

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

WAYNE GARY POLITE

APPELLANT

APPELLATE CASE NO. 2015-001843

RECORD ON APPEAL

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)
 2 COUNTY OF CHARLESTON) CASE NO. 2014-GS-10-07246
)
 3)
 4 STATE OF SOUTH)
 CAROLINA,) Transcript of Record
)
 5 Plaintiff,)
)
 6 vs.) Date: August 12, 2015
) August 13, 2015
 7 WAYNE GARY POLITE,) August 14, 2015
)
 8 Defendant.

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 12 B E F O R E:
 13 The Honorable DEADRA JEFFERSON

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18
 19 Denise J. Lauder, RPR
 20 Ninth Judicial Circuit

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A P P E A R A N C E S

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1 (The following proceedings were had
2 August 12, 2015, 2:10 p.m., in re State v. Polite,
3 Charleston County, Charleston, South Carolina)

4 THE COURT: I have an indictment for
5 Gary Wayne Polite, which is an indictment for
6 obtaining property by false pretenses. Ms. Askins
7 represents the State and Mr. Malloy is representing
8 the defense; is that correct?

9 MS. ASKINS: That's correct, Your
10 Honor.

11 THE COURT: Does your client wish to
12 have a formal arraignment, Mr. Malloy?

13 MR. MALLOY: We will waive formal
14 arraignment.

15 THE COURT: Pardon?

16 MR. MALLOY: We will waive.

17 THE COURT: And he does, in fact, want
18 to go forward; is that correct?

19 MR. MALLOY: Yes, Your Honor, that's
20 correct.

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Pardon me?

23 MR. MALLOY: I think he does have a
24 matter he would like to address.

25 THE COURT: Yes, sir. I'll be glad to

1 hear from you.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: I need you to speak up for
4 me.

5 THE DEFENDANT: I do have a
6 complaint --

7 THE COURT: Uh-huh.

8 THE DEFENDANT -- with my lawyer.

9 THE COURT: Yes, sir.

10 THE DEFENDANT: There were some people
11 that I wanted to Subpoena as witnesses for my case,
12 and he said that he can't find the people.

13 THE COURT: Okay.

14 THE DEFENDANT: One of the people I
15 wanted him to Subpoena, the Solicitor found the
16 person, has the cell phone number, work number.

17 THE COURT: Are they on the witness
18 list for the State?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: So how are you prejudiced
21 by that? You'll be able to question them, right?

22 THE DEFENDANT: Yes, and I have other
23 witnesses. My problem is -- is that the Solicitor
24 found the person real easy.

25 THE COURT: That's because they have

1 resources your lawyer doesn't have.

2 THE DEFENDANT: And, also, the finance
3 company, I wanted someone from there.

4 THE COURT: I need a witness list. I
5 haven't gotten a witness list from either of you.

6 Go ahead. I'm listening.

7 THE DEFENDANT: I have other people
8 that I know that's easy, like my mother, to
9 Subpoena, and my mother-in-law and people on the
10 reference list to Subpoena. And when I contacted
11 them, they said no one contacted them. And my
12 witnesses --

13 THE COURT: Well, you understand Mr.
14 Malloy makes the decision about who gets called as
15 a witness, not you. And he has to -- he
16 strategically knows what's in your best interest.
17 So these people can't just come testify. There has
18 to be some element of the offence they fit within.
19 Either they're going to provide you an alibi, or
20 either they were with you and they can refute what
21 happened, but you just don't call witnesses to call
22 witnesses. They have to have something meaningful
23 to say that benefits you.

24 THE DEFENDANT: Yes, ma'am, and they do
25 because they were on the application as a

1 reference.

2 THE COURT: Okay.

3 THE DEFENDANT: And under Rule 5, the
4 detective has scratched out this person --

5 THE COURT: Well, the bottom line is,
6 did you finance this car?

7 THE DEFENDANT: Ma'am?

8 THE COURT: Did the financing go
9 through for this vehicle?

10 THE DEFENDANT: I signed the agreement.

11 THE COURT: That's not my question.
12 Did the financing go through?

13 THE DEFENDANT: To the best of my
14 knowledge.

15 THE COURT: Did the financing go
16 through? Did he apply for financing --

17 MS. ASKINS: It did not go through.
18 That's the subject of the case.

19 THE COURT: When it didn't go through,
20 he was asked to return the car.

21 MS. ASKINS: That's correct.

22 THE COURT: And he didn't.

23 MS. ASKINS: That's correct.

24 THE COURT: Sir, do you understand that
25 all they have to prove is -- whether you had good

1 faith when you applied for the car or not, whether
2 they were -- whether there were references or
3 whatever really doesn't matter. Once you go to a
4 business and you apply for credit and if the credit
5 is rejected, you have to return it because you
6 can't pay for it. There is nothing in place to pay
7 for it. You don't get to keep it.

8 So what they're saying is, they're
9 conceding everything that you're talking about.
10 They're conceding that you filled out the
11 application. They're conceding that you have had
12 these people as references on the application, but
13 for whatever reason, your credit didn't go through.
14 And when it didn't, the dealership asked you to
15 return the car, and you didn't.

16 THE DEFENDANT: Yes, ma'am, my credit
17 did go through. You can call Pelican Financing --

18 THE COURT: They're saying it didn't go
19 through. If it went through, they would have
20 written a check and we wouldn't be here right now.

21 THE DEFENDANT: I will call the people
22 myself. They said that everything was okay.

23 THE COURT: If it was okay, they would
24 have sent the check and we would not be here right
25 now.

1 THE DEFENDANT: I just don't want Mr.
2 Malloy as my lawyer.

3 THE COURT: Why is that?

4 THE DEFENDANT: Because I don't have
5 confidence in him, certain things I can't tell him.

6 THE COURT: How long has this case been
7 pending?

8 THE DEFENDANT: For awhile.

9 THE COURT: And so if you didn't have
10 confidence in Mr. Malloy, why didn't you hire
11 somebody else?

12 THE DEFENDANT I'm in jail.

13 THE COURT: Well, people hire folk in
14 jail all the time.

15 THE DEFENDANT: But I'm working on that
16 right now.

17 THE COURT: It's kind of late to be
18 working on it now that it's on the trial roster.

19 THE DEFENDANT: What motions has Mr.
20 Malloy filed?

21 THE COURT: You need to ask Mr. Malloy.

22 THE DEFENDANT: I have motions that I
23 have written out.

24 THE COURT: Only he decides what
25 motions are filed. Unless you're representing

1 yourself, you don't get to file motions. That's
2 called hybrid representation and it's not allowed.

3 THE DEFENDANT: But I have -- under the
4 Fifth Amendment, I have the right to --

5 THE COURT: You have a right to
6 represent yourself if you want to, but you can't
7 file a motion making your lawyer file a motion. It
8 doesn't work like that.

9 THE DEFENDANT: I don't want him as my
10 lawyer.

11 THE COURT: Then here are your options,
12 either Mr. Malloy represents you or you represent
13 yourself.

14 THE DEFENDANT: I'll represent myself.

15 THE COURT: I don't think that's such a
16 good idea.

17 THE DEFENDANT: At the moment -- I
18 think you're right because I don't have a law
19 library. I don't have case laws in front of me.

20 THE COURT: I'm not going to delay the
21 case for that.

22 THE DEFENDANT: I don't want him as my
23 lawyer.

24 THE COURT: Well, your only option then
25 is to hire someone, and this case has been pending

1 at least for over a year, and if you desire to do
2 that, you should have already hired someone.

3 THE DEFENDANT: Well, I have someone
4 working on it, but the person hasn't come to see
5 me. One of them is Smiley, and a few other people
6 that I inquired of. They're supposed to come visit
7 me this week, but they haven't come to see me yet.

8 THE COURT: Are you prepared to pay
9 their fee.

10 THE DEFENDANT: I have someone that is
11 going to look out for me on the outside.

12 THE COURT: Well, for them to take over
13 your case they have to be ready to go forward. Did
14 you tell them the case was on the trial docket?

15 THE DEFENDANT: I gave them as much
16 information -- my family member gave them as much
17 information as they could.

18 THE COURT: Well, that wasn't my
19 question. Did you tell them your case was on the
20 trial docket ready to go forward?

21 THE DEFENDANT: I mentioned that to
22 them. I haven't talked to them personally. I was
23 supposed to see him this week. I don't believe,
24 despite what anyone says, Mr. Malloy has my best
25 interest in this case. That's my personal opinion.

1 I would rather jump off that little small bridge in
2 West Ashley than allow him to represent me.

3 THE COURT: If you felt that strongly
4 about it, then you should have already hired --

5 THE DEFENDANT: I made reference to
6 that once when I came in front of Mrs. Harrington.

7 THE COURT: It's been over a
8 year-and-a-half. You were indicted -- let's see
9 here. This case was indicted December 2, 2014.
10 It's almost a year old and this incident is alleged
11 to have happened March 11th of 2014.

12 THE DEFENDANT: And I have the right to
13 face all of my accusers. And I even asked Mr.
14 Malloy, may I see the transcript from the grand
15 jury indictment.

16 THE COURT: You're not going to get
17 that; those are secret in South Carolina. There is
18 no transcripts. We don't have a court reporter in
19 grand jury.

20 THE DEFENDANT: Or the transcript from
21 my preliminary hearing.

22 THE COURT: It's not a court of record,
23 they're not required to keep a transcript.

24 Was there a prelim?

25 MR. MALLOY: There was not.

1 THE DEFENDANT: And I filed for my
2 rights to --

3 THE COURT: It wouldn't have made a
4 real difference. What do you think you would have
5 accomplished in a prelim? A prelim in South
6 Carolina is really for a bond hearing.

7 THE DEFENDANT: My opinion is anyone
8 can say anything at a prelim --

9 THE COURT: That's all they have to do
10 to meet the burden. I mean, all they had to do is
11 show up and say you -- you filed finance papers, it
12 didn't go through, and you didn't return the car.
13 That's enough to meet the elements of the charge.

14 THE DEFENDANT: I know what ineffective
15 of counsel -- and also, too, with -- I filed a few
16 complaints against Mr. Malloy this week with the
17 bar and the disciplinary action. I have -- they
18 should have my letters already.

