 Q Okay.

9 A -- Where I made all of the apprehensions.

10 Q Okay. About how many if you can recall?

11 A Approximately about 65-ish or so.

12 Q Okay. And are you familiar with the layout of the
13 Belk in North Augusta?

14 A Yes, ma'am, very.

15 MS. HALL: Your Honor, permission to approach the
16 witness?

17 THE COURT: Yes, ma'am.

18 BY MS. HALL:

19 Q Ms. Singletary, I'm showing you what has been
20 previously marked for identification purposes as State's
21 Exhibit 1; do you recognize this?

22 A Yes, ma'am.

23 Q Okay. And what is it?

24 A It's the floor plan of Belk.

25 Q All right. And does it fairly and accurately

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 depict the layout of the Belk as it appeared on May 24th,
2 2014?

3 A Yes, ma'am.

4 Q All right. And have any alterations, changes,
5 additions, or deletions been made to it since that time?

6 A No, ma'am.

7 MS. HALL: Your Honor, at this time, the State
8 would move to enter State's Exhibit 1 into evidence.

9 MR. GIBBONS: No objection.

10 THE COURT: State's 1 is in evidence without
11 objection.

12 Thank you, Mr. Gibbons.

13 (WHEREUPON State's Exhibit No. 1 was entered into
14 evidence.)

15 BY MS. HALL:

16 Q All right. Ms. Singletary, I see that there are a
17 few markings on this. Can you indicate what these markings
18 are?

19 A It's the -- this is the office of the LP and this
20 is the main exit to the Home Department.

21 Q Okay. And did you make these markings?

22 A Yes, ma'am, I did.

23 Q Okay.

24 MS. HALL: Your Honor, permission for the witness
25 to step down and publish the exhibit?

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 THE COURT: Yes, ma'am, just keep your voice up
2 when you're away from the witness stand for me please.

3 THE WITNESS: Step down here, sir?

4 THE COURT: Yes, ma'am. Step down in front of the
5 jury.

6 BY MS. HALL:

7 Q If you'll come around just along here. All right,
8 Ms. Singletary, I want you to point out the markings that
9 were on the paper display. Where is your Loss Prevention
10 Office when you worked at Belk?

11 A Okay. My office is right here.

12 Q And can everybody see that?

13 Okay. And where are the front main entrances to
14 this Belk?

15 A Here are the main Home doors.

16 Q Okay. Is there another entrance?

17 A Yeah, the entrance is here.

18 Q Okay. All right. And can you explain to me how
19 you got involved on May 24, 2014?

20 A Yes, ma'am. I observed Mr. Johnson enter into the
21 men's department which is here, in the Polo/Chaps section.

22 Q And where were you at this time?

23 A I was on CCTV, which is a video monitoring system
24 in the LP Office.

25 Q Okay. So you were watching live-time through the

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 video surveillance in your office?

2 A Yes, ma'am.

3 Q All right. And then -- so you saw him in the men's
4 department?

5 A Yes, ma'am.

6 Q Tell me what happened next.

7 A Okay. So as I was watching Mr. Johnson, I saw him
8 enter, I saw him select the items and then I saw him
9 conceal into a army duffle bag so I came out of the LP
10 Office, came across through the toddlers, came down --

11 Q Through the aisle-way?

12 A Through the aisle over here, came down this path
13 and Mr. Johnson at this time, as I approached was headed --

14 Q Well, at what point did you try to contact law
15 enforcement?

16 A As I was coming out this way, I was my cell phone
17 contacting North Augusta once I saw the concealment.

18 Q Okay. So you had seen the concealment on the video
19 while you were in your office and then you called law
20 enforcement on your way to make contact with him?

21 A Yes, ma'am.

22 Q All right. And you said he was heading this
23 direction. What happened next?

24 A As you can see, the men's department is right by
25 the exit doors. So as I was coming from the LP Office, I

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 was about in this aisle area here, Mr. Johnson was taking
2 the bag out to clearance heading for the home exit?

3 Q You want us to step over.

4 Can everybody see?

5 All right. So he was here?

6 A As I got ready to approach Mr. Johnson, his back
7 was on the door and I approached him, identified myself
8 verbally and with my Belk ID.

9 Q Okay. And you said that he got rid of the items?

10 A Yeah, as I was coming here and as he was coming to
11 this door, I could see North Augusta coming into this back
12 part --

13 Q North Augusta being?

14 A North Augusta Police Department. So as I'm
15 approaching this way in plain clothing, North Augusta is
16 coming up this way, he's going this way, he paused here and
17 he began to remove the merchandise as I'm approaching from
18 this way.

19 Q So he removed the merchandise from what?

20 A From the army duffle bag that he had over his body.

21 Q All right. So when you approached him, did he
22 still have the bag in his hand?

23 A Yes, he had the bag and he said, he said I'm not
24 caught yet.

25 Q And the -- the -- so where were the clothing items?

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 A In a pile on the floor.

2 Q Okay.

3 A In a stack.

4 Q All right. And now did you have any prior
5 interaction with this individual?

6 A Well, I observed this subject two Saturdays prior.

7 MR. GIBBONS: Objection, Your Honor. I renew my
8 objection.

9 THE COURT: All right. And I would renew my
10 previous trial motions, Mr. Gibbons, thank you.

11 You may continue.

12 BY MS. HALL:

13 Q The two previous Saturdays, what were those dates?

14 A The date was the 10th, May 10th, and May 17th of
15 two Saturdays prior and they were both around the same
16 time. I observed Mr. Johnson in the same area of the men's
17 department concealing merchandise as you can see from the
18 LP Office. By the time I got to that back door the two
19 previous Saturdays, he had already exited the building.

20 Q Okay. So you were going all the way from the Loss
21 Prevention Office to this door to try and apprehend him?

22 A Yes, ma'am.

23 Q Okay. And the two prior Saturdays he was out
24 before you could reach him?

25 A Well, yes, ma'am. Well the two -- yes, ma'am.

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 Q All right. And now on the 10th did he have any
2 sort of bag or did he just have the items in his hands?

3 A Yes, I observed Mr. Johnson with a purple laundry
4 bag.

5 Q And what items did he -- did you observe him taking
6 the items?

7 A I observed him concealing the items, but I wasn't
8 for sure exactly which items they were, but I did observe
9 concealing the items into the bag.

10 Q Okay. And on the 17th, did he have any sort of
11 bag?

12 A On the 17th, I observed another large bag of Mr.
13 Johnson's, the same department, about the same time on a
14 Saturday. And I was contacted as well. As I was watching
15 him on television that he was concealing merchandise, I was
16 contacted by Rebecca Powell. Again, by the time I got from
17 the LP Office to the door, Mr. Johnson had already made it
18 to his vehicle, a green van, that he had parked the
19 previous Saturday as well.

20 Q On both Saturdays?

21 A Yes, and also on the 24th.

22 Q Okay.

23 A He parked, he comes in backwards with the driver's
24 side to the door.

25 Q He reversed in the parking spot?

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 A Yes, with the driver's side to the door and he can
2 access his car very quickly. So this particular Saturday
3 by the time I got out there and made it to the parking lot
4 and he was taking off so I just got the back of the vehicle
5 and I wasn't able to apprehend him.

6 Q All right. You can go there and have a seat and
7 I'm going to ask you a few more questions.

8 All right, Ms. Singletary, you said that you
9 backed -- the individual had repeatedly backed into this
10 parking spot and you had seen that vehicle in the same
11 place outside the door on those two or multiple Saturdays?

12 A Yes, ma'am.

13 MS. HALL: Permission to approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. HALL:

16 Q Ms. Singletary, I'm going to show you what's been
17 previously marked as State's Exhibit 4?

18 A Okay.

19 Q Do you recognize this?

20 A Yes. Yes, ma'am.

21 Q Okay. And what is it?

22 A It's the back shot of the home door of Belk.

23 Q Okay.

24 A That exit door.

25 Q And does it fairly and accurately represent the

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 store from inside -- a shot from inside the store into the
2 parking lot as it appeared May 24th, 2014?

3 A It does.

4 Q Okay. And have any changes or alterations been
5 made to this?

6 A No.

7 Q Okay. And can you tell me what you see in this?

8 A Yes, ma'am. The green van that Mr. Johnson parks
9 as he entered the store from the parking lot.

10 Q Okay. And is this the same green van you saw on
11 the 10th and the 17th?

12 A Yes, it's also the one we had towed on the 24th.

13 Q Okay. And so this is a video after this
14 shoplifting incident occurred?

15 A Yes, ma'am.

16 Q Okay.

17 MS. HALL: Your Honor, the State would move to
18 enter State's Exhibit 4 into evidence.

19 THE COURT: Mr. Gibbons?

20 MR. GIBBONS: I have an objection, Your Honor.
21 Well, I do have a couple of questions.

22 THE COURT: Sir?

23 MR. GIBBONS: I mean I've got questions about that
24 particular item.

25 THE COURT: You object.

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 MR. GIBBONS: I'm objecting to it coming in at this
2 time.

3 THE COURT: I will allow State's 4 in evidence and
4 overrule the objection.

5 MS. HALL: Thank you, Your Honor.

6 BY MS. HALL:

7 Q All right, Ms. Singletary --

8 THE COURT: Subject to the objections.

9 MR. GIBBONS: Thank you, Your Honor.

10 (WHEREUPON State's Exhibit No. 4 was entered into
11 evidence.)

12 THE COURT: Go right ahead.

13 BY MS. HALL:

14 Q Ms. Singletary, you also mentioned that the
15 defendant, Mr. Johnson, had concealed items into a
16 camouflaged duffle bag?

17 A Yes, ma'am.

18 MS. HALL: Permission to approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. HALL:

21 Q Ms. Singletary, I'm showing you what has been
22 previously marked for identification purposes as State's
23 Exhibit 2; do you recognize this bag?

24 A Yes, ma'am.

25 Q Okay. And have any -- what is it?

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 A It's the Army duffel bag that Mr. Johnson had over
2 him during the concealment.

3 Q Okay. And have any changes or alterations been
4 made to it since it was used by the defendant on May 24,
5 2014?

6 A No, ma'am.

7 MS. HALL: Your Honor, at this time the State would
8 move to enter State's Exhibit 2 into evidence.

9 THE COURT: Mr. Gibbons?

10 MR. GIBBONS: No objection, Your Honor.

11 THE COURT: State's 2?

12 MS. HALL: Yes.

13 THE COURT: State's 2 is in evidence without
14 objection.

15 (WHEREUPON State's Exhibit No. 2 was entered into
16 evidence.)

17 BY MS. HALL:

18 Q All right. Ms. Singletary, this individual we've
19 been talking about, is he in the courtroom today?

20 A Yes, he is.

21 Q Okay. And could you please identify where he is
22 sitting and describe what he is wearing today.

23 A Mr. Johnson has on a plaid shirt and blue pants on
24 my right.

25 Q Okay.

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 MS. HALL: Your Honor, please let the record
2 reflect the witness has identified the defendant.

3 THE COURT: So reflected.

4 BY MS. HALL:

5 Q Okay. You said that you called North Augusta
6 Department of Public Safety. And who responded from the
7 North Augusta Department --

8 A Officer Terry.

9 Q Okay. And where was the defendant when the officer
10 arrived?

11 A He was at the back exit door heading out the door
12 when the officer pulled to the back curb of Belk.

13 Q So when you asked Mr. Johnson to follow you to the
14 Loss Prevention Office, the Officer was right there with
15 you?

16 A Yeah, as we proceeded back to the office --

17 Q Okay.

18 A -- I was behind Mr Johnson and the officer was
19 behind me.

20 Q Okay. And what happened next in the loss
21 prevention office?

22 A Once we got to the office, I had Maura, which is
23 also loss prevention, former loss prevention to take Mr.
24 Johnson into the human resource office so I can show the
25 video to Officer Terry.

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 Q Okay. Is that your standard policy?

2 A It is. We never show the video with the subject in
3 the same room.

4 Q And once you were in that office, were you able to
5 confirm what you actually saw take place?

6 A Yes, all of it.

7 Q Okay. And do you remember the total value or the
8 shirts concealed in the bag or the number?

9 A It was over \$300.

10 MS. HALL: Your Honor, permission to approach the
11 witness?

12 THE COURT: Yes, ma'am.

13 BY MS. HALL:

14 Q Ms. Singletary, I'm showing you what has been
15 previously marked for identification purposes as State's
16 Exhibit 3. Do you recognize this?

17 A Yes, I do.

18 Q Okay. And what is it?

19 A It is a receipt of the items that was retrieved
20 from Mr. Johnson.

21 Q Okay. And has it been changed or altered in any
22 way since the receipt was made on May 24th, 2014?

23 A No, ma'am.

24 Q Okay.

25 MS. HALL: Your Honor, at this time the State would

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 move to introduce State's Exhibit 3 into evidence?

2 MR. GIBBONS: No objection, Your Honor.

3 THE COURT: State's 3 is in evidence without
4 objection.

5 (WHEREUPON State's Exhibit No. 3 was entered into
6 evidence.)

7 BY MS. HALL:

8 Q Now, you stated that the Defendant took the clothes
9 out of the bag?

10 A Uh-huh (affirmative response).

11 Q How did the clothes get from the bag to this cash
12 register?

13 A The associate, if you see Julian, he's the
14 department manager, I had him to gather while I escorted
15 Mr. Johnson back to the LP Office and I did pick up a
16 couple of pieces walking back.

17 Q Okay. And you said that the total value of the
18 goods was over \$320?

19 A Yeah, over 300, I remember.

20 Q All right. And this receipt shows that the items
21 totaled 190.03?

22 A What that receipt does is show you what you save,
23 but we apprehend a shoplifter, we charge the full price of
24 that item, not the sale price.

25 Q Okay. So the full price of these items was over

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 \$300, but the receipt is less than that based on the sale
2 price?

3 A Yes, ma'am, you take what you saved and the cash
4 amount to get like the sum total.

5 Q Okay. All right.

6 All right, Ms. Singletary, when you initially saw
7 Mr. Johnson, the Defendant in this case, on May 24th, 2014,
8 you said that you saw him on camera in the Loss Prevention
9 Office?

10 A Yes, ma'am.

11 Q Okay. And about how many video cameras are there
12 in the Belk in North Augusta?

13 A We use Two Intellect System. We have some that
14 move, some that's fixed. Probably -- approximately 24 or
15 so.

16 Q Okay. And how are the videos from those cameras
17 stored?

18 A They're stored on the hard drive of the Intellect
19 System and that's where we burn our CD's from.

20 Q Okay. And how long are they saved onto your
21 server?

22 A Approximately 90 days or so. That's if we don't
23 record a lot of other footage. It just re-records over it.

24 Q Okay. And did those video cameras capture the
25 footage of Mr. Johnson shoplifting on May 24th, 2014?

Patsy Singletary Siso - Direct Examination by Ms. Hall

1 A They did.

2 Q Okay. And who had access to those videos?

3 A I did..

4 Q Okay. Did anyone else?

5 A The store manager perhaps, but I'm the one who
6 records the video.

7 Q Okay. And how does the file get from your server
8 onto a CD?

9 A I export it from the Intel System to a CD to the
10 drive -- CD drive.

11 Q Okay. And was a copy of the video surveillance
12 from May 24th of this year provided to the North Augusta
13 Department of Public Safety?

14 A I recorded the incident an hour after. Somehow I
15 didn't get the actual incident on tape. So it got the
16 video after the incident happened.

17 Q Okay. So the CD was provided to the North Augusta
18 Department of Public Safety?

19 A Yes, it was.

20 Q But it was for -- do you know what time period?

21 A It was probably about an hour later and that was
22 just my error. Somehow I recorded a different shot and
23 submitted it.

24 Q Okay. And the surveillance footage from May 24th
25 when this incident occurred, is that available now?

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 A It isn't.

2 Q Okay. Why not?

3 A It's after 90 days.

4 Q All right. And what time did this incident
5 actually occur?

6 A 11:50 or so.

7 Q Okay.

8 MS. HALL: I beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (WHEREUPON there was a pause in the proceedings.)

11 MS. HALL: Ms. Singletary, I have no further
12 questions. Please answer any questions Mr. Gibbons has for
13 you.

14 THE WITNESS: Okay.

15 THE COURT: Thank you, Solicitor.

16 Mr. Gibbons.

17 MR. GIBBONS: May it please the Court.

18 **CROSS-EXAMINATION**

19 BY MR. GIBBONS:

20 Q Good afternoon, Ms. Singletary.

21 A Hello.

22 Q I'm going to take you back to the event that
23 happened on the 24th.

24 A Okay.

25 Q Now, you're watching part of this happen through a

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 video camera?

2 A Uh-huh (affirmative response).

3 Q And then you say part of what you saw, you saw as
4 you were walking through the store toward the exit;
5 correct?

6 A Once I reached the back exit, yes.

7 Q All right. So there was some little gap that you
8 didn't know what was going on while you were walking when
9 you couldn't see from the time you left the office to the
10 time you got to where you could see him?

11 A But the video was still recording.

12 Q All right. But you couldn't see it live; correct?

13 A I was actually able to go back once I got him in
14 the office and witness the entire process once I got back
15 in the LP Office.

16 Q But you couldn't see it live during a little
17 portion of it, correct?

18 A Well, it's live being recorded if that's what
19 you're asking. So I was recording live.

20 Q I understand that. I'm asking you were you
21 watching the -- every second, live, the whole time as it
22 was happening or you had to go back and see some of the
23 tape?

24 A Yeah, I had to go back and see some of the tape.

25 Q Now, you say you saw him concealing some items?

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 A Yes, sir.

2 Q Can you tell me specifically what items you saw him
3 conceal?

4 A Sure. Some red stripe Polo/Chap shirts.

5 Q How many of those were in there?

6 A Approximately about 6 or so.

7 Q All right. What else?

8 A And the others were shirts, but I wasn't able to
9 identify those at the time. Once I got the first consent
10 of concealment, that's when I went to the floor.

11 Q And you didn't see if he put some more in or
12 whoever did put some more in, you didn't see that part?

13 A I'm sorry, one more time?

14 Q So you didn't see the whole thing going on; you had
15 to stop, get out in the store and see if you could --

16 A Once I got concealment, yeah, I went to the floor.

17 Q And this number you came up with on Exhibit 3 --

18 A Uh-huh (affirmative response).

19 Q -- there are more than just the red shirts you're
20 talking about on that list, right?

21 A It could be.

22 Q And how did you come up with the shirts you didn't
23 actually see being put in the bag?

24 A They were in the stack with the other ones.

25 Q The stack?

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

- 1 A Yes, sir, the stack of shirts that he dropped.
- 2 Q And did you actually see him drop those?
- 3 A Yes.
- 4 Q How long after he dropped those was it before you
- 5 came into contact with him?
- 6 A Immediately. I was approaching.
- 7 Q Now, if someone were to pick out a shirt, continue
- 8 shopping, and change their mind and put it down on a shelf;
- 9 would that be shoplifting technically?
- 10 A I wouldn't consider it to be shoplifting.
- 11 Q Because it didn't leave the store or --
- 12 A It didn't exit the store, yeah.
- 13 Q Now, the videos you're talking about, you
- 14 identified a photograph, State's Exhibit No. 4?
- 15 A Uh-huh (affirmative response).
- 16 Q Is that taken off of a video camera?
- 17 A It is. It is a fixed video camera at the doors.
- 18 Q And when was that actually printed?
- 19 A That was after the subject had been arrested. His
- 20 vehicle was left in the parking lot.
- 21 Q So at that time, you could -- you could pull up any
- 22 still off that video and print it?
- 23 A Yeah, I could.
- 24 Q Could you have -- could you have pulled up a still
- 25 of him at the back door with the pile of shirts next to

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 him?

2 A I could have at that time.

3 Q But you couldn't later on when you realized the
4 mistake, correct?

5 A Well I, the mistake that was made, it was an hour
6 later, but it was on the screen. Like when I went back to
7 replay it to get my steps to make sure because before we
8 can make a apprehension we have to have the five steps.

9 Q Right.

10 A So when I went back to get my steps, I observed it
11 at that time on video.

12 Q But you didn't make a still?

13 A No, we usually don't make stills. We usually just
14 burn the video and turn it over to North Augusta Police.

15 Q Do you usually pick the right time?

16 A Sometimes -- sometimes, just depends.

17 Q All right. Now, the steps you're talking about,
18 you have to see them come in the store; correct?

19 A Yes, sir.

20 Q You have to see him make a selection of an item;
21 right?

22 A Yes, sir.

23 Q You have to see him conceal the items?

24 A Yes, sir.

25 Q And pass all points of payment; in other words, go

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 away from anywhere to pay?

2 A Away from all registers, yes.

3 Q And then show him exiting the store?

4 A Yes.

5 Q And you don't have all five of those, your store's
6 policy is you don't make a case?

7 A We don't.

8 Q Now, when you saw, I think you said you saw on the
9 video, on the 24th, did you recognize that person?

10 A Yeah, I recognized him from the 17th and the 10th,
11 same two prior -- two Saturday's prior; same MO, same
12 department, same vehicle.

13 Q And you don't have anybody out on the floor you
14 could have called or paged or walkie-talkied or anything
15 like that to stop him?

16 A On which day?

17 Q On any of the times?

18 A I'm the only one to stop, sir. You have to be LP
19 certified to make the apprehension.

20 Q And are you the only one allowed to run the video
21 equipment too?

22 A I am, besides -- well, excuse me, I'm the only one
23 that usually runs it, but the store manager also have a key
24 to the office.

25 Q We know they're not going to do it though; right?

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 So you went -- you -- you have to get from where
2 you first see somethings going on and get to that person
3 before they leave the store, before they get away?

4 A Yes.

5 Q And your testimony is on the two prior occasions,
6 on the 10th and the 17th, you didn't get there before they
7 got away?

8 A Mr. Johnson is fast. He doesn't play. He comes
9 in, he conceals, he leaves quickly. I wasn't able to catch
10 him the first two times.

11 Q If you know someone's doing something like that in
12 your store, do you keep a special sharp eye for that
13 activity?

14 A No, sir, my job is to look for suspicious activity?
15 That particular morning, I just happened to be in the men's
16 department and I noticed Mr. Johnson again, surprised that
17 he would come a third time.

18 Q All right. But you didn't like put his picture up
19 on the wall and say to your employees let me know if you
20 see this person?

21 A We can't do that. That would be prejudice towards
22 him.

23 Q And you made this copy for the -- for the police
24 department and turned it over to them. You never went back
25 and made sure it recorded the right way, did you?

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 A No, once I record it, I turned it over to them, but
2 I didn't look at the copy I recorded for them.

3 Q And they didn't, when they came and got it, they
4 didn't play it in your presence and make sure it copied?

5 A No, sir, they just witnessed it as it was playing
6 it as it was recording.

7 Q And had that been recorded, there would have been a
8 video of somebody doing every action just described for
9 this jury, right?

10 A Yes.

11 Q And the whole thing would be there on the TV
12 screen, correct?

13 A It would have been on the television screen, but
14 note that we also are certified to catch shoplifters on the
15 floor. So this particular incident would have been
16 recorded. However, had I been standing there, saw him
17 enter, saw him select, saw him conceal --

18 Q Do those five steps?

19 A Do those five steps in front of me because I am
20 certified, I still would have been able to make the
21 apprehension.

22 Q Right. Now when was the first time you learned
23 that the video was not of the right time and there was no
24 way to get it back?

25 A I had left Belk back in August and I received a

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 phone call about the video. I don't know the exact date.
2 Just -- and I instructed them that they would have to go
3 under where I saved it and then today was the first day
4 that I saw that the video wasn't the video that I recorded.

5 Q So no one called you 30 days after this and said,
6 Hey, we got the wrong video?

7 A No.

8 Q And had they done that, theoretically you could
9 have made the video again with the right time if you did it
10 within 90 days?

11 A Well, I couldn't because I was no longer with Belk,
12 but I'm sure.

13 Q Somebody could have?

14 A Perhaps.

15 Q But that was never done, was it?

16 A Apparently.

17 Q To your knowledge was it done?

18 A Apparently -- not to my knowledge.

19 Q What did you actually find in this bag on the 24th?

20 A The bag was empty.

21 Q Empty, there were no air fresheners in it?

22 A Not that I recall.

23 Q No ID, no clothing, no personal belongings?

24 A Mr. Johnson retrieved his ID from his pocket in the
25 LP Office.

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 Q All right. So it's your testimony it was empty?

2 A It was empty. As he showed me, he stated look, I
3 don't have anything in here. So that's how I remember it
4 being empty.

5 Q And how many feet away from him is this pile you're
6 talking about of shirts?

7 A It was right next to him.

8 Q All right. I'm going to walk to you; tell me when
9 to stop?

10 A Okay. I mean if this is the door, it's right here.

11 Q A couple of feet, 2 or 3 feet?

12 A Yeah.

13 Q And is that still in the merchandise part of the
14 store or is that in the exit part of the store?

15 A It's in the exit part of the store.

16 Q And when you stopped him, he didn't run away at
17 that point on the 24th?

18 A No, he cooperated.

19 Q And you got him before he stepped outside the
20 store, correct?

21 A Yes, I got him at the step, proceeding to go
22 through the door. As his back was going through the door,
23 North Augusta was pulling up and that's when he did a
24 u-turn back towards me.

25 Q Had he gotten out that door, would he have had any

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 store items on his person?

2 A Not for sure. Had he gotten out that door, if the
3 bag was totally clear maybe not, but --

4 Q Well, I'm just saying, based on what you found him
5 with at the door, if he'd have made one more step and
6 actually exited the store, would he have had the shirts in
7 his bag?

8 A Well, he did exit. It was considered a exit out
9 the door. So had he beat me to the truck again, he would
10 have gotten away, but this time I caught him before he got
11 to the truck --

12 Q Listen to my question.

13 THE COURT: Let -- let her finish. Let her finish
14 answering.

15 BY MR. GIBBONS:

16 Q Okay.

17 A I mean -- so to answer your question, he did exit
18 so I, you know, he just beat me the other two times.

19 Q Okay. Now, let me ask you one more time, I'll go
20 slow. If he'd gotten outside the door, would he have had
21 any store merchandise in his bag on the 24th?

22 A When he got to the door to exit before he through
23 the merchandise out, he did get to the exit of the door.
24 So what he did, he exit and then he turned back around and
25 back in the store, dumped, and so the second time he

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 wouldn't have had anything. The first time he exited, he
2 would have had merchandise.

3 Q All right. Now, let me see if I understand you
4 correctly. You're saying now that he dumped the stuff, he
5 went out the door and then he came back in?

6 A No.

7 Q You said the second time, so I'm trying to
8 understand.

9 A So when I was approaching Mr. Johnson, he was
10 already at the exit door. His back was turned to me.
11 North Augusta was pulling up. He proceeded to go around
12 the clearance corner and begin to remove the merchandise as
13 I'm witnessing this. As I approach him, that's when he
14 showed me the bag like I have nothing now. That's when I
15 say he exit. But had he dumped the stuff right there
16 before he exit out like he dumped it right there and exit,
17 he still was at the exit; he's still considered to have
18 exited the building.

19 Q Even so he's still inside the doors, he's
20 considered exiting?

21 A Once you touch that door to go out and you pass all
22 points of sales, we can make the apprehension. That's the
23 exit.

24 Q That's your policy?

25 A That's our policy. Once he concealed, that's South

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 Carolina's policy for shoplifting.

2 Q You go by store policy?

3 A Of course.

4 Q Now, on these other two incidents, you didn't make
5 a case, you didn't call law enforcement, you didn't seek to
6 get warrants on the 10th and the 17th. Was that because
7 you didn't have the five criteria you had to have?

8 A That's because I didn't have a shoplifter, sir.
9 Mr. Johnson was very quick.

10 Q He didn't shoplift that day?

11 A Yes, but at that point, he had already gone. So at
12 that point, I had no one to apprehend. I didn't have the
13 five steps on the 17th -- the 10th, and the 17th. I had
14 all except for the entrance.