19 THE COURT: That doesn't disqualify him
20 from representing you.

21 THE DEFENDANT: If I filed a complaint
22 against him.

23 THE COURT: No, it doesn't.

24 THE DEFENDANT: Well, I don't want him
25 as my lawyer.

1 THE COURT: Well, I told you what your
2 options are.

3 Are you prepared for trial, Mr. Malloy?

4 MR. MALLOY: I am, Your Honor.

5 THE COURT: Either he can represent you
6 or you can hire someone, and if you hire --

7 THE DEFENDANT: I will hire someone.

8 THE COURT: You would had to have hired
9 them before today, before it was put on the trial
10 roster.

11 THE DEFENDANT: I don't want Mr. Malloy
12 as my lawyer, and I believe under the Constitution,
13 I have the right to effective counsel -- effective
14 assistance of counsel. And Mr. Malloy, I don't
15 have confidence in him. We don't have good
16 communication and he lacks in other areas. I
17 believe his work towards me is below standards. I
18 asked him for the basics and I don't even get the
19 basics.

20 THE COURT: Sir, everything you've
21 asked for you're not entitled to. It doesn't
22 exist.

23 THE WITNESS: Not even under the Fifth
24 Amendment?

25 THE COURT: I don't know -- you've

1 asked for the grand jury transcript; they don't
2 exist. We don't have a court reporter in our grand
3 jury, it's secret. And even if there were
4 transcripts, you would not be entitled to it.

5 THE DEFENDANT: I'm not entitled to one
6 character witness on behalf --

7 THE COURT: You can have a character
8 witness. I'm sure if you give him the name of that
9 person, he will Subpoena them to be present.

10 THE DEFENDANT: And I have done it in
11 front of him and in front of the investigator. I
12 gave the investigator a list of people that we
13 haven't even discussed. He hasn't even had the
14 opportunity -- how would he know whether they're a
15 good witness or not if he never interviewed the
16 person.

17 THE COURT: Well, have you talked to
18 him enough to know if he interviewed him?

19 THE DEFENDANT: He said he couldn't get
20 in contact with them. And it should have been
21 easy. Where they live at is on the I.D. --

22 THE COURT: Unless you can tell me that
23 he made no effort to get in touch with them --

24 MR. MALLOY: I'll just say that my
25 investigator is not here right now, but he's done a

1 lot of investigation in the case following up on a
2 lot of leads provided by Mr. Polite. Some people
3 we talked to and some people we weren't able to
4 talk to. We have followed up on leads that we got
5 from --

6 THE COURT: Are any of these people
7 viable witnesses?

8 MR. MALLOY: Your Honor, at this stage
9 we don't anticipate calling any of them.

10 THE COURT: So you're telling me
11 basically they would not be beneficial to him.

12 If he wants a character witness, would
13 you be able to get in touch with that person and
14 have that person available for trial?

15 MR. MALLOY: We would make every effort
16 to.

17 THE COURT: Who do you want as a
18 character witness?

19 THE DEFENDANT: I have about eight
20 people --

21 THE COURT: You wouldn't be able to
22 call eight character witnesses. The only thing
23 they can say is to your reputation, to truthfulness
24 or untruthfulness. At some point it's cumulative.
25 I wouldn't let you call eight character witnesses.

1 THE DEFENDANT: I gave him a little
2 short list last month.

3 THE COURT: How short was it.

4 THE DEFENDANT: Eight people.

5 THE COURT: I've already told you,
6 there is no way you can call eight character
7 witnesses.

8 THE DEFENDANT I have material witness,
9 I have expert witnesses --

10 THE COURT: What expert on what
11 subject?

12 THE DEFENDANT: A car dealership that
13 does the same thing that -- people that can prove
14 that Mr. Clarence Brown is lying. People that will
15 prove that Priscilla lied and then --

16 THE COURT: It's pretty clearcut,
17 either you applied for credit and it was approved,
18 or you applied for credit and it wasn't approved.
19 Let's say for argument's sake they made a mistake.
20 What you do, or what reasonable people do -- if I
21 applied for credit for a car and they called me and
22 said, Ms. Jefferson, your credit was denied, you
23 need to bring the car back, even if I thought they
24 were wrong, I would take the car back and we would
25 have a discussion; because I would want to know

1 what the basis of their belief was, I would want to
2 know what proof they had, but I wouldn't just keep
3 driving the car and never go back to the
4 dealership.

5 THE DEFENDANT: Two to three weeks I
6 applied for a car. Two or three weeks later the
7 guy called me and said I got approved for the car.
8 I called the people myself personally. He said,
9 come pick up the car. I gave him the down payment
10 and I gave --

11 THE COURT: Sir, all of these things
12 are facts to be contested, and I'm certain
13 Mr. Malloy is prepared to present all of that, and
14 it's for the jury to decide whether what they did
15 was reasonable or unreasonable. It's not for the
16 Court to resolve; I'm not the finder of fact.

17 THE DEFENDANT: So I'm not -- I don't
18 have confidence in Mr. Malloy. Especially after I
19 filed my complaint against him.

20 THE COURT: Mr. Malloy, are you ready
21 and prepared for trial?

22 MR. MALLOY: I am, Your Honor.

23 THE COURT: Have you investigated all
24 of the leads that Mr. Polite has provided to you?

25 MR. MALLOY: I have.

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Is your -- sir, I allowed
3 you to speak and I don't want you to interrupt --

4 THE DEFENDANT: He is lying.

5 THE COURT: I will allow you to speak
6 in a moment.

7 Mr. Malloy is an officer of the court.
8 If he lies to me, he would lose his license. I
9 know him, I do not know you. He has never lied to
10 me up to this point. I have a very simple rule;
11 you're good with me until you tear your pants. His
12 word is good with me.

13 As an officer of the court, not as an
14 individual, he has a greater responsibility than
15 you do. He has to tell me the truth or he loses
16 his ability to make a living. I have no reason to
17 believe he's not telling me the truth. He has too
18 much to lose and I doubt he would lose it over one
19 client. It's not reasonable.

20 Mr. Malloy, why don't you get -- can
21 you reach your investigator?

22 MR. MALLOY: Yes, Your Honor.

23 THE COURT: Can you have him come over?

24 MR. MALLOY: He should be coming, but I
25 will check with him again.

1 THE COURT: Could you for me, have him
2 come over? But you have investigated this case; is
3 that correct?

4 MR. MALLOY: I have, Your Honor.

5 THE COURT: You have -- every lead that
6 Mr. Polite has provided to you, you've had your
7 investigator follow up on it?

8 MR. MALLOY: I have.

9 THE COURT: And you have made an
10 assessment from a strategic standpoint as to
11 whether it would be fruitful to your client or
12 whether it would be basically a dead end?

13 MR. MALLOY: I have.

14 THE COURT: Again, are you prepared to
15 go forward?

16 MR. MALLOY: I am.

17 THE COURT: If Mr. Polite provided you
18 with a character witness, would you make every
19 effort to have that witness available to testify on
20 his behalf?

21 MR. MALLOY: We would.

22 THE COURT: Mr. Polite, I need you to
23 give Mr. Malloy the names of any character
24 witnesses you want to come and be present and
25 testify for you so that they can have the

1 individuals available at the time you're allowed to
2 present your case.

3 THE DEFENDANT: I don't want Mr. Malloy
4 as my lawyer.

5 THE COURT: I've already made the
6 decision, sir, that your motion is denied. You've
7 not provided the Court with any information that
8 would amount to him being ineffective or his
9 inability to be prepared to go forward in trial,
10 and you have not made any efforts, at least that
11 you have been able to provide the Court with
12 independent corroboration, that you have made any
13 attempts to obtain new counsel, and at this point
14 your actions appear to the Court to be dilatory in
15 nature.

16 THE DEFENDANT: It would be a conflict,
17 especially after I filed a grievance --

18 THE COURT: Sir, I have no proof that
19 you actually did that, other than your word, and I
20 --

21 THE DEFENDANT: Well, I can bring the
22 proof --

23 THE COURT: But even if you did, that
24 doesn't provide a conflict.

25 THE DEFENDANT: Also, the one

1 witness -- he hasn't even interviewed Ms. Ruth Love
2 and that's one of the ones I wanted originally.

3 THE COURT: Sir, I don't know if he
4 talked to her or not. You haven't talked to him
5 and asked.

6 THE DEFENDANT: I talked to my
7 mother --

8 THE COURT: That's not my question.
9 Did you ask Mr. Malloy?

10 THE DEFENDANT: He said he couldn't
11 contact her.

12 THE COURT: Who is the person that
13 you've indicated?

14 THE DEFENDANT: It's one of my
15 witnesses. She's on the reference list that you
16 have to give --

17 THE COURT: Have you talked to her since
18 you've been in jail?

19 THE DEFENDANT: I'll talk to her.

20 THE COURT: Where does she live?

21 THE DEFENDANT: I'll talk to her.

22 THE COURT: That's not my question.
23 Where does she live?

24 THE DEFENDANT: I know where she lives.

25 THE COURT: Then you need to tell the

1 Court, where does she live?

2 THE DEFENDANT: The Solicitor has the
3 address and information and cell phone number.

4 THE COURT: Where does she live, sir?

5 THE DEFENDANT: In North Charleston.

6 THE COURT: What area of North
7 Charleston?

8 THE DEFENDANT: Near Dorchester Road.

9 THE COURT: About how far from the
10 courthouse would you estimate that?

11 THE DEFENDANT: Less than eight to
12 ten miles.

13 THE COURT: Where does she work?

14 THE DEFENDANT: She works at a
15 nightclub.

16 THE COURT: Okay. So during the day
17 she's off, so to speak, and then she works in the
18 evening?

19 THE DEFENDANT: She has a part-time
20 job.

21 THE COURT: What does she do part-time?

22 THE DEFENDANT: I can't remember the
23 name of the place. I remember her telling me.

24 THE COURT: Okay. It's not -- the
25 State doesn't contest the people who you've listed

1 as references on your application, correct?

2 THE DEFENDANT: The State?

3 MR. MALLOY: Your Honor, she's actually
4 on the State's witness list. She was added since
5 the last time it was on the trial docket, but we
6 did try to locate her previously with the
7 information we had. She had relocated from that
8 address.

9 THE COURT: So it's safe to say that
10 what she has to say is beneficial to the State?

11 MR. MALLOY: She is on their witness
12 list, that's correct.

13 THE COURT: So, sir, I guess what I'm
14 trying to figure out, if that's a witness you
15 wanted Mr. Malloy to locate, she's coming to court
16 and you'll be able to question here.