15 Q All right. So you have to have seen him physically
16 come in the door?

17 A Yes, sir.

18 Q On the video is not good enough?

19 A No, I have to have seen him, witness him enter the
20 store and then get ready to leave, but on that day when he
21 exited, I had no contact with him on the 10th or the 17th
22 at the point of him exiting the store, by the time I got to
23 the back home exit, he had already jumped in the van and
24 sped off.

25 Q And based on store policy, you didn't try to do

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 anything with those cases, correct?

2 A No, sir. Once he's gone, he's gone.

3 Q Now, after the police came, did you tell them about
4 these other incidents?

5 A I don't recall.

6 Q You don't know if you did or not?

7 A I can't remember. Mr. Johnson admitted to Maura
8 about the other incidents. She stated that --

9 MR. GIBBONS: Your Honor, I object. That's
10 hearsay, she stated --

11 THE COURT: That's fine.

12 THE WITNESS: Maura's here. She stated --

13 MR. GIBBONS: She's saying a witness stated
14 something, Your Honor.

15 THE COURT: I thought she said --

16 THE WITNESS: Mr. Johnson stated.

17 MR. GIBBONS: She said -- she said Mr. Johnson
18 stated.

19 THE WITNESS: Mr. Johnson stated.

20 BY MR. GIBBONS:

21 Q To you?

22 A To Maura and I.

23 THE COURT: Maura and I?

24 THE WITNESS: Yes, sir.

25 BY MR. GIBBONS:

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 Q Well, you didn't say I, you said Maura.

2 A Okay. I'll talk for you.

3 Q All right.

4 A He stated, Mr. Johnson --

5 Q If he said it to you that's fine, go ahead.

6 A He did. He stated that he did it the first two
7 times and this time he dumped the stuff and I explained to
8 him that he passed all points of sales; this is why this is
9 a shoplifting. But he admitted to the first two times.

10 Q And did you write that in your statement you made
11 that day?

12 A I'd have to see it, sir.

13 Q All right. Let me show you your statement to
14 refresh your memory.

15 A Okay. No, I didn't indicate it.

16 Q So you didn't tell, in your statement; why do you
17 write a statement like that?

18 A What do you mean.

19 Q Why would you write this down, what's the purpose?

20 A It was the facts of the apprehension for the 24th.

21 Q So you have it memory fresh after it happened?

22 A That's why I had to read the statement. That was
23 back in May.

24 Q Did you write it then so it's still fresh in your
25 mind and you write it down so you can remember it later

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 what happened?

2 A What's the time on that? Where's the time?

3 Q I don't know, it's your statement, you signed it; I
4 didn't.

5 A Okay. Yeah, what happened sometime after the
6 apprehension.

7 THE COURT: May I see the statement?

8 MR. GIBBONS: Yes, sir.

9 THE COURT: I didn't mean to interrupt you.

10 MR. GIBBONS: No problem.

11 BY MR. GIBBONS:

12 Q So isn't the point of making a statement like that
13 so you can later go back and remember what happened and
14 have it fresh in your mind again?

15 A Well I thought I gave pretty good details on it,
16 pretty accurate details on it, but again, the video
17 supported what I needed it to support. I witnessed it and
18 my statement is what I did give to North Augusta.

19 Q But the video, we don't have anymore.

20 A Okay.

21 Q All right.

22 A But my statement indicate that Mr. Johnson entered,
23 selected, concealed, passed all points of sales, and
24 exited.

25 Q I understand that.

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 THE COURT: There is a time on that statement.

2 MR. GIBBONS: Thank you, Judge.

3 THE COURT: I believe it's --

4 THE WITNESS: Yes, sir. 1 p.m.

5 BY MR. GIBBONS:

6 Q Well, you'd written the statement out?

7 A Uh-huh (affirmative response).

8 Q Does anywhere in there mention anything about being
9 in the store before?

10 A No, it's not in my statement.

11 Q It's not in this statement?

12 A But again, Maura and I witnessed Mr. Johnson --

13 Q I understand. I'm just asking easy questions.

14 A Sure.

15 Q Is it in your statement, yes or no?

16 A It isn't.

17 Q And is there anything in the statement even about
18 North Augusta coming up to the door?

19 A Can I see it again?

20 Q Sure.

21 A It indicates that North Augusta arrived when I had
22 the witness in the LP Office.

23 Q In the office?

24 A Uh-huh (affirmative response).

25 Q Not at the door, correct?

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 A Yeah, but they walked with me to the LP Office.

2 Q Does it say that on here?

3 A It doesn't, but I didn't know my statement would
4 have to be detail to detail to detail when I indicated the
5 five steps of the shoplifting.

6 Q Well, ma'am, you were, you were a police officer,
7 correct?

8 A Yes.

9 Q You're trained at taking statements?

10 A But I'm working in the capacity of loss prevention.

11 Q I know but you're trained to take statements as a
12 police officer?

13 A I'm trained to do it Belks' way and that's the list
14 of five steps.

15 Q Well you knew this was going to be used in Court?

16 A I did, I wrote it to the best of my ability on that
17 day, sir.

18 Q Well, shouldn't you write anything that was
19 important down?

20 A That -- those aren't important to you?

21 Q Well, if there's something else important shouldn't
22 you have written it too?

23 A Well, I named, he entered, he selected, he
24 concealed, he passed all points of sale and he exited.

25 Q Your five things, but there's a world outside those

Patsy Singletary Siso - Cross-Examination by Mr. Gibbons

1 five things.

2 A But those are the things that Belk require us to
3 do. So working in loss prevention those are how we
4 indicate our reports. We don't write the reports as I
5 would as a police officer. I write them Belk policy way..

6 Q Well, this is a North Augusta form, right?

7 A Yes.

8 Q Made for a police officer; this isn't for Belk,
9 right?

10 A I was working in loss prevention for Belk. So we
11 also submit a copy to our corporate office.

12 Q What I'm saying is you did not feel it important to
13 write in this statement that he admitted doing it the other
14 times?

15 A Well, since Maura was helping and he was sitting
16 there in front of us.

17 Q I'm just asking you questions --

18 THE COURT: Let her answer the question. The Court
19 can't take two people talking at one time.

20 THE WITNESS: Since Maura, who was also loss
21 prevention, was there, we verbally heard him admit it and
22 at that time no, I did not put it in my statement because
23 Mr. Johnson had verbally admitted it to Maura and I in the
24 LP Office.

25 BY MR. GIBBONS:

Patsy Singletary Siso - Redirect Examination by Ms. Hall

1 Q All right. Now, You say your business makes you
2 keep a copy of this?

3 A Yes, it's at the office at Belk.

4 Q Where's Maura's statement.

5 A I was loss prevention that day. Why would Maura
6 have a statement? I'm not for sure. I don't know why
7 North Augusta didn't ask her for a statement. I can't
8 speak for them.

9 Q Well, you were just saying you didn't write it down
10 because she heard it too. She didn't write it down either
11 then.

12 A I was just testifying to what Mr. Johnson admitted,
13 sir, verbally.

14 MR. GIBBONS: Your Honor, no further questions.

15 THE COURT: Redirect, Solicitor?

16 **REDIRECT EXAMINATION**

17 BY MS. HALL:

18 Q Ms. Singletary, were you asked to include anything
19 in your statement about --

20 THE COURT: Would you speak up a little bit for me,
21 please?

22 MS. HALL: Sorry, I apologize, Your Honor.

23 BY MS. HALL:

24 Q Were you asked to include anything about the
25 previous two Saturdays in your statement to law

Patsy Singletary Siso - Redirect Examination by Ms. Hall

1 enforcement?

2 A No, ma'am.

3 Q And you only provided information as to the police
4 report?

5 A Yes, ma'am.

6 Q And Mr. Gibbons a deal about the meaning of exit.
7 In your five step method, under goal, what does the exit
8 include?

9 A The exit include the exit door where there's no
10 cash registers that's around, which means you pass all
11 points of sales and you're exiting out of the building.

12 Q So had Mr. Johnson passed all cash registers?

13 A Yes, ma'am.

14 Q And he was touching the door?

15 A Yes, ma'am.

16 Q And that is included in the definition of exiting?

17 A Yes, ma'am.

18 Q Okay. And Mr. Gibbons asked you if law enforcement
19 saw the surveillance video?

20 A Yes, ma'am.

21 Q Okay. Now did Officer Terry watch the video as it
22 was being recorded to the CD?

23 A Yes, ma'am, that's how I play it and then I record
24 so -- as I was playing it -- I don't know if it didn't
25 record that time, but he was watching real time of the

Patsy Singletary Siso - Recross-Examination by Mr. Gibbons

1 incident.

2 Q Okay. No further questions. Thank you.

3 THE COURT: Mr. Gibbons, recross?

4 MR. GIBBONS: Just one question.

5 **RECROSS-EXAMINATION**

6 BY MR. GIBBONS:

7 Q You say the officer watched you while you were
8 recording the CD?

9 A Yes, sir, as we -- it plays and it records at the
10 same time. So as I was showing him the video of what took
11 place, it should have been recording, but apparently it
12 didn't.

13 Q On to a CD?

14 A Yes, sir.

15 Q And did you give him that CD at that time?

16 A I did. I took the CD out, put it in the case and
17 gave it to him.

18 Q How long did all that take?

19 A Approximately 15 minutes or so depending on what
20 speed or whatever, but approximately --

21 Q Fifteen minutes after everybody came in loss
22 prevention, you got this CD going?

23 A Yes, Mr. Johnson was in another room with Ms.
24 Carson.

25 Q And as soon as it got recorded, you handed it to

Patsy Singletary Siso - Recross-Examination by Mr. Gibbons

1 the officer and that was the last you saw until here?

2 A Yes, sir.

3 Q And you said that took 15, 20 minutes?

4 A Yes.. That's how long it usually takes.

5 Q Now, what time did you say that CD that actually
6 ended up getting to law enforcement started?

7 A I'm not for sure.

8 Q Well, did you say it about an hour after the event?

9 A Before -- when.

10 Q The time that ended up being on the CD was not the
11 right time, correct?

12 A Yes, it was about an hour or so after, about an
13 hour and fifteen minutes or so after I recorded the long, I
14 recorded the wrong frame and there's frames that you can
15 record and apparently I was -- I recorded the wrong frame?
16 So it was playing live video on one Intellects and I was
17 recording on our second Intellects so I recorded the wrong
18 frame of time.

19 Q All right. Thank you. Nothing further.

20 THE COURT: Thank you. Thank you, Ms. Singletary,
21 you may step down.

22 All right. Solicitor, you may call your next
23 witness.

24 MR. SLOCUM: Thank you, Your Honor. The State
25 would call Rebecca Powell.

Rebecca Powell - Direct Examination by Mr. Slocum

1 THE COURT: All right. If you'd come around,
2 please and be sworn.

3 REBECCA POWELL,
4 having been duly sworn, testified as follows:

5 THE CLERK: Please have a seat in the in the
6 witness box. State your full name, spelling your last.

7 THE WITNESS: My name is Rebecca Powell.
8 P-O-W-E-L-L.

9 **DIRECT EXAMINATION**

10 BY MR. SLOCUM:

11 Q Ms. Powell, good afternoon.

12 A Good afternoon.

13 Q Who do you currently work for?

14 A Belk Department Store.

15 Q And how long have you been with Belk?

16 A Seven years.

17 Q Which Belks location are you currently working at?

18 A North Augusta.

19 Q Did you work at any other Belks prior to that one
20 in North Augusta?

21 A Aiken.

22 Q How long total have you been working for Belks?

23 A The entire time is seven years.

24 Q And what was your job capacity in both Belks, the
25 one in Aiken and the one in North Augusta?

Rebecca Powell - Direct Examination by Mr. Slocum

1 A In Aiken I was loss prevention. When I transferred
2 to North Augusta, I transferred into Human Resources.

3 Q Okay. Were you working at the North Augusta Belks
4 this past May 24th, 2014?

5 A I was not.

6 Q You were not; where were you at that time?

7 A I don't recall May 24th.

8 Q The reason why we're here today, the case today.
9 On May 24th of this year were you working with Belks?

10 A Oh, I was.

11 Q Okay.

12 A I'm sorry.

13 Q What capacity were you working in?

14 A I was -- I wasn't aware of what; okay, I'm sorry.

15 Q And what capacity were you working at Belks on that
16 day?

17 A Human Resources.

18 Q And this was at North Augusta?

19 A It is, yes.

20 Q How did you become involved in all this, tell us
21 about that?

22 A Actually what I was involved in took place on May
23 17th.

24 Q Which was a week, Saturday --

25 A Prior.

Rebecca Powell - Direct Examination by Mr. Slocum

1 Q -- before the incident for which we're here today?

2 A Uh-huh (affirmative response). I -- I had worked
3 that day. I got off a little early, around noon. My
4 husband met me at the store. We were doing a little
5 shopping in the men's department and I noticed some
6 suspicious activity in the men's department. So I texted
7 Patsy and told her what I observed and I left it after
8 that. I just --

9 Q When you say it was suspicious activity, please
10 tell us what you're talking about.

11 A We're trained to look for behaviors, selecting
12 merchandise with disregard for color, for size, for price,
13 just random selections, multiple selections without even
14 paying any, there's total disregard for what you're
15 selecting.

16 Q And is that what you saw --

17 A Uh-huh (affirmative response).

18 Q -- on May 17th?

19 A Yes.

20 Q Did you go through the same training as Ms.
21 Patsy --

22 A I did.

23 Q -- in terms of loss prevention?

24 A I did.

25 Q So is that what -- having had training is that what

Rebecca Powell - Direct Examination by Mr. Slocum

1 kind of put your antennae up with what you saw that day?