17 THE DEFENDANT: My thing is that I
18 wanted her as a witness. He said he couldn't find
19 her or contact her.

20 THE COURT: He said she relocated from
21 the address that you gave him.

22 THE DEFENDANT: The address that she
23 has is still a good and valid address. She hasn't
24 relocated. That's where her mother --

25 THE COURT: Here's the bottom line,

1 sir. Regardless of where she worked, work, lives,
2 or whatever, she's going to be here. You will be
3 able to question her. If you want her as a
4 witness, she's going to be here and you can ask her
5 any questions you need to ask her.

6 THE DEFENDANT: I have other witnesses.
7 I have a right to --

8 THE COURT: You need to give those
9 witness to Mr. Malloy so he can locate them and
10 have them available.

11 THE DEFENDANT: And the other employees
12 at L&B Snacks, and then the employees at East Coast
13 -- I wanted those employees at -- the other two
14 employees at East Coast to be on the witness list,
15 and also the employees at L&B who worked at the
16 same time this happened to be on the witness list.

17 I also asked him to Subpoena
18 Mr. Clarence Brown's ex-wife to be on the witness
19 list because her statement I know for a fact will
20 contradict what Mr. Brown's statement said.

21 THE COURT: You gave that information
22 to Mr. Malloy?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Were you able to locate
25 her?

1 MR. MALLOY: Those individuals that he
2 mentioned specifically -- Mr. Brown's wife we have
3 not been able to locate, but some of the others he
4 has mentioned we have talked to and have decided
5 not to call them.

6 THE COURT: And Mr. Brown's wife -- is
7 it wife or ex-wife?

8 MR. MALLOY: Ex.

9 THE COURT: Was the State able to
10 locate Mr. Brown's ex-wife?

11 MS. ASKINS: We have never made any
12 attempt to locate her. I don't know anything about
13 her.

14 THE COURT: Was she ever involved in
15 the business?

16 MS. ASKINS: As far as I know, based on
17 the conversation with Mr. Brown, no.

18 THE COURT: Sir, what is she going to
19 be able to say?

20 THE DEFENDANT: She was involved in the
21 business. She still has ties with it even though
22 they're not married anymore.

23 THE COURT: I mean, what is she going
24 to say?

25 THE DEFENDANT: She can speak to my --

1 there's one argument that I don't work at L&B and I
2 never did work at L&B, and then I have other
3 witnesses that I want to call that can say that
4 Mr. Clarence Brown gave -- said that I was a
5 full-time employee of other businesses that I don't
6 trust Mr. Malloy with that information.

7 There are other businesses that I have
8 that will say that this person talked to Clarence
9 Brown personally and he gave a recommendation to
10 say that I was a good person to recommend, that he
11 told them personally that I was a full-time
12 employee. And there are two or three businesses
13 out there.

14 THE COURT: Is this gentleman going to
15 say he didn't work for him?

16 MS. ASKINS: Your Honor, just so we're
17 clear kind of about the case, the Defendant went
18 into the car dealership to buy a BMW, filled out an
19 application and provided all of the information,
20 gave his driver's license, references, things of
21 that nature, and indicated that he worked at L&B
22 Vending Services, had worked there for seven years,
23 and earned about \$3,000 a month income.

24 He also -- the Defendant got employees
25 of L&B to lie on his behalf when the car company

1 called to verify his background information.
2 Clarence Brown is going to say, I know Wayne
3 Polite, I've known him for 20 years, he has
4 occasionally done a few odd jobs for me, he was not
5 an employee for me and not worked for me for seven
6 years. I did not give him an income of \$3,000 a
7 month and I did not provide for him the pay stub
8 that the Defendant provided to the car dealership.

9 That's the gist of his conversation.
10 The gist of the case is that -- obtaining by false
11 pretenses. The false pretense is the information
12 that he provided on the credit application to the
13 car dealership.

14 THE COURT: Was it approved or not
15 approved?

16 MS. ASKINS: The credit was not
17 approved --

18 THE COURT: And why was it not
19 approved?

20 MS. ASKINS: Because of the false
21 information.

22 THE COURT: When they called to verify,
23 they couldn't verify it. Okay. I forgot what my
24 original question was.

25 MS. ASKINS: You had asked me about

1 Mr. Clarence Brown.

2 THE COURT: What kind of business is
3 this?

4 MS. ASKINS: L&B Vending Services, they
5 -- Mr. Brown supplies vending machines, but he also
6 has a check-cashing business on Rivers Avenue.

7 THE COURT: Okay.

8 MS. ASKINS: And I think he has -- he
9 owns a restaurant, he has --

10 THE COURT: He has a variety of things.

11 MS. ASKINS: Yes, ma'am.

12 THE COURT: Was his ex-wife involved in
13 any of the businesses?

14 MS. ASKINS: This is the first time
15 that I've heard of the ex-wife. I never inquired
16 to that, so I have no idea.

17 THE COURT: Okay. And, sir, where is
18 it that you contend the former Mrs. Brown lives?

19 THE DEFENDANT: I've been by her house.
20 I don't know the exact address.

21 THE COURT: Well, you know the general
22 area. Where does she live?

23 THE DEFENDANT: North Charleston.

24 THE COURT: What part of North
25 Charleston?

1 THE DEFENDANT: Not too far from
2 Cosgrove and -- between that road Cosgrove and
3 Spruill and Rivers.

4 THE COURT: Okay. And were they
5 married or divorced when you worked -- when you say
6 you worked for Mr. Brown?

7 THE DEFENDANT: I knew Clarence before
8 he met her, and during -- while they were married,
9 and during the divorce, and now.

10 THE COURT: Okay. So Mr. Brown owns
11 the business, correct?

12 THE DEFENDANT: He owns it. He has
13 silent partners. He's the sole --

14 THE COURT: He's the one that writes
15 the checks and does the payroll and reports to the
16 government.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: I'm still trying to figure
19 out -- here's the bottom line: I have heard your
20 motion to relieve Mr. Malloy. I have not heard any
21 bases to relieve him. He's ready and prepared to
22 go forward. I have not heard anything that amounts
23 to ineffective assistance of counsel. This case
24 has been pending for more than a year, and if it
25 was your desire to obtain private counsel, you've

1 had more than adequate opportunities to have done
2 that. So the motion to relieve your attorney is
3 denied.

4 Now, what you need to do, and you have
5 more than adequate time to do it and to accomplish
6 it, is you need to give Mr. Malloy the name of
7 every person that you want him to --

8 Actually, what I need you to do, Mr.
9 Malloy, every person that he has given you, you
10 need to go through that list with him and tell him
11 -- and have your investigator present and let him
12 know what efforts were made to locate these
13 individuals and tell him why you made the strategic
14 decision not to call them.

15 MR. MALLOY: Your Honor, we will
16 address that with him, but I have kept him updated
17 on our --

18 THE COURT: I assume you have. I don't
19 mean to imply by what I just said that you didn't.
20 I just want you to do it one more time just to --
21 so that we will know definitively --

22 MR. MALLOY: Happy to.

23 THE COURT: -- that he was, in fact,
24 updated. Is your investigator present? Has he
25 come yet?

1 MR. MALLOY: Your Honor, I just texted
2 him.

3 THE COURT: Now, sir, there is another
4 thing that you need to discuss with your lawyer.
5 Sometimes lawyers will not call witnesses in a case
6 because they want to do something procedurally,
7 which is to preserve last argument, which
8 oftentimes is more valuable than calling a
9 character witness. So you may want to discuss that
10 with Mr. Malloy because that may be a part of his
11 reasoning in not calling any witnesses.

12 And I will be real direct with you,
13 mostly when you call a character witness, the jury
14 doesn't really give that a whole lot of weight
15 because they assume that they like you and they
16 know you and they're going to say something
17 beneficial about you. And that might not be worth
18 giving up last argument for.

19 THE DEFENDANT: And you're right, Your
20 Honor. That's what I'm talking about; I don't know
21 what is going on, he hasn't talked to me about the
22 strategy. If that's the case, hey, look --

23 THE COURT: Well, he said that he has
24 already gone over it with you, but I have directed
25 him to go over it with you again.

1 THE DEFENDANT: And also, too, I think
2 everybody -- I went to that car lot --

3 THE COURT: Sir, nobody is assuming
4 guilt or innocence. It's not my prerogative. I'm
5 not the fact-finder. I wasn't there, I don't know
6 what happened. So what happens is the State
7 presents their side. You don't have a burden of
8 proof; you don't have to say anything. All you
9 have to do is sit at that table, and it's up to
10 them to prove their case beyond a reasonable doubt,
11 and it's up to your attorney to go through the
12 facts as the State presents them to determine
13 whether they've met that burden or not.

14 Twelve citizens will decide if the
15 State has met their burden. That's not for the
16 court. I don't have an opinion one way or the
17 other; it doesn't matter if you're convicted or
18 acquitted. I just have to make sure that everybody
19 has a fair trial, the State and you.

20 THE WITNESS: I'm the one that has to
21 do the time if I lose the trial, not you or anyone
22 else.

23 THE COURT: That's right.

24 THE DEFENDANT: I'm not afraid to go to
25 trial. I want to do my best to do what I can do to

1 fight for my right. All I want is a fair chance
2 and a fair opportunity. I'm not afraid to go to
3 trial. I believe Mr. Malloy might be a great
4 lawyer for someone else and he might have won
5 plenty other trials. I don't think he's the right
6 guy --

7 THE COURT: Sir, I have already
8 entertained that argument and you still have not
9 provided the Court with any independent information
10 that would -- that would justify me relieving an
11 attorney who is prepared and ready to go forward.
12 He has fully explored your case and investigated
13 every lead that you've given him and has formulated
14 a defense for you.

15 So what I would suggest you do -- and
16 it's up to you if you do it or not -- is you sit
17 down and you listen with an open mind and allow Mr.
18 Malloy to go over it with you once again before we
19 get started with opening argument and opening
20 instructions. And you give him any information
21 that you feel he needs so his investigator can
22 track all that down before the time comes for you
23 to present your case in the event you want to
24 present any witnesses.

25 THE DEFENDANT: I still don't want him

1 as my lawyer.

2 THE COURT: I understand that and the
3 Court has ruled, sir. I've already ruled on it.

4 THE DEFENDANT: So my rights to
5 effective assistance --

6 THE COURT: Sir, the Court has ruled.
7 There is no further argument once the Court has
8 ruled. I have fully heard every argument that
9 you've made regarding --

10 THE DEFENDANT: Well, I won't be here

11 -- THE COURT: Pardon me?

12 THE DEFENDANT: I won't be here while
13 he represents --

14 THE COURT: Well, that's your choice.
15 If you want to be present, you can be present. If
16 you choose to absent yourself from the proceedings,
17 that's your choice. I will tell you, however, that
18 that would not benefit you, because as the
19 witnesses testify you need to inform Mr. Malloy of
20 issues that you may want him to cross-examine the
21 witnesses about.

22 THE DEFENDANT: I will refuse to. You
23 can find me in contempt, but --

24 THE COURT: I'm not going to find you
25 in contempt, that's up to you. You don't have to

1 be present at your trial. That's your right. If
2 you don't want to be here, you don't have to be.

3 THE DEFENDANT: He's not representing
4 me.

5 THE COURT: Well, he's going to be
6 representing you, so you have to make your choice
7 now whether you want to be here and assist him or
8 whether you don't.

9 THE DEFENDANT: I don't want to have to
10 get physical with Mr. Malloy, but --

11 THE COURT: You're not going to get
12 physical because if I have to, I will have him
13 restrain you.

14 THE DEFENDANT: I will. One way or
15 another, I will.

16 THE COURT: That's not going to happen.
17 I have better confidence in your ability to conform
18 your behavior.

19 THE DEFENDANT: This is my life. I'll
20 do everything I can to defend my rights.

21 THE COURT: Well, I can instruct you
22 now that if you do not conform your behavior, the
23 deputies will handle it. I will not be involved.
24 Security is their business. If you do anything to
25 Mr. Malloy, I need to advise you that you will be

1 charged probably with assault or they will restrain
2 you. And I don't want you to be restrained in the
3 presence of the jury --

4 THE DEFENDANT: Better restrain me.

5 THE COURT: -- because that's going to
6 prejudice you.

7 THE DEFENDANT: He will not defend my
8 case.

9 THE COURT: Okay. Mr. Malloy, your
10 investigator is here. I suggest you go over with
11 him everything. You-all take him to an interview
12 room so he can go over those items.

13 THE DEFENDANT: I won't talk to Mr.
14 Malloy.

15 THE COURT: Sir, that is your choice.

16 MS. ASKINS: Your Honor --

17 THE COURT: I need your witness list
18 and your voir dire.

19 MS. ASKINS: I was not able to get
20 those first two witnesses here, Your Honor. You
21 indicated you would like me to get the first two
22 witnesses here today. I called them. They are
23 unable to come. They had made other plans and
24 said, you told us to be here tomorrow morning.

25 THE COURT: This is their case. I

1 can't imagine they have other plans that are more
2 important than being here for their case.

3 MS. ASKINS: Your Honor, they refused
4 to be here. We instructed them -- Judge Harrington
5 instructed us to tell them to be here Thursday
6 morning.

7 THE COURT: You should always instruct
8 people that scheduling is subject to change.

9 MS. ASKINS: Under the new order that
10 we're under, I have not --

11 THE COURT: Is there an order.

12 MS. ASKINS: My understanding, Your
13 Honor -- I'm not trying to be argumentative.

14 THE COURT: There is no order. The
15 only order is case management, you have to do it
16 county by county. The chief has not approved that;
17 there are no orders in place that I'm aware of.

18 MS. ASKINS: I'm going over the
19 instructions that I had, we were to start on
20 Thursday and we were going to get things started.

21 (There was a break in these
22 proceedings.)

23 THE COURT: Get Mr. Polite. I don't
24 want him to think that we had any cloak-and-dagger
25 conversations out of his presence.

1 Do I need to have any conversations
2 with you all ex parte, because I don't want to
3 reveal any of your trial strategy in the presence
4 of the State?

5 MR. MALLOY: No, Your Honor.

6 THE COURT: I just wanted to ask. I'm
7 not implying.

8 MR. MALLOY: We don't have any problems
9 with everybody.

10 THE COURT: All right. Good.

11 Okay. Mr. Malloy, who is your
12 investigator for the record?

13 MR. MALLOY: Your Honor, my
14 investigator is Harry Long.

15 THE COURT: And did the list that
16 Mr. Polite indicated he provided, you provided that
17 to Mr. Long.

18 MR. MALLOY: Yes.

19 THE COURT: And he's -- did you all go
20 over everybody that Mr. Polite provided to you all
21 and let him know the status of each of those
22 individuals and whether you were able to contact
23 them or not and whether they would be beneficial to
24 his case?

25 MR. MALLOY: Yes, Your Honor. And

1 Mr. Polite has indicated that there are some he
2 chooses not to share with me just because he
3 doesn't trust me.

4 THE COURT: Okay. Well, that's his
5 option and certainly -- Mr. Polite, I would tell
6 you if there are witnesses that you want at trial,
7 you need to give the names to Mr. Malloy so that
8 Mr. Long can track those people down today so that
9 they can be available for the defense of your case.
10 Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. We're going to go
13 ahead and pick the jury, but we're not going to
14 start until tomorrow.

15 Bring the panel up for me, sir.

16 And did you have any voir dire, Mr.
17 Malloy?

18 MR. MALLOY: Excuse me, Your Honor?

19 THE COURT: Did you have any voir dire?

20 MR. MALLOY: I submitted some via an
21 e-mail.

22 THE COURT: You know what? I have a
23 motion in limine and I have voir dire, but I don't
24 have a witness list.

25 MR. MALLOY: Your Honor, the only

1 (Jury out, 3:42 p.m.)

2 THE COURT: You may be seated. I have
3 a motion in limine that you filed, Mr. Malloy,
4 dealing with the admissibility of any prior
5 convictions.

6 Does Mr. Polite have any prior
7 convictions that the State would be seeking to
8 introduce to impeach his credibility if he were to
9 testify?

10 MS. ASKINS: He does, Your Honor.

11 THE COURT: And what are those
12 convictions?

13 MS. ASKINS: One moment. Your Honor,
14 he has a 2002 forgery, he has a 2005 bank fraud
15 that was federal, he has a 2008 forgery, a 2009
16 financial identity fraud, 2009 forgery, also in
17 2009, two additional counts of forgery, two counts
18 of financial identity fraud, manufacturing a false
19 ID, all of those are out of Georgia, and in 2013,
20 he has two counts of financial identity fraud.

21 THE COURT: Are those out of Georgia as
22 well?

23 MS. ASKINS: No, Your Honor, those were
24 in Charleston. The last two were in Charleston.

25 THE COURT: When do you have -- when

1 was he released from confinement? Some of these
2 would be outside of the ten years. The 2002 would
3 be outside the ten years.

4 MS. ASKINS: Your Honor, my -- I'm
5 sorry, I didn't mean to interrupt.

6 THE COURT: And depending on the date
7 of the 2005, that would be outside of the ten
8 years.

9 MS. ASKINS: Your Honor, the 2002
10 forgery, he pled guilty December 19, 2002. He was
11 sentenced to three years, suspended to one year
12 probation. I think that would give him --

13 THE COURT: 2013 is when he would be
14 released from confinement -- well, 2003, you'd add
15 ten years to that, so 2013 would be the cutoff,
16 it's when you're released from confinement which is
17 your potential to go to jail, which is probation.
18 Or when you're released from jail and when your
19 community supervision time ends. So that would not
20 be -- unless you gave them notice and I found it
21 was probative that there are so many others, at
22 some point it gets cumulative, so --

23 MS. ASKINS: I did give him notice.

24 THE COURT: Bank fraud 2005, when was
25 he released from that confinement?

1 MS. ASKINS: He pled guilty February
2 24, 2005, he was committed to prison for time
3 served, and he was ordered to pay restitution and
4 supervised for five years.

5 THE COURT: When did he get off of
6 probation? That's when the time period runs for
7 the ten years.

8 MS. ASKINS: Your Honor, I do remember
9 having that information.

10 THE COURT: I would have to know the
11 facts of the bank fraud to make an intelligent
12 decision about whether that could be used for
13 impeachment. The 2008 I would assume would be
14 within the ten years, as well as the 2009 and the
15 2013. Is he on probation for the 2013 event?

16 MS. ASKINS: My understanding is that
17 he is.

18 MR. MALLOY: He is, Your Honor.

19 THE COURT: What were the terms of that
20 sentence? When did he plead guilty, or did he have
21 a trial and what was he sentenced to?

22 MS. ASKINS: The 2013?

23 THE COURT: Uh-huh.

24 MS. ASKINS: He pled guilty January 13,
25 2013, Judge Hughston sentenced him to five years,

1 suspended upon 27 months with five years probation.

2 THE COURT: And five years probation?

3 MS. ASKINS: Yes, Your Honor. On both
4 of the counts.

5 THE COURT: So he was in jail for
6 27 months and then he pled?

7 MR. MALLOY: That's my understanding.

8 THE COURT: Okay. All right. I would
9 have to think about how much would be admissible to
10 impeach his credibility because at some point it
11 becomes incredibly cumulative, so I will have to
12 look at it and see.

13 MS. ASKINS: I do have information from
14 the probation -- federal probation as well as the
15 indictment on that federal charge if you would
16 like.

17 THE COURT: He was on federal
18 probation?

19 MS. ASKINS: This went back -- you
20 inquired about the 2005 bank fraud. You were
21 asking me when he was released.

22 THE COURT: That's a federal charge?

23 MS. ASKINS: Yes, Your Honor.

24 THE COURT: Is he still on supervision?

25 MS. ASKINS: Your Honor, he was

1. released in 2008, July 20th.

2. THE COURT: That would be ten years
3. from that, so that would be 2018. And what were
4. the alleged -- well, he pled guilty or he had a
5. trial?

6. MS. ASKINS: He pled guilty, Your
7. Honor.

8. As to the bank fraud account, on or
9. about November 19, 2001, in South Carolina,
10. executing a scheme to defraud and obtain monies
11. from Wachovia Bank. Sounds very similar to our
12. bank fraud, Your Honor. I'm paraphrasing here, in
13. that he deposited a counterfeit check in the amount
14. of \$3,475.91 in the Wachovia Bank.

15. THE COURT: Did he have to pay
16. restitution? I would assume he had or they caught
17. it before it was cashed I guess.