2 A Yes, in loss prevention training you're trained to
3 look for behaviors so, yes.

4 Q And did -- do you see the individual in the
5 courtroom today that you saw on May 17th at Belks?

6 A I do.

7 Q Could you please describe what he's wearing?

8 A He's wearing a plaid shirt.

9 Q Would you please point him out for the jury.

10 A (Pointing.)

11 MR. SLOCUM: Your Honor, let the record reflect
12 that Ms. Powell has identified the defendant.

13 THE COURT: So reflected.

14 BY MR. SLOCUM:

15 Q So you notified Ms. Patsy and that was kind of your
16 involvement on the 17th?

17 A Uh-huh (affirmative response).

18 MR. SLOCUM: I beg the Court's indulgence, Judge.

19 That's all the questions I have for you, Ms.

20 Powell. Please answer any Mr. Gibbons may have for you.

21 MR. GIBBONS: I have nothing, Your Honor.

22 THE COURT: Thank you. Thank you very much, Ms.

23 Powell.

24 All right, Solicitor, you may call your next
25 witness.

Maura Carstens - Direct Examination by Mr. Slocum

1 MR. SLOCUM: Thank you, Judge. The State calls Ms.
2 Maura Carstens.

3 THE COURT: All right. If you'd come around and be
4 sworn for us please.

5 MAURA CARSTENS,
6 having been duly sworn, testified as follows:

7 THE CLERK: Please have a seat in the witness box.
8 State your full name for the record, spelling your last.

9 THE WITNESS: Maura Carstens. C-A-R-S-T as in
10 Thomas, E as in Edward, N-S.

11 **DIRECT EXAMINATION**

12 BY MR. SLOCUM:

13 Q Ms. Carstens, good afternoon.

14 A Hello.

15 Q Where do you currently work?

16 A Belk, North Augusta.

17 Q And how long have you been with Belk?

18 A December the 15th will be eight years.

19 Q Eight years. In what capacity do you work at Belk?

20 A Right now I am the lead scheduler.

21 Q And the Belks you're referring to is the one in
22 North Augusta on Knox Avenue?

23 A 1163, yes.

24 Q Okay. Same one where Ms. Powell works?

25 A Yes.

Maura Carstens - Direct Examination by Mr. Slocum

1 Q Where Ms. Patsy --

2 A Yes, sir.

3 Q -- Singletary worked?

4 A Yes, sir.

5 Q Are you trained in loss prevention as well?

6 A Yes, I am.

7 Q All right. Tell us your involvement with this case
8 here today?

9 A Well Patsy, when I took another position within the
10 store, Patsy replaced me, but her and I were like a
11 tag-team together in the store so --

12 Q In loss prevention?

13 A In loss prevention, yes.

14 Q Okay. Well what happened on May 24th?

15 A On May 24th I came out, they called me and said
16 Patsy had a fish. That was our code for shoplifter,
17 especially if she was on the floor, you didn't want to say
18 I think I have someone. So our code word was a fish. So
19 she calls me and says I have a fish so I head out from the
20 back office where I am and I see her and Mr. Johnson and
21 Officer Terry following behind. And -- go ahead.

22 Q I'm sorry, go ahead.

23 A And I'm following them. They're in one aisle and
24 I'm following them back to LP. So we kind of meet
25 together.

Maura Carstens - Direct Examination by Mr. Slocum

1 Q So you come in after all this has kind of gone
2 down?

3 A Yes, I'm basically her Belk representation within
4 the store. Like her second employee within the building.

5 Q Okay. And you followed them back to the Loss
6 Prevention Office?

7 A Yes, sir.

8 Q What role did you have in all that went on that
9 day?

10 A I just kind of sit there and Patsy was getting Mr.
11 Johnson's information and I, you know, asked some basic,
12 you know, questions and then she, Patsy asked Mr. Johnson
13 and I leave the room and step next door to the Human
14 Resource Office so Patsy could show North Augusta Public
15 Safety the video of that day.

16 Q And so Ms. Patsy is the one that directed you out
17 of the video surveillance room, not the officer?

18 A Oh, absolutely it was Patsy.

19 Q Okay. So the officer didn't tell you to
20 question --

21 A No, not at all.

22 Q What happened next after y'all went in that room?

23 A We are sitting across a regular office desk from
24 each other.

25 Q Who is we?

Maura Carstens - Direct Examination by Mr. Slocum

1 A Mr. Johnson and myself. I was sitting at Ms.
2 Powell's desk and he was sitting in a chair in front of me
3 and we're just, you know, talking about making bad
4 decisions and I said, you know, Don't you see the video
5 cameras and stuff when you walk in department stores; you
6 don't think someone might be watching you; Yeah; and I'm
7 like well, why did you do it; You got to do what you got to
8 do sometimes, he said, to make ends meet. I'm like okay.
9 Okay.

10 Q And no law enforcement asked you --

11 A No.

12 Q -- any questions?

13 A Absolutely not.

14 Q All right. About how long were y'all in that
15 office together?

16 A I don't recall, maybe 10 minutes.

17 Q Okay.

18 A And we talked about his truck and I asked him why
19 he backed in all the time and he said where he could just
20 pull out and go. And typically our policy is to
21 immediately have the vehicle towed. I was feeling
22 compassionate because I wasn't sure if he shared that car
23 with somebody so we didn't immediately have it impounded.
24 We let it stay in case he needed to have somebody come over
25 and pick it up.

Maura Carstens - Cross-Examination by Mr. Gibbons

1 Q Did somebody ever come and pick it up?

2 A It was a couple of days before that van left our
3 parking lot.

4 Q Now were you working the two Saturdays prior?

5 A I worked on the 10th. I had off on the 17th.

6 Q Did you see anything on the 10th, the van or
7 anything, that -- in relation to the day of the 10th and
8 Mr. Johnson's involvement?

9 A Other than, you know, Patsy and I chatted that she
10 had what we call a grab and run or --

11 Q You didn't see anything?

12 A I didn't see anything.

13 Q Okay.

14 MR. SLOCUM: I beg the Court's indulgence, Judge.

15 THE COURT: Yes, sir.

16 MR. SLOCUM: Ms. Carstens, that's all the questions
17 I have for you. Please answer any Mr. Gibbons may have.

18 THE WITNESS: Okay.

19 MR. GIBBONS: Thank you, Solicitor.

20 Mr. Gibbons?

21 CROSS-EXAMINATION

22 BY MR. GIBBONS:

23 Q Ms. Carstens, I just want to ask you a few short,
24 quick questions.

25 A Okay.

Maura Carstens - Cross-Examination by Mr. Gibbons

1 Q When you were with Mr. Johnson on the 24th --

2 A Yes, sir.

3 Q -- you and he were alone in this room?

4 A There was a Public Safety Officer standing in the
5 hallway, but not in the room, just -- and the door was
6 open, just to -- I guess to make sure that I was okay
7 inside that office.

8 Q Right. And who escorted him to loss prevention?

9 A To the Loss Prevention Office?

10 Q Yes, ma'am.

11 A He was in front and Patsy was behind; that's
12 protocol.

13 Q And where were the police officers?

14 A Behind.

15 Q And when these remarks were made between the two of
16 you was the police officer in hearing range?

17 A I don't recall. I could see motion in the hallway,
18 but I do not even remember which officer was out there.

19 Q But y'all were the only ones in the room?

20 A Yes, sir.

21 THE COURT: Y'all meaning who, Mr. Gibbons?

22 BY MR. GIBBONS:

23 Q The Defendant and yourself.

24 A Yes.

25 MR. GIBBONS: Thank you, Your Honor.

Maura Carstens - Cross-Examination by Mr. Gibbons

1 BY MR. GIBBONS:

2 Q And did you know Mr. Johnson personally at all; had
3 you ever -- did you recognize him from having seen him
4 before at all?

5 A No.

6 Q That's the first time you'd ever met him?

7 A Yes.

8 Q No further questions. Thank you.

9 A Okay.

10 THE COURT: Redirect, Solicitor?

11 MR. SLOCUM: Nothing more from the State.

12 THE COURT: Thank you. Thank you very much, Ms.
13 Carstens.

14 THE WITNESS: Thank you.

15 THE COURT: All right, Solicitor, you may call your
16 next witness.

17 MR. SLOCUM: Thank you, Judge. The State calls
18 Officer Terry with the North Augusta Department of Public
19 Safety.

20 THE COURT: All right. Come around and be sworn
21 please.

22 LONDON TERRY,
23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your full name for the Court and spell your last?

Landon Terry - Direct Examination by Mr. Slocum

1 THE WITNESS: Landon Terry, T-E-R-R-Y.

2 **DIRECT EXAMINATION**

3 BY MR. SLOCUM:

4 Q Officer Terry, good afternoon, sir.

5 A How are you?

6 Q Well, thank you.

7 Where are you currently employed?

8 A North Augusta Department of Public Safety.

9 Q In what capacity? What is your job title over
10 there?

11 A Public Safety Officer.

12 Q All right. And how long have you been with North
13 Augusta?

14 A Seven years.

15 Q Were you with another group prior to North Augusta
16 or is that your entire tenure with law enforcement?

17 A No, sir. Ten years with Richmond County and
18 another seven years with Augusta College Police.

19 Q And so that's 24 years of service?

20 A Yes, sir.

21 Q What kind of training and experience have you had
22 in 24 years of service?

23 A I couldn't begin to tell you; Police Academy
24 Training, Advanced Training, Instructor Training, working
25 several divisions throughout different agencies.

Landon Terry - Direct Examination by Mr. Slocum

1 Q Did that training include how to observe or
2 determine the facts in certain crimes?

3 A Yes, sir.

4 Q That's why you're a police officer, right?

5 A Yes, sir.

6 Q Were you working with North Augusta on May 24th,
7 2014?

8 A Yes, sir.

9 Q How did you become involved in this case?

10 A I was notified by our dispatcher that Belks had a
11 shoplifter in custody.

12 Q Is that the Belks on Knox Avenue?

13 A Belks on Knox Avenue in North Augusta, yes, sir.

14 Q Okay. That's here in Aiken County, right?

15 A Yes, sir.

16 Q Who did you meet with; who made contact with you?

17 A Upon my arrival, I met with Ms. Singletary when was
18 in the process -- who was in the process of escorting the
19 defendant identified as Mr. Johnson, back to the Loss
20 Prevention Office.

21 Q And is that Mr. Johnson sitting over there at the
22 table?

23 A Yes, sir.

24 Q Could you describe what he's got on?

25 A Plaid shirt and it looks like a white t-shirt under

Landon Terry - Direct Examination by Mr.Slocum

1 it.

2 Q Thank you.

3 MR. SLOCUM: Your Honor, let the record reflect
4 Officer Terry has identified the defendant.

5 THE COURT: So reflected.

6 BY MR. SLOCUM:

7 Q When you arrived at Belk, what did you do next?

8 A I went to the Loss Prevention Office with Ms.
9 Singletary and Mr. Johnson. At that time, Mr. Johnson was
10 escorted out of the office with another Belks employees so
11 I could observe or review the video tape recording of the
12 incident.

13 Q Did you direct that Mr. Johnson leave the room?

14 A No, sir.

15 Q Who did?

16 A Ms. Singletary.

17 Q Okay. Who was left in the room with you?

18 A Left in the room with me?

19 Q With you, yes, sir.

20 A Just Ms. Singletary.

21 Q And what were y'all doing?

22 A Reviewing the video tape of the incident.

23 Q So you actually got to view the video tape?

24 A Yes, sir.

25 Q In that office?

Landon Terry - Direct Examination by Mr.Slocum

1 A Yes, sir.

2 Q All right. After viewing that video tape, what did
3 you do?

4 A We reviewed the video tape. Ms. Singletary was
5 making a copy of it for me. After we reviewed it, I took
6 Mr. Johnson into custody and transported to our
7 headquarters where he was booked and processed.

8 Q Okay. That CD that you were given, did you have a
9 chance to look at it --

10 A I did not.

11 Q -- that day?

12 A I didn't look at the actual CD itself that was
13 given to me.

14 Q Have you looked at it since May 24th?

15 A I have.

16 Q Okay. And did it depict the shoplifting that you
17 saw in the office that day?

18 A No, sir, it was random store coverage. I couldn't
19 tell what kind it was, but it was not the incident.

20 Q It wasn't what you saw on the video --

21 A No, sir.

22 Q -- initially?

23 A It wasn't what I reviewed in the office.

24 Q Did you go back and look in the evidence in North
25 Augusta to see if you could find another one?

Landon Terry - Direct Examination by Mr.Slocum

1 A I double-checked in the evidence vestibule, yes,
2 sir.

3 Q And did you have any luck looking for it there?

4 A No, sir, there was another copy of the exact same
5 thing.

6 Q Okay. Do you -- when you get videos, do you -- is
7 it your policy to automatically review them or is it
8 something you do on a case-by-case basis; how does that
9 work?

10 A Case by case, we normally just take the video tape
11 provided by whatever department store, whatever business
12 gives it to us, and we drop it into evidence. Normally we
13 don't review it until we know there's an actual case coming
14 up because a lot of times, we don't ever review them
15 because it doesn't make it that far.

16 Q All right.

17 A As far as to court or anything.

18 Q So it's not something that's mandatory?

19 A No, sir.

20 Q All right. You heard a lot about this five-step
21 policy Belks has. Does North Augusta have to follow the
22 policy of the businesses before they make a charge?

23 A No, sir, we don't have a five step policy. You
24 committed the crime or you didn't.

25 Q So you follow the law?

Landon Terry - Cross-Examination by Mr. Gibbons

1 A Yes, sir.

2 MR. SLOCUM: I beg the Court's indulgence, Judge?
3 Officer Terry, that's all I have for you. Please
4 answer any questions Mr. Gibbons has.

5 THE WITNESS: Yes, sir.

6 MR. GIBBONS: May it please the Court?

7 THE COURT: Yes, sir.

8 **CROSS-EXAMINATION**

9 BY MR. GIBBONS:

10 Q How you doing today, Mr. Terry?

11 A Good, how are you, sir.

12 Q I'm doing well.

13 What was going on when you got to the Belks Store
14 on the 24th of May?

15 A On my arrival, Mr. Johnson was being escorted by
16 Ms. Singletary back to the Loss Prevention Office and I
17 helped escort him back to the office.

18 Q Did you ever see him get outside the store?

19 A I did not. He was still inside of the store upon
20 our arrival.

21 Q So you never saw him set foot on the pavement
22 outside the door?

23 A No, sir.

24 Q And you took this stuff into evidence, correct?

25 A Yes, sir.

Landon Terry - Cross-Examination by Mr. Gibbons

1 Q Do you have to inventory something like that when
2 you take it into evidence?

3 A We normally check it and make sure there's no
4 contraband or anything like that in it, no personal
5 contents or anything. We don't take it from them because
6 we know it's going to be dropped into the jail for his
7 personal property.

8 Q So if there was something in there, it would be
9 taken out and taken to the jail?

10 A If it was contraband or anything like that, we
11 would secure that and made an appropriate charge if there
12 was anything illegal in it, but personal property, we sent
13 to the jail with him.

14 Q So if it was full of personal property, you
15 wouldn't have it anymore, correct?

16 A No.

17 Q Do you have any recollection or do you have any
18 notes indicating there was anything in the bag?

19 A No, sir, I don't. Well, hold on, let me
20 double-check and make sure. No, sir, I have no notes of
21 anything out of the ordinary.

22 Q Now, you took the statements from the store
23 employees in this case, correct?

24 A Yes, sir.

25 Q And you just took the statement of Ms. Singletary?

Landon Terry - Cross-Examination by Mr. Gibbons

1 A Yes, sir, Mr. Singletary, she was the one -- she's
2 the prosecuting person from Belk.

3 Q Now, do you recall her mentioning any other
4 shoplifting incidents?

5 A No, sir.

6 Q How did she mention that she had someone entering,
7 film of them taking something and they driving off in a
8 specific car; could you have made a charge on something
9 like that potentially?

10 A It might be -- possibly -- potentially. That just
11 depends on what the store policy is and what the store
12 wanted to do.

13 Q But as far as, you don't have to follow store
14 policy though, right?

15 A No.

16 Q But if you thought you had enough, you'd make a
17 charge regardless?

18 A We could have made a charge.

19 Q But to your knowledge, you were never told about
20 those?

21 A No, sir.

22 Q And the video -- how long after -- you got to the
23 store, you followed Mr. Johnson and the store employees
24 back to the Loss Prevention room. You watched the video as
25 she was recording it. She pulled it out and gave it to

Landon Terry - Cross-Examination by Mr. Gibbons

1 you; is that pretty much how it happened?

2 A Pretty much.

3 Q And how long do you think that time would have
4 elapsed for all that to happen?

5 A I'd say no more than 15, 20 minutes.

6 Q And after you got the CD, you went and left,
7 correct?

8 A Yes, sir.

9 Q Now when Mr. Johnson was at the Loss Prevention
10 Office, whose custody was he in at that time?

11 A He was with another employee from Belk in a
12 different office. They don't allow them to stay in the
13 room to review the video tape of the actual incident.

14 Q Was he under arrest at that time?

15 A At that point, he was just being detained.

16 Q And who was detaining him, you or the store?

17 A The store was detaining him, I was reviewing the
18 video tape, there was another officer present, but he was
19 more for -- to make sure there was no further incidents.

20 Q Did he ever take any statements from anybody?

21 A No, sir.

22 Q As far as the investigation goes, that was yours?

23 A That was mine. Yes, sir.

24 Q And when did you first learn that the video had not
25 captured correctly?

Landon Terry - Cross-Examination by Mr. Gibbons

1 A Unfortunately probably about a month ago.

2 Q And at that point, did you check and see if they
3 could still pull footage off this system?

4 A We did. We checked and they said normally after 90
5 days it will erase over. I double-checked in our evidence
6 room to see if maybe there was another copy there, but it
7 was the same copy of the one Ms. Singletary had given me.

8 Q At what point was Mr. Johnson told he was under
9 arrest and taken into your, your custody?

10 A After reviewing the video tape and determined there
11 was enough evidence. At that point, he was taken into
12 custody, Mirandized and transported to our facility.

13 Q And after that time, was he ever alone outside
14 police presence with another person, store personnel?

15 A Once he was under arrest, he was in our custody.

16 Q So y'all didn't leave his side after that?

17 A No, sir.

18 Q And did you take pictures of or take into evidence
19 any of the items from the store?

20 A Whatever pictures were taken I believe were taken
21 by Ms. Singletary and they were, they have copies of it and
22 we dropped it into our evidence also.

23 Q But you didn't log in the shirts?

24 A Oh, no, sir. Belks kept that. In my notes I have
25 it that -- if you'll give me a second -- all clothing items

Landon Terry - Cross-Examination by Mr. Gibbons

1 were recovered by complainant Singletary.

2 Q Did you see where the shirts were found?

3 A I didn't see the exact spot. I just observed it on
4 video. It appeared to be a shelf area right near the exit
5 of -- the main exit of the store.

6 Q And was also merchandise in that area?

7 A Other merchandise, whatever normal merchandise was
8 in that area.

9 Q So there was a pile of shirts on the same shelves
10 as merchandise for sale on the floor?

11 A Yes, sir.

12 Q And that's all you could tell; you couldn't tell
13 what belonged there and what couldn't?

14 A I mean it was just various merchandise.

15 Q And did you see those items actually put on the
16 shelves on the tape that you watched?

17 A What I observed on the tape was -- if you'll give
18 me just a second.

19 Q Sure.

20 A I watched the in-store video surveillance footage,
21 observed subject Johnson to kneel down on the floor, take
22 clothing items from the shelves and conceal them inside of
23 a camouflage bag, head towards the front of the store where
24 he was stopped by complainant Singletary after he had
25 removed the clothing items and attempted to leave the

1 store.

2 Q So you saw the items being removed?

3 A Yes, sir.

4 MR. GIBBONS: Nothing further, Your Honor.

5 THE COURT: Redirect?

6 MR. SLOCUM: Nothing from the State, Judge.

7 THE COURT: Thank you.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: All right. Perhaps now, Mr. Foreman,
10 ladies and gentlemen, would be a good time to take our
11 afternoon recess. So please remember during this recess,
12 do not discuss this case with your fellow jurors. We'll
13 take about a 15 minutes recess. Leave your notes upside
14 down in your chair. Thank you. Thank you very much and --

15 (WHEREUPON the jury left the courtroom at 3:19 p.m.)

16 THE COURT: All right. Court will be in recess for
17 about 15 minutes. Thank you.

18 (WHEREUPON a brief recess was observed.)

19 THE COURT: Yes, sir?

20 MR. SLOCUM: We were thinking in terms of going
21 forward from here. The State is planning to rest and Mr.
22 Gibbons suggested that we go over --

23 MR. GIBBONS: My client testifying while we're
24 broke --

25 MR. SLOCUM: Right.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You may return to your seat.

3 All right. I think we can finish the testimony
4 day. Bring us our jury please. Bring us our jury please.

5 (WHEREUPON the jury entered the courtroom at 3:51
6 p.m.)

7 THE COURT: All right. Solicitor, you may call
8 your next witness.

9 MR. SLOCUM: Thank you, Your Honor. At this time,
10 the State rests.

11 THE COURT: Thank you. Thank you very much.

12 Motions noted for the record, Mr. Gibbons?

13 MR. GIBBONS: Thank you, Your Honor, we move at
14 this time.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury panel, the State has now rested. You've heard all the
17 evidence, all the testimony you're going to hear from the
18 State in this case in its case in chief. The defendant now
19 may present evidence and testimony if the defendant chooses
20 to do so. As you've heard me say before, a criminal
21 defendant in South Carolina, regardless of the seriousness
22 of the charge, is never required to prove himself or
23 herself innocent. He is always presumed to be innocent and
24 the State carries the burden of proving its case beyond a
25 reasonable doubt.

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 However, if a defendant chooses to present evidence
2 and testimony, he may certainly do so. So we will now turn
3 our attention to Mr. Gibbons.

4 Does the defendant intend to present any evidence
5 or testimony, Mr. Gibbons?

6 MR. GIBBONS: Yes, Your Honor.

7 THE COURT: All right. You may call your first
8 witness.

9 MR. GIBBONS: Marvin Johnson.

10 THE COURT: All right. You can come around for us,
11 Mr. Johnson, and be sworn.

12 MARVIN BROCK JOHNSON,
13 having been duly sworn, testified as follows:

14 THE CLERK: Please take a seat in the witness box.
15 State your full name for the Court and spell your last?

16 A My name is Marvin Brock Johnson. Johnson,
17 J-O-H-N-S-O-N.

18 **DIRECT EXAMINATION**

19 BY MR. GIBBONS:

20 Q Mr. Johnson, how old are you?

21 A 55.

22 Q And where are you from?

23 A I was born and raised in Miami, Florida. I'm from
24 Florida, but I'm living in Augusta as of now.

25 Q And how long have you been living in this area, the

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 Aiken area?

2 A I've been here since 1999.

3 Q And what kind of work do you usually do?

4 A I worked at MCG for six years stripping, waxing,
5 and maintenance floors.

6 Q Have you done any other kind of work?

7 A I did landscaping and that's it.

8 Q And do you have family in this area?

9 A I have a daughter and two grand kids and a ex-wife.

10 Q Mr. Johnson, I'm going to ask you about the event
11 that happened May the 24th of this year?

12 A Yes, sir.

13 Q Do you remember that day?

14 A Yes, sir.

15 Q I would like you to start, you were at the Belks
16 store that day, correct?

17 A Yes, sir.

18 Q I would like you to start at the beginning when you
19 came up to the Belks store and tell the jury what happened
20 that day.

21 A Well, that particular day, I pulled up in the
22 parking lot and like she said, I did back up. I -- I
23 backed my car up in the parking lot. I went into Belks. I
24 had a tote bag. My tote bag I had is right there. I had
25 just got it from my friend girl's sister, she had gave me a

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 tote bag and in that tote bag was possessed of -- excuse my
2 language -- a pair of thongs underwear, a checkbook and a
3 rack of air fresheners. I had it on the inside of the bag
4 and I went into the store. I went into the men's wear.
5 When you come into the store, as soon as you get into
6 Belks -- as you soon as you get into the door, you look to
7 your right there's appliance department and you turn to
8 your right and you go at the men's department; it's right
9 there. They're both connected. I walked through there and
10 I looked at a few shirts. I picked them up and I decide
11 well, and I put them back down. I was, when I put them
12 back down, I went to go out the store and on my way going
13 out the store, she was standing at the front door.

14 Q When you say she, who are you talking about?

15 A Ms. Singletary. She was standing at the front
16 door. She say stop. She say give me my product out of
17 your bag. I said what product, ma'am? She said my product
18 out of your bag. I opened my bag. I presented to her a
19 rack of air fresheners. Now, if that's my bag, which was
20 in the property room at Aiken County Jail, there should
21 have been a checkbook in there, a rack of air freshener and
22 I asked her, I said what you want; you want to buy one?
23 She said no, sir, she say stop; follow me.

24 At that time, no police was involved. She said
25 follow me, I need you to sign a piece of paper saying you

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 will not come back into this store no more for the next
2 five years. I said okay. I didn't want no problem. I
3 didn't want no police problem because yes, I do have a
4 record. I didn't want no problem with the police.

5 So we went to her office and when we got in Ms.
6 Singletary's office -- when we got in the office, I signed
7 the paper. All of a sudden, the police came. Then she
8 asked me to step to the next room with another police
9 officer; that's why I don't understand why the other police
10 officer is not here today, but another police officer and I
11 don't know if it was that lady, but I know it was a lady,
12 okay?

13 We sat in there and we waited and we waited about
14 15, 20 minutes at the most and then they came back, they
15 arrested me for shoplifting. Why -- before the police got
16 there, while I was in the office with Ms. Singletary, Ms.
17 Singletary kept asking me what I have been doing with her
18 property, give her her property; give her her property and
19 I'm steady telling her, ma'am, I don't know what you're
20 talking about; what property are you talking about? I
21 don't know what you're talking about.

22 She went on and on and on. When she took me to the
23 side, she said I got you for two other Saturdays that
24 you've been here and getting stuff. I said, ma'am, you
25 ain't got me for nothing. She said it's on camera. I

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 asked her to let me see what she talking about because it
2 ain't me.

3 Never seen the camera. I never seen the video yet
4 of what Ms. Singletary had told me about or anything like
5 that. Now today, you know, she got on the stand. She said
6 totally different of what I'm saying, but what she said did
7 not happen that way and that's what happened that day.
8 They took me and I got arrested. When I got arrested, they
9 took me to Aiken County Jail with my duffle bag with my
10 property in it.

11 Now my duffle bag are here and I was trying to
12 figure out if they -- if they got my duffle bag for
13 evidence, why did they give me my duffle bag to take with
14 me. If I had their stuff in my duffle bag, why did they
15 have to come to Aiken County Jail to get my duffle bag.

16 Q Now, Mr. Johnson, did you pick up some shirts in
17 the store that day?

18 A Yes, I picked up some shirts.

19 Q And did you attempt to leave the store still with
20 them?

21 A No, sir.

22 Q What did you do with them?

23 A I put the shirts down. I left them right in
24 another department which was called Slugger where they keep
25 their shirts called the name of Slugger. I put the shirts

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 down. Now, let me explain this, sir. I did have the
2 intentions of doing something I had no intention -- well
3 walking out the store with these things, but after I had
4 got the shirts and I thought about it, I said no, I'm not
5 going to do it and I left them there.

6 Q So when you up to that door, what was your intent?

7 A When I went going out?

8 Q Yes, sir.

9 A I never made it to the door. That's what I don't
10 understand why she said I did. I never made it. She was
11 standing at the door and I was coming towards the door.
12 She said stop, give me my property out of your bag. I told
13 her I didn't have her stuff in my bag. Then I end up
14 getting loud. I end up getting loud. Ma'am, I don't have
15 your stuff in my bag and I opened the bag and I asked her,
16 I said what you want to buy, some air fresheners. If you
17 call over to the Aiken County Detention Center right now,
18 they'll tell you what was in that bag.