18. Do you know if he had to pay
19. restitution?

20. MR. MALLOY: I don't know, Your Honor.

21. THE COURT: Sir, did you have to pay
22. restitution on your federal charge?

23. THE DEFENDANT: Yes, ma'am.

24. THE COURT: Did you complete that
25. restitution?

1 THE DEFENDANT: No, I'm sorry. I'm
2 sorry, they -- no, I didn't have to pay
3 restitution.

4 THE COURT: It wasn't cashed, was it?

5 THE DEFENDANT: No, it was a civil
6 suit.

7 THE COURT: You were put on federal
8 probation. It wasn't a civil suit.

9 THE DEFENDANT: I went to court, but --
10 and I got six months at a camp.

11 THE COURT: Okay.

12 THE DEFENDANT: And they made the
13 restitution a civil --

14 THE COURT: A civil judgment?

15 THE DEFENDANT: Yes, ma'am.

16 MS. ASKINS: It looks like the total
17 amount of that restitution was \$60,000.

18 THE COURT: But you're saying they
19 reduced that to a civil judgment when you went to a
20 six-month camp?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Is that part of a federal
23 revocation?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Is that because you weren't

1 able to pay the restitution?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. So I will have
4 to look at that and I'll make that decision at the
5 time I question him on his rights to testify.

6 MR. MALLOY: Your Honor, if I could
7 just state for the record the grounds for my motion
8 to exclude the convictions. Obviously, our
9 position is that the ones that are ten years old
10 should not come in --

11 THE COURT: I didn't hear you.

12 MR. MALLOY: The convictions over ten
13 years --

14 THE COURT: Well, I've already
15 determined the ones that are over ten, and there is
16 only one. That's the forgery from 2002.

17 MR. MALLOY: Thank you, Your Honor.
18 The ones from within the last ten years we would
19 move to exclude on the basis of their similarity to
20 the case that is charged in this trial today.
21 Especially, Your Honor, the forgeries.

22 The State's allegation --

23 THE COURT: Let me interrupt you one
24 second. Even if I were to find that, you would
25 concede, though, that they are entitled to ask him

1 if it is a felony? That would be the option,
2 because they're still going to be able to impeach
3 his -- you can't just erase his record like it
4 didn't happen, because it does bear on his
5 credibility and I may be inclined to agree with you
6 that it is similar and it may be more probative
7 than prejudicial, but the remedy our courts have
8 articulated is to ask whether he was convicted of a
9 felony and leave it at that.

10 MR. MALLOY: I realize that some of
11 these would carry over a year and be admissible
12 under 609, but I still think the Court should weigh
13 the probative value versus the danger of unfair
14 prejudice due to the similarities of the crime
15 charged. And, again, with the forgery --

16 THE COURT: Well, if they ask him if he
17 was convicted of a felony, they're not saying what
18 it was.

19 MR. MALLOY: Your Honor, I agree that
20 that would not -- that would eliminate the
21 prejudice that would arise from specifics of his
22 prior convictions.

23 THE COURT: Which of these are
24 felonies? Is the forgery considered a felony?

25 MS. ASKINS: Your Honor --

1 THE COURT: I know the bank fraud is
2 probably a felony.

3 MS. ASKINS: My understanding is that
4 the 2008 forgery is --

5 THE COURT: I'm sorry, I can't hear
6 you. The 2008, you said forgery was no dollar
7 amount?

8 MS. ASKINS: Yes. And that would be a
9 three-year misdemeanor.

10 THE COURT: Okay. And then financial
11 identity fraud 2009?

12 MS. ASKINS: That's a ten-year offence,
13 Your Honor.

14 THE COURT: That would be a felony,
15 but you need to look it up because the years don't
16 matter in South Carolina because CDV HAN is a
17 misdemeanor and it carries ten years.

18 MS. ASKINS: The financial identity
19 fraud is a felony.

20 THE COURT: The 2009 forgery?

21 MS. ASKINS: I believe that is a
22 felony. I have the sentencing sheet here, Your
23 Honor. Let me just verify that. Yes. That was
24 less than \$5,000 and that is a felony.

25 THE COURT: The one from 2009?

1 MS. ASKINS: Yes, Your Honor.

2 THE COURT: Okay. And the two from
3 2009, that -- I have two forgeries -- an additional
4 two forgeries in 2009, a financial identity fraud
5 two times and manufacturing false ID from Georgia.
6 All of those Georgia offenses, felonies or
7 misdemeanors?

8 MS. ASKINS: Bear with me one moment,
9 Your Honor. On the sentencing sheet, that's marked
10 felony sentence.

11 THE COURT: All of them or just --

12 MS. ASKINS: He pled to everything on
13 one sentencing sheet and it's marked felony
14 sentence.

15 THE COURT: It doesn't say which ones
16 are felonies and which ones aren't?

17 MS. ASKINS: Count 1, he got five
18 years; second count he got five years; third count
19 he got five years; fourth count he got years --

20 THE COURT: I don't know what each of
21 those are.

22 MS. ASKINS: I would be happy to --

23 THE COURT: Yeah, I think I need to
24 know so I can make an intelligent assessment as to
25 whether each of them are felonies, and then we

1 don't have any -- you know, we're clear for the
2 purpose of the record. The financial identity
3 fraud from South Carolina 2013, are those felonies?

4 MS. ASKINS: Yes, Your Honor.

5 THE COURT: So I can tell you initially
6 that since this will come down to credibility I
7 assume, although I haven't heard anything yet that
8 -- all these type cases usually would have some
9 component of credibility. If he were to testify, I
10 probably would let in some level of these offences
11 for impeachment, but I probably wouldn't let in all
12 of them. But at some point it becomes cumulative
13 and it almost crosses over into the level of
14 character because basically you're saying you're a
15 bad person because there are so many offences.

16 If your goal is to impeach his
17 credibility, you can do that with two of them
18 probably. You don't need all of them. So I will
19 determine at that time -- and it really doesn't
20 become germane until he decides to testify and I'm
21 not going to make a decision until then.

22 I'm just going through this so he can
23 have some idea, so that he won't be blind, to know
24 that there is something that will come in to
25 impeach his credibility so he can have a meaningful

1 conversation with Mr. Malloy when the time is
2 appropriate as to whether he should or should not
3 testify.

4 Now, sir, we will start the case in the
5 morning. I need you to communicate with Mr. Malloy
6 the best that you can, give him all the information
7 that you can so that he can put his investigator to
8 work this afternoon and this evening and tomorrow
9 to get any information or witnesses that you need
10 here for your defense.

11 I don't know whether -- you know, the
12 great thing about being a judge is I don't have to
13 make the decision about guilt or innocence in this
14 case. I don't have to decide whether the State has
15 met their burden or not, that's why we have an
16 adversarial system. The State puts on their case;
17 you defend the case. You don't have a burden of
18 proof; they have the burden of proof. Okay. You
19 just sit at that table and say nothing. You don't
20 have to say a word because you don't have the
21 burden of proof. You don't have to prove your
22 innocence.

23 Now, based on what you've said today,
24 you may well have a viable defense, which means you
25 may really have a point to what you're saying. Mr.

1 Malloy can't -- he's your legs, he's your arms to
2 get that done, but he can't do it if you don't
3 communicate with him. Okay? The only way he can
4 make that assessment is if you communicate with him
5 and tell him what he needs to know so that he can
6 be prepared to articulate those things that you
7 want in the record.

8 Now, even though you tell him, under
9 our case law and even under the standards for
10 ineffective assistance, he doesn't have to do
11 everything you ask. He has to investigate, but he
12 still has to make a common sense reasonable legal
13 assessment of what's in your best interest. Okay?
14 And the case law says he doesn't even have to get
15 your yay or nay on strategy, but still he needs to
16 discuss it with you. He can't talk with you if
17 you're not willing to talk to him. Okay?

18 So I need you to listen to him with an
19 open mind. I need you to communicate with him with
20 a open mind because, like I said, you may well have
21 a legitimate defense, I have no idea, but Mr.
22 Malloy won't have any idea if you don't give him
23 the information to pursue.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You have a good evening.

1 I'll see you at 9:30 in the morning.

2 MS. ASKINS: Your Honor, we have some
3 other witnesses with prior records. Would you like
4 to take it up as --

5 THE COURT: Who are your witnesses with
6 prior records?

7 MS. ASKINS: Your Honor, Clarence
8 Brown.

9 THE COURT: What's the prior record?

10 MS. ASKINS: An '87 shoplifting --

11 THE COURT: Wait a second. '87? I
12 would assume that would have been the magistrate
13 court.

14 MS. ASKINS: That's correct, Your
15 Honor. I'm just -- I'm not saying they come in --

16 THE COURT: No. No. I'm just sort of
17 thinking out loud. Go ahead.

18 MS. ASKINS: '87 shoplifting, a 2001
19 failure to return rental objects, and he does have
20 a current pending gun charge and unlawful carrying
21 with our office.

22 THE COURT: Have you given him any deal
23 to testify?

24 MS. ASKINS: We have not. We have not
25 spoken to him about this case at all.

1 THE COURT: What year is the pending
2 gun charge?

3 MS. ASKINS: 2014. And just so the
4 Court knows, Mr. Cooper was prosecuting that case
5 and then it came to our attention. So his case had
6 been transferred. We have been in communication
7 with -- we have not discussed it at all with
8 Mr. Brown. I have been in contact with his lawyer
9 just to let him know -- I just discovered -- and
10 his lawyer is Rick Cannon. It's our position that
11 none of that comes in. I just --

12 THE COURT: Say that one more time.

13 MS. ASKINS: It's the State's position
14 that none of that should come in.

15 THE COURT: Well, if Mr. Malloy has a
16 good-faith basis that you all have offered him a
17 deal in consideration for him testifying, he can
18 ask that. But if he doesn't have a good-faith
19 basis for it, then --

20 MR. MALLOY: Your Honor, I would argue
21 the just the pending nature of the offense
22 prosecuted by this Solicitor's office should be
23 allowable under Rule 608, evidence of potential
24 bias. The charge is still hanging over his head --

25 THE COURT: They haven't -- usually it

1 comes in if they have some deal with him or he
2 thinks that he's going to get something in
3 consideration, whether they've articulated it to
4 him or not. He has to have something of value he
5 perceives he's going to receive from them.

6 MR. MALLOY: Well, Your Honor, our
7 position would be that under Rule 608(C), it could
8 be a potential source of bias, due to his hope --

9 THE COURT: You have to have some
10 good-faith basis for that. I'm not inclined to let
11 it in, but I'll think about it. You need to have
12 some good-faith basis or belief that they've
13 offered him something or that he has pled guilty
14 and he's cooperating with some hope that something
15 will be given to him, even though a deal is not in
16 place.

17 You have to have something more than --
18 and it's been my experience that a pending gun
19 charge does not offer him anything for testifying.

20 MR. MALLOY: I understand Your Honor.

21 THE COURT: They're going to prosecute
22 that gun charge. I can't imagine they would not.

23 MR. MALLOY: Your Honor, regarding
24 shoplifting, I know there's a remote conviction,
25 however, I believe shoplifting is a crime of

1 dishonesty per say would be --

2 THE COURT: Did you give them notice?

3 MS. ASKINS: He did not, Your Honor.

4 MR. MALLOY: We probably won't ask
5 about that due to the remoteness of the conviction,
6 but --

7 THE COURT: I would agree with you that
8 it's a crime of dishonesty, it comes in
9 irregardless of punishment. Whenever it's
10 something over ten years, both sides have to --
11 it's reciprocal.

12 MR. MALLOY: We would ask you to
13 consider the pending charge.

14 THE COURT: I'm going to think about
15 that, but unless you can come up with something
16 over the break, or he's been promised something, or
17 he has a reasonable expectation of getting
18 something -- I'll have to think about that.

19 MR. MALLOY: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 MS. ASKINS: Next witness is Priscilla
22 Patterson. She has a 2008 contempt of court
23 conviction from Virginia.

24 THE COURT: What is that for, child
25 support? Or what is it?

1 MS. ASKINS: All it says is failure to
2 appear. It does not indicate --

3 THE COURT: You have to -- we have to
4 figure out what that's all about. It could be for
5 child support.

6 MS. ASKINS: She also has a 2003
7 driving without a license. Actually, I'm not sure
8 it's a conviction, it's just an arrest. I don't
9 believe it will come up anyway. We provided to Mr.
10 Malloy -- there was an incident report where her
11 name came up from last year. It was an
12 investigation of a forgery, and that incident
13 report indicated that they did not find a crime.

14 THE COURT: Okay.

15 MS. ASKINS: And that's all of her
16 record.

17 THE COURT: Okay. Who's next?

18 MS. ASKINS: We've discussed
19 Mr. Polite. Ruth Love's convictions.

20 THE COURT: Ruth Love.

21 MS. ASKINS: Yes, Your Honor. She has
22 a 2008 false information to police, 2012 DUS,
23 shoplifting, A and B third, 2013 forgery, those are
24 both no dollar misdemeanor -- two counts of that,
25 both no dollar, she has a DUS and false info to

1 police --

2 THE COURT: All in '13?

3 MS. ASKINS: Yes, Your Honor. And she
4 has a 2014 possession of marijuana.

5 THE COURT: Which is the -- the false
6 info would come in because that's involving
7 dishonesty, irregardless of punishment. The
8 shoplifting would come in irregardless of
9 punishment. The forgery you would have to prove
10 involved some theft for it to come in. The false
11 info in '13 would come in. The marijuana would not
12 come in, it's not dispositive to truthfulness.
13 False information by its nature is lying to police.

14 Let's see, shoplifting is a theft. And
15 609(2) provides, evidence of any witness that's
16 been convicted of a crime shall be admitted if it
17 involves dishonesty or false statement, regardless
18 of the punishment. So all of those are within the
19 ten years, but I need to know if the forgery
20 involved a theft, the two forgeries.

21 MS. ASKINS: I will go back and look at
22 that. I'm vaguely familiar, but I'm not sure I can
23 articulate it.

24 THE COURT: That's okay.

25 MS. ASKINS: I will look into that.

1 And, finally, Your Honor, we have a witness
2 Michelle Miller. She has no convictions, Your
3 Honor, but she is the subject of a federal target
4 letter.

5 THE COURT: Say that again.

6 MS. ASKINS: A federal target letter.

7 THE COURT: What is that?

8 MS. ASKINS: My understanding is that
9 she is a potential witness -- a potential target in
10 a federal investigation. And I will tell you what
11 I know about this. I have spoken to her briefly
12 and I have spoken with her lawyer, Bill Runyon.
13 This involves a mortgage fraud that was --

14 THE COURT: She hasn't been charged?

15 MS. ASKINS: She has not been charged
16 with anything, Your Honor. She has not been
17 questioned; she has not been indicted; she is just
18 a target. That was disclosed to me, I disclosed
19 that to Mr. Malloy and --

20 THE COURT: That wouldn't be
21 admissible. She hasn't been charged with anything;
22 it's not a conviction.

23 All right. Does that cover all the
24 witnesses that have records?

25 MS. ASKINS: That's correct.

1 (The following proceedings were had
2 August 13, 2015, 9:44 a.m., State v. Polite,
3 Charleston County, Charleston, South Carolina.)

4 (PLF. EXH. 1 - 13, were marked for
5 identification.)

6 THE COURT: State ready to proceed?

7 MS. ASKINS: Yes, Your Honor.

8 THE COURT: Defense ready to proceed?

9 MR. MALLOY: Yes, Your Honor.

10 THE COURT: And just as a matter of
11 housekeeping, did Mr. Polite give you any other
12 individuals that he would like you to work on last
13 evening?

14 MR. MALLOY: Your Honor, we did locate
15 Mr. Clarence Brown's ex-wife, and I went and spoke
16 to her about the case and we've decided not to call
17 her as a witness.

18 THE COURT: Have you discussed that
19 with him, before we get started?

20 MR. MALLOY: I have not.

21 THE COURT: I think you might need to
22 so he's clear.

23 MR. COOPER: Judge, if I may approach?
24 I have a consent order on an unrelated matter.

25 THE COURT: Thank you.

1 MR. MALLOY: Your Honor, one potential
2 witness that I neglected to mention yesterday would
3 be my investigator, Harry Long. And he would only
4 be called as an impeachment witness. I don't know
5 if you want to mention his name to the jury to see
6 if anybody is familiar with him.

7 THE COURT: Does the State feel it's
8 necessary?

9 MS. ASKINS: Your Honor, I don't have a
10 problem with that. To the same extent, for
11 impeachment purposes, we may have to call our
12 investigator, Sherri Niblock, as well. We don't
13 have an objection to that if the case arises.

14 THE COURT: And did you go over with
15 him all of the other witnesses? He had indicated
16 some character witnesses he wanted you to locate as
17 well.

18 MR. MALLOY: Your Honor, we had that
19 discussion.

20 THE COURT: You have discussed that
21 with him?

22 MR. MALLOY: Yes. And, Your Honor, I'm
23 asking for witnesses to be sequestered.

24 THE COURT: Any objection from the
25 State?

1 MS. ASKINS: No, Your Honor.

2 THE COURT: Witnesses will be
3 sequestered?

4 Who is the State's first witness going
5 to be?

6 MS. ASKINS: John Tursi.

7 THE COURT: If you all could have your
8 witnesses close so we don't have to be waiting a
9 long period of time when it's time for them to
10 testify, that would be appreciated.

11 Is it correct that State's 1 through 13
12 have been marked and admitted without objection,
13 from the State?

14 MS. ASKINS: Yes, Your Honor, 1 through
15 13. I believe Mr. Malloy has no objection to those
16 and --

17 THE COURT: I believe my question was,
18 are State's 1 through 13 marked and admitted
19 without objection?

20 MS. ASKINS: Yes, Your Honor.

21 THE COURT: Mr. Malloy, are State's
22 Exhibits 1 through 13 marked and admitted without
23 objection?

24 MR. MALLOY: Without objection.

25 THE COURT: Marked and admitted without

OPENING STATEMENT BY MR. COOPER

1 The Defendant in this case is charged
2 with obtaining goods under false pretenses. Now,
3 as the judge stated, she will instruct you at the
4 end of the case what the law in this case is, but I
5 want to go over it with you briefly now.

6 In South Carolina, obtaining goods
7 under false pretenses is comprised of four
8 elements, four things that we, the State, myself
9 and Ms. Askins, have to prove to you. The four
10 elements we have to prove are that the Defendant
11 with false pretenses or misrepresentations obtained
12 a good from a person with the intent to defraud
13 that person of that good; essentially, that someone
14 purposely lied to someone else to obtain a good
15 from that person. And in this case, that good is a
16 car.

17 Now, the State has the burden of
18 proving these elements to you beyond a reasonable
19 doubt. That's not beyond all doubt. There are
20 very few things in this world that we know beyond
21 all doubt or with absolute certainty. What the law
22 requires is that we prove it to you beyond a
23 reasonable doubt, or that you're left firmly
24 convinced of the Defendant's guilt in this case.

25 Through the testimony of the witnesses

OPENING STATEMENT BY MR. COOPER

1 and the evidence that the State will introduce, the
2 State will prove to you beyond a reasonable doubt
3 the following: That on March 11, 2014, the
4 Defendant Wayne Polite, went to East Coast Sports
5 and Imports, a used car dealership on Rivers
6 Avenue, to get a car. He got on the lot, he found
7 a car that he liked, a silver 2004 BMW X3, and he
8 went in to meet with the finance manager, Michelle
9 Miller, to finance the vehicle.

10 At that point, he provided fake pay
11 stubs -- two fake pay stubs from a North Charleston
12 company, L&B Snacks and Vending, where he was not
13 employed. He provided false information that
14 stated he had worked there for seven years and that
15 he had an income of roughly 700 a week or \$3,000 a
16 month. Mr. Polite had a friend that worked at that
17 company that he asked to lie for him when East
18 Coast called to verify the employment and income.

19 He was conditionally approved for a
20 loan. He paid a down payment on the vehicle and he
21 was allowed to drive off the lot in that BMW.
22 Eventually, it was discovered that the information
23 he provided was false and that his employment and
24 income information was not accurate, that he was
25 not employed with L&B and that he did have the

OPENING STATEMENT BY MR. COOPER

1 income that he stated. You will hear from Ms.
2 Miller, the finance manager, and the owner/operator
3 of East Coast Sports and Imports who will tell you
4 had they known the truth about his lack of
5 employment and income information, they would never
6 have let him drive off the lot with that BMW, or
7 any car for that matter.

8 All the evidence in this case, all the
9 testimony you're going to hear is going to lead you
10 to one conclusion, and that's that Wayne Polite
11 used -- lied and used false pretenses and false pay
12 stubs to obtain a 2004 BMW X3 from East Coast
13 Sports and Imports, and drove off the lot with the
14 intent to fraud them of that vehicle.

15 Now, I submit to you that at the end of
16 the case the State will have met its burden of
17 proof and you will be firmly convinced of the
18 Defendant's guilt for obtaining goods under false
19 pretenses.