19 Q All right. What happened to the shirts you were
20 looking for -- looking at while you were in the store?

21 A I left them right there in another department, but
22 it's still the men's department.

23 Q All right. At the time you were leaving the store,
24 what was your intent you had about those shirts?

25 A Well, when I got the shirts, I had intentions of

Marvin Brock Johnson - Direct Examination by Mr. Gibbons

1 trying to get the shirts. Then I changed my mind. I
2 changed my mind, I said no, I'm not going to do it, so I
3 left them there. I had no intentions of -- of just trying
4 to -- you know, she was just still by herself, you know if
5 I was trying to do something wrong, she couldn't stop me.
6 I don't think so anyhow.

7 Q All right, Mr. Johnson. On that day when you were
8 leaving that door, was it your intent to take some
9 merchandise out of that door?

10 A Well, I went in that was my intention, but I did
11 not do it. I didn't have it in my bag. I left it where --
12 in the department.

13 Q Now, you've had, you said yourself, you've got some
14 run-ins in the past with the law?

15 A Yeah, I had -- I have -- I have ran into the law
16 many times before.

17 Q And you've had some shoplifting convictions in the
18 past, correct?

19 A Yes, sir.

20 Q What's different about those than this case?

21 A Well at this time I was on drugs. I was on drugs.
22 Last time I came in this courtroom in front of Judge Early,
23 2008, I was on drugs. Since June 2000, since June 8th,
24 2008, I've been clean and sober, but I've been going
25 through a little stuff, I just got a divorce a few years

Marvin Brock Johnson - Cross-Examination by Mr. Slocum

1 ago, a couple years ago; and I had -- yes, I did have
2 intentions, but I did not do it.

3 Q You stopped before you completed the act?

4 A Yes, sir.

5 Q Thank you. Answer any questions the State has for
6 you.

7 THE COURT: Thank you, Mr. Gibbons.
8 Solicitor.

9 MR. SLOCUM: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. SLOCUM:

12 Q Mr. Johnson?

13 A Yes, sir.

14 Q What do you mean by, I had intentions of trying to
15 get the shirts?

16 A When I went into the store, my plan was I'm going
17 to try to get me a couple of shirts and make me a couple of
18 dollars so I can get me some gas, a little food or
19 whatever.

20 Q You were going to steal them?

21 A Yes, sir.

22 Q Okay. But you didn't have the chance to because
23 you got caught before you got out?

24 A No, sir. No, sir.

25 Q Tell me what happened.

Marvin Brock Johnson - Cross-Examination by Mr. Slocum

1 A What happened was that I had a change of mind, a
2 change of heart, and I left the shirts there.

3 Q What about the past two, I'm sorry, were you
4 finished?

5 A I'm finished.

6 Q What about the past two Saturdays?

7 A It wasn't me.

8 Q It wasn't you?

9 A No, sir.

10 Q So --

11 A I don't know anybody - excuse me. I'm sorry about
12 that. I don't even much know what they talking about.

13 This is what I don't -- because I was in with Ms.

14 Singletary telling me you know, you been doing this here

15 for the last three or two Saturdays; this is the 3rd

16 Saturday. You always come back at the same time and
17 everything.

18 Sir, I leave my house one way. I don't go back
19 home the same way I leave. So I know it couldn't have been
20 me.

21 Q So the person on that video two Saturdays prior
22 looks so much like you that it raised a flag on two people
23 sitting here to watch you and then to actually catch you
24 before you get out the door; that wasn't you though?

25 A Okay. Sir, do you have that video?

Marvin Brock Johnson - Cross-Examination by Mr. Slocum

1 THE COURT: You can't ask --

2 MR. SLOCUM: You can't ask me a question, but.

3 THE WITNESS: Okay. I'm sorry.

4 THE COURT: Wait just a minute. He asks the
5 question.

6 THE WITNESS: Yes, sir.

7 THE COURT: You give the answers.

8 THE WITNESS: Yes, sir.

9 THE COURT: One person speaks at a time.

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Thank you.

12 THE WITNESS: Now, what did you say, sir?

13 THE COURT: Thank you, Solicitor.

14 THE WITNESS: Thank you.

15 BY MR. SLOCUM:

16 Q You're saying that the person on that video wasn't
17 you, but it looked so much like you that it raised their
18 antennae?

19 A Yes, sir.

20 Q And then the guy in that video had a bag?

21 A I don't know. I don't know.

22 Q You were in here for that testimony, weren't you?

23 A Right, that's what they say.

24 Q They said you had a bag. They said he put some
25 shirts over his arm?

Marvin Brock Johnson - Cross-Examination by Mr. Slocum

1 A Yes, sir.

2 Q Put them in that bag and left the store?

3 A Yes, sir, that what they say.

4 Q So the very next Saturday, the very same time, the
5 very same vehicle that you got caught on the 24th, but it
6 wasn't you the two Saturdays before that?

7 A Yes, sir, that's correct.

8 Q Mr. Johnson, do you have -- do you go by any other
9 names?

10 A I have got a few alias.

11 Q Okay.

12 MR. GIBBONS: I object; relevance.

13 THE COURT: What is the relevance.

14 MR. SLOCUM: Your Honor, it goes to the credibility
15 of the witness.

16 MR. GIBBONS: Your Honor, that falls under that
17 rule.

18 MR. SLOCUM: Okay.

19 MR. GIBBONS: Can we sidebar?

20 THE COURT: Sure.

21 (WHEREUPON there was a bench conference out of the
22 hearing of the jury and the court reporter.)

23 BY MR. SLOCUM:

24 Q Mr. Johnson?

25 A Yes, sir.

Marvin Brock Johnson - Cross-Examination by Mr. Slocum

1 Q You said you've had some run-ins with the law
2 before?

3 A Yes, sir.

4 Q Were you convicted of shoplifting back in 2006?

5 A Yes, I have got probation for it.

6 Q And again in 2008?

7 A Yes.

8 Q And back in Georgia you had another shoplifting in
9 2006, right?

10 A Yes, sir, in 2006.

11 Q And another one 2007 in Georgia; is that also
12 correct?

13 A Yes, sir.

14 Q And also another one in Georgia in 2007; is that
15 also correct?

16 A I believe so.

17 Q And a final shoplifting in 2008 also in Georgia; is
18 that correct?

19 A Yes, sir. Excuse me, 2008 was here.

20 Q My mistake. You're right.

21 MR. SLOCUM: I beg the Court's indulgence, Judge.

22 Mr. Johnson, that's all the questions I have for
23 you.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Redirect, Mr. Gibbons.

Marvin Brock Johnson - Cross-Examination by Mr. Slocum

1 MR. GIBBONS: No, Your Honor.

2 THE COURT: Thank you. Thank you very much, Mr.
3 Johnson.

4 THE WITNESS: Yes, sir. I'm sorry about --

5 THE COURT: Sir?

6 THE WITNESS: I was saying about me talking.

7 THE COURT: No, you don't owe me an apology. Thank
8 you very much.

9 All right. Mr. Gibbons, you may call your next
10 witness.

11 MR. GIBBONS: Your Honor, the defense rests.

12 THE COURT: You renew your motions, Mr. Gibbons?

13 MR. GIBBONS: I would, Your Honor, same grounds.

14 THE COURT: I renew my previous rulings. Taking
15 into account the additional testimony, I would renew my
16 previous rulings.

17 MR. GIBBONS: Thank you, Your Honor.

18 THE COURT: Does the State have any evidence or
19 testimony in reply?

20 MR. SLOCUM: We do not, Judge.

21 THE COURT: Thank you. Thank you very much.

22 How long y'all need to argue? I ask you that in
23 front of the jury so that they can hold you to it.

24 MR. SLOCUM: I think we can be done by 5:00, Judge.

25 THE COURT: With your arguments?

1 situation or something like that or someone has to go out I
2 leave it up to the sheriffs and the bailiffs to deal with
3 that.

4 Again, ladies and gentlemen, the closing arguments
5 are not evidence. However, they are true arguments.
6 They're different from the opening statements. They may
7 comment on the facts, the emphasis to be drawn from the
8 facts and how that applies to the law that I will instruct
9 you on after the closing arguments.

10 I would ask you to give the parties your complete
11 and undivided attention as you have done throughout the
12 trial of this case.

13 Mr. Gibbons.

14 **CLOSING ARGUMENTS**

15 MR. GIBBONS: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. GIBBONS: Mr. Slocum, ladies and gentlemen of
18 the jury, you're almost done. You made it through this
19 long day. Before you get this case and listen to the
20 judge's instruction on the law, I have one more chance to
21 talk to you and I want to thank you for your service.
22 Thank you for be willing to come in here. I've watched.
23 You've paid attention, you've listened; and we can't ask
24 for any more than that. Mr. Johnson can't ask for more
25 than that.

1 We're here today about a liberty, as I said before,
2 and it's just as big a deal for a shoplifting charge as it
3 is for a murder charge. The State has to meet its burden
4 all the way up; no lesser standard, no lesser threshold for
5 as case that's -- a shoplifting case, but the State has to
6 prove every element beyond a reasonable doubt. What does
7 that mean?

8 A reasonable doubt, a doubt that makes you
9 hesitate. If it's reasonable; it's a reasonable doubt. A
10 doubt that makes you second guess yourself is a reasonable
11 doubt. There are very few things we can prove beyond a
12 shadow of a doubt. I can't prove what my name is without
13 somebody having told it to me. There are a few things in
14 this life you can prove without a doubt and one of the
15 hardest things to prove is that something didn't happen a
16 certain way.

17 But Mr. Johnson is here before you today. You've
18 heard the testimony against him and you've heard his side
19 of the story. You have the evidence from that chair to
20 take back with you and make your decision.

21 Before you do, I'd like to just make sure I go over
22 some of the evidence because as in a lot of cases, it's
23 what we call a swearing contests; one word -- one sides
24 word against the other sides word. And the judge will tell
25 you, you don't add up the number of witnesses; oh, this

1 side had five; this side had two, so we give more credit
2 for number five. That's not how it works. You examine
3 each witness. You get to examine what they said, how they
4 said it, how they looked when they were saying it, what --
5 what opportunity they had to tell you about what they're
6 talking about and any reason they might have to tell you
7 something different; any motive they might have to change
8 the story or -- or to tell you something that's not quite
9 right. Even whether they can realistically remember the
10 details. You get to take all those into consideration.
11 It's like Mr. Slocum said, common sense.

12 We don't have photographic memory. Sorry we don't
13 have a video that you can push play and you can see
14 everything that happened that day, but we don't have that
15 any more. Mr. Johnson is not at fault for not being able
16 to give you play by play, frame by frame, of what happened
17 that day. He's not at fault for that. He had nothing to
18 do with that video not being here. Was it a careless
19 mistake; yeah. Was it a mistake; yeah. But he should not
20 suffer for other people falling down on their job and you
21 should not have to jump over hoops and -- and make leaps to
22 cover up someone not doing their job correctly.

23 Evidence that came out of that chair right there
24 and these items that have been placed into evidence, I want
25 you to consider. And you have nobody to cheer for; you

1 have nobody to punish. Your job is simply to decide what's
2 true about that day.

3 Now let's talk about that video a little bit. I
4 asked two or three of the witnesses, I asked Ms. Singletary
5 and I know I asked the officer, from the time he was found
6 at the door to the time when that CD was placed in your
7 hand, how long was it; 15, 20 minutes. If I remember it
8 wrong we can play it back. They both said no more than 15
9 or 20 minutes.

10 Well, we heard from Ms. Singletary that the tape
11 that they sent over to the police department was advanced
12 an hour from the actual theft. Now, how does that happen?
13 How do you watch something 15 minutes after it happened,
14 make a DVD, and then what ends up on that DVD 30 minutes
15 later it starts and goes an hour. Are we getting the full
16 story about that DVD? Are we getting the full story about
17 why you don't have the best piece of evidence that could
18 prove this case one way or another. How did they take
19 something and give it to the officer 45 minutes before it
20 happened? Like if this happened at 12 o'clock, the
21 testimony was the tape was an hour later, so it would be
22 one o'clock. Well according to the testimony, if it was
23 twelve o'clock when we stopped him at the door, they gave
24 them that DVD at 12:20 or 12:30. It couldn't have
25 happened, ladies and gentlemen, because what's on the DVD

1 starts at one o'clock.

2 What's up with that? Does that cause you to
3 hesitate? Does that give you a little bit of doubt? And
4 again, you can't hold that against Mr. Johnson. He had
5 nothing to do with you not having what you need today. But
6 if you want to go ahead and stamp your approval on that
7 kind of conduct, take somebody's liberty away on that kind
8 of sloppy work?

9 THE COURT: No, sir, that's not a proper argument.

10 MR. GIBBONS: Thank you, Your Honor.

11 THE COURT: The punishment is not for the jury;
12 it's for the Court.

13 MR. GIBBONS: Thank you, Your Honor.

14 I submit to you that there's something wrong with
15 that story. There's something wrong with that picture.

16 Now, there are two very different stories that were
17 told here today. Mr. Johnson told you what his intent was.
18 At the time he was arrested, he had changed his mind. He
19 had put stuff back on the shelf where other material is
20 already, other clothing, different department, but back on
21 the store shelf with the clothes and then he started to go
22 out the door.

23 Now, how did that lady see him unload that stuff
24 and get over to the door and just about getting out the
25 door without hollering stop ahead of time. He said she

1 didn't holler stop until he was at the door. When she saw
2 him unload the stuff, she could have hollered then.
3 We have a different story about the police officer. One
4 witness says they were right outside the door when he was,
5 when he was caught. The other witness said they came up
6 later and followed them into the room; he was already in
7 custody of the store employee. So there's just some things
8 about this case that just don't fit; they just don't sound
9 right. They give you -- that would give person reason to
10 hesitate and a reason to wonder what's going on here.

11 Ladies and gentlemen, he, he's had some problems
12 with the law. He admitted that freely. He admitted -- he
13 didn't have to tell you when he went in the store and he
14 was going to do that. He didn't have to say that at all.
15 But he got on that stand and he told you his side of the
16 story. I was going to do something wrong; I changed my
17 mind, I put it back on the shelf and I was going to the
18 door, they came up and said I was shoplifting and hauled me
19 away.