20 Thank you very much.

21 THE COURT: Mr. Malloy, you may proceed
22 when you're ready.

23 MR. MALLOY: Thank you, Your Honor.
24 May it please the Court.

25 THE COURT: Yes, sir.

OPENING STATEMENT BY MR. MALLOY

1 MR. MALLOY: This case is going to be
2 about who you believe. The majority of the
3 evidence that's going to be presented in this case
4 is going to be in the form of testimony from the
5 witness stand, and when deciding whether you
6 believe a witness you have to consider any biases
7 that they may have, any reasons they would have to
8 lie. Those biases could be monetary. It could be
9 to regain a lost that they had. It could be to
10 gain financially, or it could be to avoid criminal
11 prosecution.

12 On March 11, 2014, Wayne Polite
13 purchased a car from East Coast Sports in North
14 Charleston. He went there and provided all the
15 necessary information in order to purchase the car.
16 He gave them his employment records. He gave them
17 his employment information from L&B Snacks. The
18 finance person at East Coast Sports followed up on
19 that, he was conditionally approved for finance,
20 and he drove the car off the lot.

21 The problem started when the finance
22 company called his boss at L&B Snacks, the place
23 where he works, and his boss lied and said that he
24 does not work there. You would think, why would he
25 lie about that? Well, his boss, Clarence Brown,

OPENING STATEMENT BY MR. MALLOY

1 does not run his business like a normal business.
2 He conducts his business under the table. And the
3 reason he does this, he doesn't want to have to
4 report his records, his employment numbers to the
5 IRS, to the state government. He wants to fly
6 under the radar.

7 And as you heard, one of his employees
8 told the finance company -- or told East Coast
9 Sports when they called to verify Wayne's
10 employment that he did, in fact, work there. And I
11 submit to you that that is the truth; however, her
12 boss, Clarence, came back to her and said, no, we
13 can't let anybody know that Wayne works here. We
14 can't let anybody know about that. So she changes
15 her story.

16 Eventually, the police are called.
17 Detective MacDonald from North Charleston gets
18 involved. She goes out to East Coast Sports and
19 L&B Snacks and takes their statements verbatim and
20 does a follow-up to verify those statements for
21 conducting any record searches, searches of that
22 nature, or anything like that.

23 You've heard the State has the burden
24 to prove their case beyond a reasonable doubt. At
25 the close of this case you may believe that their

OPENING STATEMENT BY MR. MALLOY

1 witnesses are not being completely truthful. That
2 is a reasonable doubt. Mr. Polite is presumed
3 innocent and he is innocent because he did not lie
4 in order to get the car that is at issue in this
5 case.

6 This trial is not a trial of violence,
7 not the kind of trial that you read about in the
8 newspapers or see in the news, but that does not
9 change the great importance of this day for
10 Mr. Polite. You owe it to him and you owe it -- it
11 is your duty as citizens of the community to
12 provide the case your undivided attention and apply
13 the law as the Judge states it and give Mr. Polite
14 every benefit of the doubt.

15 Thank you.

16 THE COURT: The State may proceed.

17 MS. ASKINS: The State calls John
18 Tursi.

19 THE COURT: Ladies and gentlemen, I
20 need to ask one additional question -- one
21 additional question. Two potential witnesses in
22 this case are Harry Long and Sherry Niblock. Is
23 there any member of the panel related by blood or
24 marriage to either of these individuals or does
25 anyone have a close personal or social relationship

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 with them? If so, please stand at this time.

2 THE JURY: (None)

3 THE COURT: Let the record reflect
4 there was no response.

5 MS. ASKINS: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 JOHN TURSI,

8 being first duly sworn, testified as follows:

9 THE CLERK: Please be seated. Once
10 seated, please state your first and last name,
11 spelling your last name loudly and clearly into the
12 microphone.

13 THE WITNESS: John Tursi, T-U-R-S-I.

14 THE COURT: Sir, if you could -- you
15 need to put that mic -- bear with us.

16 THE WITNESS: Is that better?

17 THE COURT: Yes. Thank you.

18 THE WITNESS: You can talk to me. I'm
19 okay.

20 THE COURT: I didn't want to --
21 sometimes those things can be a little tricky and
22 they don't move around.

23 You may proceed.

24 MS. ASKINS: Thank you, Your Honor.

25 DIRECT EXAMINATION

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 BY MS. ASKINS:

2 Q. Morning, Mr. Tursi.

3 A. Morning.

4 Q. How are you this morning?

5 A. I'm very well, thank you.

6 Q. Appreciate you being here. Where do
7 you live?

8 A. Mount Pleasant, South Carolina.

9 Q. How long have you been in Charleston?

10 A. In May of 2008, I moved down here.

11 Q. How many years is that?

12 A. Six, six and a little bit.

13 Q. Where did you move from?

14 A. Connecticut.

15 Q. And how long were you in the
16 Connecticut area?

17 A. 20 years.

18 Q. What brought you to Charleston?

19 A. It was time for a change and Charleston
20 fit all my criteria, and I love it here.

21 Q. What type of work do you do?

22 A. I own a preowned or used car lot in
23 North Charleston.

24 Q. What's the name of that business?

25 A. East Coast Sports and Imports.

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 Q. Okay. And do you have any other
2 businesses?

3 A. Yes.

4 Q. What are those other businesses?

5 A. Pardon me?

6 Q. What are those --

7 A. I own a business that sells parts for
8 AR 15s.

9 Q. And how long have you been in the car
10 business?

11 A. I started in 1989, so it's
12 20-something-years or so.

13 Q. And what type of business is East Coast
14 Sports and Imports? Describe that.

15 A. We sell high-lined cars like Mercedes,
16 BMWs, and such in the subprime market.

17 Q. You say high-line. Do you mean
18 expensive?

19 A. Well, they're 10, 15, 9, 8. They're
20 not like 30, or \$40,000, no.

21 Q. What is subprime?

22 A. Subprime is a term used for people who
23 have already had credit problems in the past, and
24 we get them financed through banks who specialize
25 in subprime lending.

JOHN TURSI - DIRECT EXAM, BY MS. ASKINS

1 Q. And where is East Coast Sports and
2 Imports located?

3 A. Well, at the time of this incident it
4 was on Rivers Avenue, 52 -- 5281 I think it is.
5 I'm now moved to 5267.

6 Q. And at the time of this incident in
7 March of 2014, which county was your business
8 located?

9 A. Charleston.

10 Q. So this is not necessarily a
11 traditional dealership. Would that be a true
12 statement?

13 A. Like Crew's Chevrolet or -- no, it's
14 not. This is a preowned used car lot in every
15 definition of it. We sell used cars.

16 Q. And to people that might not be able to
17 obtain financing through a larger --

18 A. Yes.

19 Q. -- more --

20 A. -- traditional.

21 Q. -- dealership?

22 A. No.

23 Q. How many employees did you have back in
24 March of 2014?

25 A. Maybe four, five.

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 Q. Was Michelle Miller one of those
2 employees?

3 A. Yes, she was.

4 Q. What did she do for you?

5 A. She was my finance manager.

6 Q. And what does that entail?

7 A. It was her job to interview the client,
8 ascertain where their credit situation was and then
9 try to find a bank that would fall into those
10 criteria.

11 Q. A facilitator?

12 A. Yeah. That's a good word.

13 Q. How many cars did you have on your lot,
14 generally?

15 A. Twenty-five to 30.

16 Q. Do you know Mr. Polite?

17 A. I know -- yeah, I do. Yes.

18 Q. And how do you know him?

19 A. He came in and wanted to purchase a
20 vehicle.

21 Q. And when was this?

22 A. The exact date I don't know, but it
23 was, you know, many, many months ago.

24 Q. Last spring?

25 A. Yes.

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 Q. What type of vehicle was he looking
2 for?

3 A. He purchased a BMW X3.

4 Q. Did you personally meet with him at the
5 dealership?

6 A. I said, hello, and shook his hand when
7 he picked up the car, said thank you, brief
8 conversations, but nothing in-depth.

9 Q. Were you the person that showed him the
10 car?

11 A. I think -- typically, what we do is
12 people come in and they like the car, we give them
13 the key and they go look at it. If they like it
14 further, you know, we interview them a little bit
15 more, and Michelle takes over from there.

16 Q. Were you involved in the financing or
17 was that Michelle?

18 A. Michelle.

19 Q. How many -- how long did this process
20 take for Mr. Polite? Did he come in one day or --

21 A. No, it takes a week or so.

22 Q. How many times did he come in during
23 the --

24 A. Several. Several. He has to bring in
25 documentation, like the car and test drive the car,

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 bring in more documentation.

2 Q. Generally, describe what type of
3 information your business obtains when someone
4 wants to obtain financing.

5 A. We need their driver's license, we need
6 proof of residency, where he lives, proof of --
7 verification of employment, things like telephone
8 numbers, we need references, stuff like that.

9 Q. And you and Michelle gathered all of
10 this information?

11 A. Not only is it required by us, but --
12 it's required by us because it's required by the
13 finance company. They have a whole litany -- a
14 checklist, if you will, of things we have to supply
15 to them to get final approval.

16 Q. Was this process followed with
17 Mr. Polite?

18 A. In every single case, yes, sir --
19 ma'am.

20 MS. ASKINS: Your Honor, may I approach
21 the witness?

22 THE COURT: Yes, ma'am.

23 By MS. ASKINS:

24 Q. Mr. Tursi, I'm showing you documents
25 which have been marked as State's Exhibits 1

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 through 13. Would you please review those? Take a
2 moment.

3 A. Yes, ma'am.

4 Q. Do you recognize the documents?

5 A. Yes. These are copies of paperwork
6 that Mr. Polite submitted to us for -- to proceed
7 with the loan. Part of it is stuff that we
8 generate for the sale, the credit app, that sort of
9 stuff.

10 Q. Were these documents kept and
11 maintained in the normal and ordinary course of
12 business --

13 A. Yes. The DMV requires us to have -- to
14 keep everything for seven years.

15 MS. ASKINS: Your Honor, I would move
16 these into evidence.

17 THE COURT: 1 through 13 have already
18 been marked and admitted into evidence.

19 BY MS. ASKINS:

20 Q. Mr. Tursi, I'm showing you States
21 Exhibit 11. Actually, I'm going to show it to you
22 on this. It will appear before you. Can you see
23 that?

24 A. Surely, yes.

25 Q. What is this document?

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 A. It's the bill of sale.

2 Q. And what is a bill of sale?

3 A. Well, everyone here has purchased
4 something. It comes with a receipt. It's kind of
5 a receipt. Okay. It defines what the vehicle was,
6 the mileage, and cost.