20 This stuff's in evidence. No one knows what was in
21 the bag. The officer said he didn't know, he can't tell
22 you if there were air fresheners in that bag. Whatever it
23 was, it went to the jail. Well, we don't know. Why are
24 there holes in this case? Why are there things that you
25 need, that anyone would need to decide this case.

1 Ladies and gentlemen, I'm asking you to go back in
2 that room and take what you've heard from that chair, take
3 what the Judge is giving you, instructions on the law, and
4 weigh it out and if you do that, we're confident that
5 you'll come up with a fair and true verdict and that
6 verdict in this case, due to the fact that there's just
7 stuff that you didn't get to see, the proper verdict would
8 be not guilty. Thank you.

9 THE COURT: Thank you. Thank you very much, Mr.
10 Gibbons.

11 Solicitor.

12 MR. SLOCUM: Thank you, Judge. If it please the
13 Court, Mr. Gibbons. Ladies and gentlemen, Mr. Gibbons is a
14 very fine attorney and what you just saw and just heard
15 from him is him doing his job and doing a good job of it
16 wanting you to look all about over here, look over here,
17 look at this over here, instead of what really happened.
18 It doesn't matter what was in this bag. There's a pair of
19 women's underwear, air fresheners, has nothing to do with
20 what's testified about and what you heard from that witness
21 stand.

22 The video, yeah, people make mistakes. People
23 aren't perfect. This isn't TV. I told y'all in openings,
24 this isn't CSI and forensics and everything's not perfect;
25 this is real life. You heard Ms. Patsy, what she saw that

1 day, what she did that day, what she saw the two Saturdays
2 prior to that. What makes sense? Does it make sense that
3 she would sit there and make up a story about a guy the
4 same Saturdays before and lo and behold the third Saturday
5 it just happened to be Mr. Johnson? What's the smart
6 rational thing; what does your common sense tell you?

7 Ms. Powell got up there and told you what she did.
8 She said I just saw him on that second day and notified Ms.
9 Patsy and that's what she did. There's nothing more to it
10 than that.

11 When Ms. Carstens told you what -- what she and Mr.
12 Johnson talked about in the Loss Prevention Office -- look
13 at the details. Ms. Patsy talking about the purple bag on
14 the first incident and where he was, where he knelt down
15 and -- with this bag and threw the shirts out right before
16 law enforcement got there after he tried to get out the
17 door.

18 I also want to talk about those five steps of Belk.
19 Had nothing to do with the law in South Carolina. They're
20 great for Ms. Patsy and them to go by; they have to do
21 store policy to prevent them from being in trouble legally.
22 They do those things because that's what their company
23 policy wants them to do. But you heard Officer Terry, they
24 follow the law; they don't go by what Belks' policy is.
25 They go by what our State Code of Laws tell them to do and

1 the judge is going to -- like I said in opening -- is going
2 to tell y'all what it is, but I want you to listen what he
3 tells you about shoplifting. It's the taking and carrying
4 away or willful concealment or transferring from one area
5 to the store or taking off the price tags. It's not and;
6 you don't have to take it, you carry it away and hide it
7 and take the price tag off and leave the store. There's
8 nothing in the shoplifting statute that says he has to
9 leave the store. There's nothing in the shoplifting
10 statute that says it has to be on a video. That's
11 irrelevant. I mean it was -- it would have been nice to
12 have, but this is real life, it's what we have.

13 I think I told you in opening, it's your job to
14 weigh the credibility of a witness, of Ms. Singletary, of
15 Ms. Powell, Ms. Carstens, Officer Terry, believing what
16 they had when they told us about it.

17 I ask you to look at Mr. Johnson's testimony, what
18 reason was it he had to make it up. This isn't about his
19 liberty; it's about what y'all determine the facts to be
20 and that's it. That's your job.

21 Mr. Johnson told you he went in the store with the
22 intent to get them shirts and the only reason he wasn't
23 able to get those shirts is because he finally got caught
24 on the third time. Ms. Patsy said the first two times he
25 was too fast for her. The third time she got to him before

1 he got to the door.

2 Ladies and gentlemen, this shouldn't be difficult.
3 Please use your common sense. Use what you use every day
4 when you judge people, your kids. I told you about the
5 cookie jar and the chocolate. You put it all together.

6 What we have to prove beyond a reasonable doubt is
7 not beyond all doubt. It's not completely all doubt;
8 what's reasonable, beyond a reasonable doubt. Firmly
9 convinced the Defendant is guilty in this case.

10 Thank you for being with us today. Thank you for
11 your service. I ask when you go back in the jury room and
12 discuss this case, you come back with a verdict of guilty.

13 THE COURT: Thank you, Solicitor.

14 **JURY CHARGE**

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, the way I instruct or charge the jury is to give
17 the general criminal law that applies to all cases, all
18 criminal cases in South Carolina; thereafter, I will charge
19 you on the specific offense alleged in the indictment of
20 shoplifting. And finally, I will charge you on the form of
21 the verdict. Usually I will tell you the paragraph of the
22 subject matter I'm fixing to cover and when I go from one
23 subject matter to the next, I will give you the caption as
24 to the area I'm fixing to cover.

25 Charge, arrest, indictment not evidence. Again,

1 ladies and gentlemen, the indictment charges the defendant
2 with shoplifting. I remind you that the fact that
3 defendant was arrested, charged, and indicted in this case
4 is not evidence and cannot be considered by you as evidence
5 of guilt in this nor does it create any presumption or
6 inference of guilt. This indictment -- this indictment is
7 again simply the formal written instrument which brings and
8 contains the charges made against the defendant and brings
9 the case before the Court.

10 Presumption of innocence. The defendant has pled
11 not guilty to the indictment and that plea puts the burden
12 on the State to prove the defendant guilty. A person
13 charged with committing a criminal offense in South
14 Carolina is never required to prove himself innocent. I
15 charge you that it is an important rule of the law that the
16 defendant in a criminal trial, no matter what the
17 seriousness of the charge may be will always be presumed to
18 be innocent of the crime for which the indictment was
19 issued unless guilt has been proven by evidence satisfying
20 you of that guilt beyond a reasonable doubt.

21 This presumption of innocence does not end when you
22 begin your deliberations; but it accompanies the defendant
23 throughout the trial until you reach a verdict of guilty
24 based on evidence satisfying you of that guilt beyond a
25 reasonable doubt. The presumption of innocence has been

1 said to be like a robe of righteousness placed about the
2 shoulders of the defendant which remains with the defendant
3 until it has been stripped from the defendant satisfying
4 you of the defendant's guilt beyond a reasonable doubt.
5 The presumption of innocence is not a mere legal theory.
6 It is not just a legal phrase. It is a substantial right
7 to which every defendant is entitled unless you, the jury,
8 are satisfied from the evidence of the defendant's guilt
9 beyond a reasonable doubt.

10 What is a reasonable doubt in the law? A
11 reasonable doubt is the kind of doubt that would cause a
12 reasonable person to hesitate to act. The State has the
13 burden of proving the defendant guilty beyond a reasonable
14 doubt. Some of you in the past may have served as jurors
15 in civil cases. When you were told that it is only
16 necessary to prove that a fact is more likely true than not
17 true, such as by the greater weight or the preponderance of
18 the evidence. In criminal cases, the State's proof must be
19 more powerful than that. It must be beyond a reasonable
20 doubt. Proof beyond a reasonable doubt is proof that
21 leaves you firmly convinced of the Defendant's guilt.

22 There are very few things in this world that we
23 know with absolute certainty and in criminal cases the law
24 does not require proof that overcomes every possible doubt.
25 If based on your consideration of the evidence you are

1 firmly convinced the defendant is guilty of the crime
2 charged, you must find the defendant guilty. If, on the
3 other hand, you think there is a real possibility that the
4 defendant is not guilty, you must give the defendant the
5 benefit of the doubt and find him not guilty.

6 The duties of juries and trial judge. I remind you
7 during this trial you and I have certain distinct duties to
8 perform. As the trial judge, it is my responsibility to
9 preside over the trial of this case and I also have the
10 duty to rule on the admissibility of the evidence offered
11 during the trial. You are to consider only the competent
12 evidence before you. If there was any testimony ordered
13 stricken from the record in this case during the trial, you
14 must disregard that testimony. You are to consider only
15 the testimony which has been presented from this witness
16 stand, any exhibits which -- and any exhibits which have
17 been made part of the record.

18 I have the additional duty to charge you the law
19 that applies to this case. As presiding judge I am the
20 sole judge of the law of this case and it's your duty as
21 jurors to accept and apply the law as I now state it to
22 you. If you already have any ideas of what the law is,
23 what the law ought to be and it does not agree with what I
24 now tell you the law is, you must abandon your idea, set it
25 aside because you are sworn to accept the law and apply the

1 law exactly as I state it to you.

2 In every case tried in this Court before a jury,
3 the jury becomes the sole and exclusive judge of the facts
4 in the case. A trial judge cannot intimate, state, comment
5 on or make any statement to a trial jury about the facts in
6 a case. Since you, the jury, are the sole judge of the
7 facts in the case, you are not to infer from what has been
8 said during the progress of this trial in ruling upon the
9 admissibility of evidence or otherwise or anything that I
10 say now to you during the course of this instruction that I
11 have any opinion about the facts of this case. The law
12 does not allow me to have an opinion about the facts of the
13 case. That is a matter solely for to determine. As
14 jurors, it is your duty to determine effect, value, weight
15 and truth of the evidence presented during this trial.

16 Direct and circumstantial evidence. There are two
17 types of evidence which are generally presented during a
18 trial, direct evidence and circumstantial evidence. Direct
19 evidence directly proves the existence of a fact and does
20 not require deduction. Circumstantial evidence is proof of
21 a chain of facts and circumstances indicating the existence
22 of a fact. Crimes may be proven by circumstantial
23 evidence.

24 The law makes absolutely no distinction between the
25 weight or the value to be given to either direct or

1 circumstantial evidence. However, to the extent the State
2 relies on circumstantial evidence, all of the circumstances
3 must be consistent with each other and when taken together
4 point to the guilt of the accused beyond a reasonable
5 doubt. If these circumstances merely portray the
6 defendant's behavior as suspicious, the proof has failed.
7 The State has the burden of proving the defendant guilty
8 beyond a reasonable doubt. This burden rests on the State
9 regardless of whether the State relies on direct evidence,
10 circumstantial evidence, or some combination of the two.

11 Credibility of witnesses. Necessarily, you, the
12 jury, must determine credibility of the witnesses who have
13 testified in this case. As you all know credibility simply
14 means believability. Who are you -- who are you going to
15 believe or who are you going to not believe? It becomes
16 your duty as jurors, using your good judgment and your
17 common sense and use it and collectively to analyze, to
18 evaluate the evidence and determine which evidence
19 convinces you of its truth.

20 In determining the believability of witnesses who
21 have testified in this case, you may believe one witness
22 over several, or several over one. You may believe a part
23 of the testimony of the witness and reject the remaining
24 part of the testimony of that same witness. You may
25 believe the testimony of a witness in its entirety or

1 reject the testimony of a witness in its entirety. You may
2 consider whether any witness has exhibited to you any
3 interest, bias, prejudice, or other motive in this case.
4 You may also consider the manner, the appearance of the
5 witness while on the witness stand. You may consider
6 whether the testimony of the witness is consistent within
7 that testimony. You may consider whether or not a
8 witness's testimony has been corroborated by other
9 witnesses or has not been corroborated, in other words,
10 made stronger by other witnesses or made weaker by other
11 witnesses. And you may take anything into account in
12 determining the weight -- anything into account using your
13 good judgment and common sense, that is in your record and
14 give it the weight you think it deserves.

15 As I have stated before, you are the finders of the
16 facts in this case. You are the sole judges of the facts
17 in the case and of the credibility and believability of any
18 of the -- any and all of the witnesses in this case.

19 Prior record. You have heard evidence that the
20 defendant was convicted of a crime in the past other than
21 the offense of which he is presently on trial for. This
22 testimony, if you consider it is true, may only be
23 considered by you, the jury, on the question of intent,
24 common plan and scheme, and for no other reason and no
25 other purpose. You may give this evidence the weight and

1 value, if any, which you find it should have on those sole
2 issues of intent and common scheme and plan. You must not
3 consider evidence -- the commission of another offense as
4 proof that the defendant is guilty of the charge we are
5 trying today.

6 A person who has a past criminal record is
7 competent to testify during a trial. A past record does
8 not affect the ability of the witness to testify. However,
9 a past record may be considered by you, if at all, only in
10 determining the believability of the witness.

11 Intent. And I assure you, ladies and gentlemen,
12 the end is in sight. Please continue to give me your
13 complete and undivided attention.

14 In order to establish criminal liability, criminal
15 intent is required. For example, the mental state required
16 to be proven by the State for a particular crime might be
17 purpose, might be intent, might be knowledge, recklessness
18 or criminal negligence. Criminal intent must be proven by
19 the State beyond a reasonable doubt. Criminal intent is
20 always a matter that must be determined by the jury from
21 the totality of the circumstances surrounding the event and
22 the situation. There is no way to prove intent to a
23 mathematical certainty. There is no way medical science
24 can dissect a person's brain and determine what that person
25 had in mind. So the law says that criminal intent may be

1 inferred from the circumstances shown to have existed.

2 This is how you make a determination of whether or not the
3 element requiring intent was present.

4 It is not necessary to establish intent, by direct
5 or positive evidence where intent may establish, may be
6 established by inference in the same way as any other fact
7 by taking into consideration the acts of the party and all
8 the facts and circumstances of the case. Criminal intent
9 is a mental state, a conscious wrongdoing. It is up to you
10 to determine what the defendant intended to do based on the
11 circumstances as shown to have existed. That is the
12 general criminal law in South Carolina.

13 Shoplifting -- the specific charge on the
14 indictment. A person is guilty of shoplifting if he -- and
15 the State must prove beyond a reasonable doubt, one of the
16 following: Takes possession of, carries away, transfers
17 from one person to another, or from one area of the store
18 or other retail mercantile establishment to another area;
19 that's one, the State may prove; or causes to be carried
20 away or transferred any merchandise, displayed, held,
21 stored, or offered for sale by any store or other retail
22 mercantile establishment, with the intent of depriving the
23 merchant of the possession, use, or benefit of the
24 merchandise without paying the full retail value. Again,
25 take possession of, carries away, transfers from one person

1 to another, or from one area of the store or other retail
2 mercantile establishment to another area, or causes to be
3 carried away or transferred any merchandise, displayed,
4 held, stored or offered for sale by any store or other
5 retail mercantile establishment with the intention of
6 depriving the merchant of the possession, use, and benefit
7 of the merchandise without paying the full retail value or
8 transfers any merchandise displayed, stored, or offered for
9 sale by any store or other retail mercantile establishment
10 from the container in which it is displayed to any other
11 container with the intent to deprive the merchant of the
12 full retail value. And in this case, or willfully conceal
13 certain merchandise valued at less than \$2,000, displayed,
14 held, stored or offered for sale by Belk Department Store.

15 Ladies and gentlemen, in conclusion, the jury
16 verdict. You will have a verdict form in there with you,
17 Mr. Foreman. It has the caption of the case, the name of
18 the case, it basically says, We, the jury, find the
19 defendant -- and it's got a line -- we unanimously find and
20 it's got a line that says guilty of shoplifting or not
21 guilty. You -- the order in which I've just stated those
22 have no significance whatsoever. One must be said first.
23 You would deliberate, determine what the facts are and then
24 apply those facts to the standard of the law as I told you
25 the law is. If you find, based on your finding of facts,

1 that the State has met its burden of proof beyond a
2 reasonable doubt, your verdict will be guilty as charged.
3 If you find the State has not met its burden of proving
4 this case beyond a reasonable doubt, your verdict will be
5 not guilty. You will then sign and date the verdict, Mr.
6 Foreman.

7 That verdict form, I have it printing out right
8 now, will be in there with you. You will note, there will
9 be a line to the left of guilty of shoplifting and a line
10 to the left of not guilty. Whichever one you choose, check
11 to the left of it and circle both the check mark and the
12 words either guilty of shoplifting or check to the left and
13 circle the word, two words, not guilty.

14 Ladies and gentlemen, your verdict must be a
15 unanimous one. All twelve of you must agree. Your verdict
16 may not be based on compassion, prejudice, sympathy, or any
17 other factor, any other motive not in evidence in this
18 case. It must be based on the facts as you find them to be
19 and the law as I have told you the law is.

20 Once you reach that unanimous verdict, if you would
21 please then knock on the jury room door, advise the bailiff
22 you have reached the -- reached the verdict, and we will
23 then receive you back into the courtroom for your verdict.

24 I'm going to ask you to return to your jury room
25 but do not begin your deliberations until you are told to

1 do so by the clerk. There are -- the law requires I meet
2 with the attorneys one final time outside of your presence
3 before I submit the case to you for your deliberations. If
4 I do not have to bring you out for any further
5 instructions -- everybody looks great -- what will happen
6 is our alternate will come out, the evidence will come in
7 and you will then be instructed to begin your
8 deliberations. You may take your notes with you at this
9 time.

10 If you have any questions, Mr. Foreman, please just
11 write me out a note. All right. Thank you. Thank you
12 very much.

13 (WHEREUPON the jury left the courtroom at 4:43
14 p.m.)

15 THE COURT: Any additions or objections, Mr.
16 Gibbons?

17 MR. GIBBONS: No, sir.

18 THE COURT: Solicitor?

19 MR. SLOCUM: Judge, the only thing that we send
20 back the evidence that the alternate be taken out of there.

21 THE COURT: All right. Yes, sir. Is the evidence
22 1, 2, 3 and 4 here?

23 MR. SLOCUM: I believe that's all we have.

24 THE COURT: All right. If you need to look at the
25 verdict form, Mr. Harrell has it for you.

1 (WHEREUPON the alternate was brought out of the
2 jury room and the jury began deliberations at 4:45 p.m.)

3 (WHEREUPON it was reported to the Court that the
4 jury had reached a verdict at 5:04 p.m.)

5 THE COURT: All right. Bring us our jury, please,
6 Mr. Bailiff.

7 (WHEREUPON the jury entered the courtroom at 5:17
8 p.m.)

9 THE CLERK: Ladies and gentlemen of the jury, have
10 y'all reached a verdict?

11 THE FOREPERSON: We have.

12 THE CLERK: Would you please pass it forward by the
13 bailiff to the judge.

14 Thank you.

15 **VERDICT**

16 THE COURT: Thank you. Thank you very much.

17 All right. The verdict form appears to be in the
18 proper form. It is signed by our foreperson and dated
19 today's date.

20 Madame Clerk, please publish our verdict.

21 THE CLERK: We have the State of South Carolina
22 versus Marvin Brock Johnson. Indictment No.
23 2014-GS-02-01355 (sic). The Indictment No. 2014-GS-02-0355
24 as to the charge of shoplifting, We, the jury, unanimously
25 find the defendant guilty of shoplifting.

1 Signed and dated, Presiding Juror: Robert K.
2 Ellis, November the 4th, 2014.

3 Ladies and gentlemen of the jury, if this is still
4 your verdict, would you please indicate by raising of your
5 right hand?

6 All right hands are raised, Your Honor. Thank you.

7 THE COURT: Thank you. Thank you very much, Madame
8 Clerk.

9 Anything further for the jury from the State?

10 MR. SLOCUM: Nothing from the State, Judge.

11 THE COURT: Defense?

12 MR. GIBBONS: No, sir.

13 THE COURT: Thank you. Thank you very much.

14 Ladies and gentlemen of the jury panel, momentarily
15 I'm going to release you from your jury service not only
16 for the remainder of the day, but also for the remainder of
17 the week. Your colleagues that were not fortunate enough
18 to serve on this jury will return tomorrow, but we have
19 enough to continue with other jury trials rather than risk,
20 so to speak, having frequent flyers, where just a select
21 group just kind of continues to serve. It seems that that
22 happens very often.

23 I thank you very much for your time this week and
24 attention. As I said, and I'll repeat myself again, it's a
25 very important case for both the State and for -- and for

1 MR. GIBBONS: We're prepared to go forward.

2 THE COURT: Would you come around please, Mr.

3 Johnson.

4 SENTENCE

5 THE CLERK: You are still under oath.

6 THE COURT: All right. Anything additional from
7 the State before I impose sentence?

8 MR. SLOCUM: Just the sentence sheet in front of
9 Your Honor, the portion that was checked pleas earlier has
10 been stricken through and initialed by myself and Mr.
11 Gibbons and reads correctly, convicted post-trial.

12 THE COURT: Prior record?

13 MR. SLOCUM: Your Honor, 1991 federal cocaine
14 possession conviction; a 1973 petty larceny; 1990 cocaine;
15 1995 grand theft; '97 larceny and grand theft; '98 grand
16 theft, also a petty larceny and resisting officer; 1999
17 petty larceny and two counts of grand theft; 2000
18 shoplifting; 2006 two counts of shoplifting; 2007 two
19 counts of shoplifting; and 2008 shoplifting.

20 THE COURT: And he got a four year sentence in
21 2008.

22 MR. SLOCUM: That is correct, Your Honor.

23 THE COURT: And when did he get out of the
24 penitentiary?

25 Can you tell me?

1 THE DEFENDANT: 2010.

2 THE COURT: 2010.

3 MR. GIBBONS: That sounds about right with a four
4 year sentence.

5 MR. SLOCUM: That would be about correct, Your
6 Honor.

7 THE COURT: So he's had no charges from 2010 until
8 May 24th?

9 MR. SLOCUM: Judge, he has a 2013 probation
10 violation on his record, but I did not have a conviction
11 behind that.

12 THE COURT: Sir?

13 THE DEFENDANT: It was for a violation charge is
14 for when I had got violation, I was on probation in 2006
15 for the shoplifting, and I violated it. I turned myself
16 back in when I got -- when I got out of prison in 2010. I
17 stayed in Kingstree, South Carolina, and took care of my
18 father for a couple of years and then I went --

19 THE COURT: In where, Kingstree?

20 THE DEFENDANT: Kingstree, South Carolina up around
21 Florence. I took care of my father for a couple of years
22 and then I went back to Augusta, Georgia and turned myself
23 in.

24 THE COURT: Your father is from Kingstree?

25 THE DEFENDANT: Yes, sir, Cades, South Carolina.

1 THE COURT: Cades.

2 THE DEFENDANT: Cades. That's Williamsburg County.

3 THE COURT: Yes, sir.

4 THE DEFENDANT: And I went back to turn myself in,
5 in Augusta, Georgia, and completed my probation and I just
6 got off probation November of 2013.

7 THE COURT: How did you come to be from Miami?

8 THE DEFENDANT: I was born there. My mother and my
9 father went to Carolina -- I meant they went to Florida and
10 I was born in Florida and my father moved back and my
11 mother stayed.

12 THE COURT: Your momma -- your mother stayed in
13 Florida?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And your father moved back to
16 Williamsburg County?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What was your father's name?

19 THE DEFENDANT: Marion Brock Johnson.

20 THE COURT: Marion Brock Johnson. And what did he
21 do?

22 THE DEFENDANT: Farmer.

23 THE COURT: A farmer?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: A lot of that down there in

1 Williamsburg.

2 THE DEFENDANT: Sir?

3 THE COURT: A lot of that down there in
4 Williamsburg County.

5 THE DEFENDANT: Yeah. Yes, sir.

6 THE COURT: Anything further, Solicitor?

7 MR. SLOCUM: Just want to thank Officer Terry and
8 everybody at Belks for their willingness to be with us
9 today.

10 THE COURT: Thank you. Thank you very much.

11 Mr. Gibbons?

12 MR. GIBBONS: Your Honor, I think you heard details
13 about his life. I think you heard him testify on the
14 stand. He is -- I've told him from day one this was going
15 to be a tough case and he's wanted to tell his story and --
16 and he's had that opportunity here today. And I don't know
17 if he wants to say anything to the Court other than that.

18 THE COURT: Well, I'd be glad to hear anything
19 you've got to say, Mr. Johnson.

20 THE DEFENDANT: Thank for hearing me out.

21 THE COURT: Sir?

22 THE DEFENDANT: Thank you for hearing me out. I
23 just wanted to get, you know, let it be known what had
24 actually happened. What was said that happened didn't
25 happen. What had happened is what I said. I just wanted

1 to be heard, that's all. It wasn't like I was -- I was
2 scared up there, yeah, but I just wanted to be heard.
3 Thank y'all for this.

4 THE COURT: And I believe you said you had a
5 daughter and two grandchildren in Georgia?

6 THE DEFENDANT: I have a total of seven kids and
7 eighteen grands.

8 THE COURT: Seven children and eighteen
9 grandchildren?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How long have you been in jail?

12 THE DEFENDANT: Sir?

13 MR. SLOCUM: Since May 24th to now.

14 THE COURT: Anything further, Mr. Gibbons?

15 MR. GIBBONS: No, sir.

16 THE COURT: I take into account the totality of the
17 circumstances, the prior criminal history, particularly the
18 history of shoplifting any type of property crimes.

19 I believe earlier you said he had 15 prior
20 thefts --

21 MR. SLOCUM: That's correct.

22 THE COURT: And that included eight prior
23 shopliftings?

24 MR. SLOCUM: This was number seven and fifteen
25 total crimes -- property crimes.

1 THE COURT: With the jury having returned the
2 verdict of guilty, the defendant is committed to the State
3 Department of Corrections for a determinate term of six
4 years. He is to be given credit for all time served.

5 Good luck to you. Good luck to you, Mr. Johnson.

6 THE DEFENDANT: Thank you.

7 MR. SLOCUM: Thank you, Judge.

8 THE COURT: Thank you. Thank you very much.

9
10 * * * * * END OF TRANSCRIPT * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 4th
11 day of November, 2014.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 24th day of January, 2015.

19
20
21
22
23
24
25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

North Augusta Dept. of Public Safety

Terry Landon

Law Enforcement Case #: 14-001428

JAS

ARREST WARRANT NUMBER

2014A0210200532

FILED October 2 2014

Liz Godard
C.C.P. & G.S.

Robert Wade
Deputy Clerk

ACTION OF GRAND JURY

true bill

Robert Wade

Foreperson of Grand Jury

Date: October 2, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0201355

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

THE STATE

vs.

MARVIN BROCK JOHNSON

CDR #: 2877

Indictment for

SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

NOV 13 2014

Liz Godard
C.C.P. & G. S., Aiken County, S.C.

Deborah Bell
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

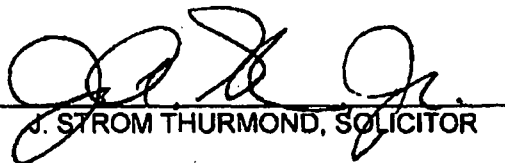
INDICTMENT FOR
SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

At a Court of General Sessions, convened on October 6, 2014, the Grand Jurors of Aiken County present upon their oath:

That MARVIN BROCK JOHNSON did in Aiken County on or about May 24, 2014, take possession, carry away, transfer to another area of the store; alter, transfer or remove the price label or tag; transfer from its container to another container; and/or wilfully conceal certain merchandise valued at less than Two Thousand Dollars, to wit: miscellaneous items, displayed, held, stored or offered for sale by Belk Department Store, located at 1163 Knox Avenue, North Augusta, South Carolina, a store or retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of the merchandise without paying the full retail value. The Defendant having previously been twice convicted of offenses for which the term of imprisonment was contingent upon the value of the property involved. All in violation of §16-13-110 of the Code of Laws of South Carolina (1976), as amended.

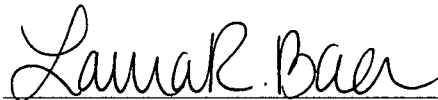
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

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 16th, 2016



Laura R. Baer
Appellate Defender

RECEIVED

MAY 16 2016

SC Court of Appeals

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

ATTORNEY FOR APPELLANT