7 Q. And did you come to an agreement with
8 Mr. Tursi (sic) of this BMW?

9 A. Yes, ma'am.

10 Q. What was the agreement price that he
11 was going to pay?

12 A. The bottom line price was \$14,400.

13 Q. Okay. But the actual price of the
14 vehicle -- I know that has a couple of fees in it.

15 A. Pardon me? Oh, the actual cost of the
16 vehicle was \$13,862.

17 Q. Was Mr. Polite -- how was he going to
18 pay for the vehicle?

19 A. The down payment and we arranged
20 financing.

21 Q. Did he provide a down payment?

22 A. Yes.

23 Q. How much?

24 A. I think it was \$1500.

25 Q. Who was the financing going to be

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 through?

2 A. I think it was Pelican.

3 Q. Did he provide the paperwork for the
4 financing?

5 A. Yes.

6 Q. Was he conditionally approved for
7 financing?

8 A. Typically, what happens is we go over
9 all the documentation and verify it, and then we
10 submit it to Pelican. Okay. And they say, based
11 on a cursory examination of it, it will work.
12 Okay. And then we continue from there.

13 Q. And that cursory evaluation, is it
14 subject to further evaluation?

15 A. Yes. Once we submit it and all the
16 paperwork is signed and everything else is
17 finalized, we -- we call these people. Whatever
18 you give -- whatever anybody gives us, we verify
19 the employment, the address. We verify the people
20 who are supposed to stand up for him -- I forget
21 the wording -- we do all of that. Okay. And then
22 -- we speak to every one of them. And then once we
23 know that that's in fact the case and it's
24 solidified, we send it then to Pelican who then
25 redoes it.

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 Q. What -- I'm sorry?

2 A. They redo it all over again.

3 Q. But they gave conditional approval?

4 A. Yes.

5 Q. What was the condition on which it was
6 approved?

7 A. That everything was verifiable.

8 Q. So the deal was not done yet? It was
9 not final yet?

10 A. No, it was not finalized.

11 Q. Did you allow Mr. Polite to leave the
12 dealership with the vehicle?

13 A. Yes.

14 Q. Why, even though the deal --

15 A. It's pretty standard. We -- up until
16 this point -- once this stuff is verified, you
17 know, it's pretty much done. We do exactly what
18 the finance companies are going to do. You know,
19 if we speak to the same people, we're good.

20 Q. You trusted Mr. Polite?

21 A. We trust all of our customers and I've
22 never had up this point a problem, and I have sold
23 thousands of cars.

24 Q. Was Mr. Polite ultimately able to
25 secure financing?

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 A. Well, I don't know how to answer that.

2 Q. Did Pelican --

3 A. No, they did not. They reviewed it
4 again and found that there were inaccuracies, if
5 you will.

6 Q. Inaccuracies concerning?

7 A. Employment.

8 Q. How quickly did you find out that
9 Pelican was not going to fund this transaction?

10 A. Within a week. Usually, we overnight
11 it, the packet, to them, and it sits on a desk for
12 a day or two, somewhere between three and
13 five days.

14 Q. And when they -- when you found out
15 that Pelican wasn't going to fund this loan, what
16 did you do?

17 A. We contacted Mr. Polite and told him to
18 bring the vehicle back.

19 Q. And what did he say?

20 A. (Indicating)

21 Q. I need a verbal response?

22 A. Well, originally, he said okay, but he
23 never did.

24 Q. Okay. And did you speak to him
25 personally?

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 A. Several times.

2 Q. Okay. And how did you -- did you visit
3 him? Did you talk to him on the phone?

4 A. Talked to him on the phone.

5 Q. And tell the jury a little more of the
6 subject of the conversations. What did you say to
7 him?

8 A. I said, you know, you're -- you're
9 documentation -- specifically, your employment is
10 not true. You told us you were working at a
11 specific company for a year or so, and we spoke to
12 a young lady there and she said, yes, yes, yes.
13 And when the finance company rechecked it, they
14 spoke to the owner and the owner said, the guy
15 hasn't worked for me for over a year.

16 And I said, you lied, just bring the
17 car back. And he -- I didn't lie, I didn't lie.
18 According to everybody you did, so the finance
19 company is not going to approve it, so you need to
20 bring the car back. And that was the end of that
21 story. There was actually one or two conversations
22 and one of them was heated.

23 Q. I'm sorry, one of them was heated?

24 A. Heated, yeah, because --

25 Q. If you can just speak up a little bit.

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 A. I'm sorry. In any event, so -- the end
2 of it was he didn't bring the car back.

3 Q. Did he ever make any payments on the
4 vehicle?

5 A. No. There was nothing to pay because
6 nothing was approved. There was no finance company
7 approval.

8 Q. Did he pay you the \$13,862?

9 A. No, he did not.

10 Q. Did he ever return the car?

11 A. No.

12 Q. Did he ever return to the dealership?

13 A. No.

14 Q. How long did this conversation with
15 Mr. Polite go on that you were asking him to return
16 the vehicle?

17 A. I mean, it was long and involved when
18 we discussed it. Probably about a month, month or
19 so of me chasing him down and trying to find the
20 car. And we found the car one day, but he was in
21 it and he was running red lights and we couldn't
22 keep up with him. So it was over a month in an
23 attempt to get the vehicle back.

24 Q. Did Mr. Polite ever complain about the
25 condition of the vehicle?

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 A. No, not at all.

2 Q. Were you willing to return the down
3 payment?

4 A. Yeah.

5 Q. Have you ever gotten the vehicle back?

6 A. No.

7 Q. I'm showing you what's been marked as
8 State's Exhibit Number 11. Can you see that?

9 A. Yes.

10 Q. I'm sorry, it is State's Exhibit 1.
11 What is this document?

12 A. This is a bill of sale to me, East
13 Coast Sports and Imports, from Fanelli's Auto, from
14 where I bought the vehicle.

15 Q. Is this concerning the vehicle that
16 Mr. Polite purchased?

17 A. Yes.

18 Q. What did you pay for the vehicle?

19 A. \$10,000.

20 Q. Is this the same car you sold to
21 Mr. Polite?

22 A. Yes.

23 Q. In your interactions with Mr. Polite,
24 did you rely on the information that he provided
25 you about his employment and references?

JOHN TURSI - DIRECT EXAM BY MS. ASKINS

1 A. Yes.

2 Q. You trusted him?

3 A. Yes.

4 Q. If you hadn't gotten that information
5 and it hadn't been verified, would you have let him
6 drive off of the lot with the vehicle?

7 A. No.

8 MS. ASKINS: Beg the Court's
9 indulgence.

10 THE COURT: Yes, ma'am.

11 BY MS. ASKINS:

12 Q. Did you ever check the references that
13 Mr. Polite provided?

14 A. Yes. Yes. We call everybody. It's
15 standard operating procedure. We get a packet --
16 in fact, we have a checklist. Okay. I showed you
17 the checklist. And this checklist we use to check
18 everybody's information.

19 MS. ASKINS: Please answer any
20 questions Mr. Malloy may have.

21 THE WITNESS: Pardon me?

22 MS. ASKINS: Please answer any
23 questions Mr. Malloy may have.

24 THE WITNESS: Sure.

25 THE COURT: Any cross-examination of

JOHN TURSI - CROSS EXAM BY MR. MALLOY

1 the witness?

2 MR. MALLOY: Yes, Your Honor.

3 THE COURT: You may proceed.

4 CROSS-EXAMINATION

5 BY MR. MALLOY:

6 Q. Mr. Tursi, you described yourself as a
7 used car dealership. You mentioned some of the
8 clients are subprime lending, they may not be able
9 to get credit from the bigger lending companies,
10 correct?

11 A. Correct.

12 Q. And, obviously, the majority of your
13 clients can't pay for the cars up front with their
14 own money?

15 A. None of them can.

16 Q. So they need financing?

17 A. Yes.

18 Q. And you're well aware of the
19 requirements that financing companies want in order
20 to approve financing?

21 A. Yes.

22 Q. In fact, you mentioned a list -- a
23 checklist that the financing company gives you of
24 all the information they need in order to approve
25 the financing?

JOHN TURSI - CROSS EXAM BY MR. MALLOY

1 A. Yes.

2 Q. In this case, it was a company called
3 Pelican Financing?

4 A. Yes.

5 Q. And one of the things that they want,
6 obviously you're aware of, is pay stubs to verify
7 employment, correct?

8 A. Yes, sir.

9 Q. And they also want references for the
10 customer, correct?

11 A. Yeah.

12 Q. And in this case, references were
13 provided, correct?

14 A. Pardon?

15 Q. References were provided?

16 A. Yes.

17 Q. Addresses were given?

18 A. Yes.

19 Q. Did you go to the physical address?

20 A. Pardon me?

21 Q. Did you go to the physical addresses?

22 A. No. No, we do it on the phone.

23 Q. And you also called an employee of L&B
24 Snacks where Wayne said that he worked, correct?

25 A. No. We called the company.

JOHN TURSI - CROSS EXAM BY MR. MALLOY

- 1 Q. L&B Snacks?
- 2 A. Right.
- 3 Q. Correct. And a female --
- 4 A. Employee.
- 5 Q. You spoke to a female employee there?
- 6 A. Yes.
- 7 Q. And she said that Wayne did in fact
- 8 work there?
- 9 A. Correct.
- 10 Q. You paid \$10,000 to get this car?
- 11 A. Uh-huh.
- 12 Q. The sale price that you were
- 13 negotiating with Wayne was higher because you're
- 14 trying to turn a profit, correct?
- 15 A. Yes.
- 16 Q. Obviously, you want the financing to go
- 17 through?
- 18 A. Yeah.
- 19 Q. Because you're probably not going to
- 20 get paid unless it does, correct?
- 21 A. I'm definitely not going to get paid
- 22 unless it does.
- 23 Q. Obviously, there are different values
- 24 for the car; you bought it for \$10,000 and that was
- 25 used, correct?

JOHN TURSI - CROSS EXAM BY MR. MALLOY

1 A. No, that was around the book.

2 Q. But the car was used, it wasn't brand
3 new --

4 A. Oh, the vehicle was used. Yes. I
5 thought you said, huge. Sorry.

6 Q. It's a 2004 BMW?

7 A. Yes.

8 Q. And Wayne did make a down payment of
9 \$1,500?

10 A. Uh-huh.

11 Q. The first installment was due probably
12 a month later?

13 A. No. I don't know. Until it's -- until
14 it's approved, I don't know when the first
15 installment is because sometimes they negotiate and
16 the say, I need an extra 15 days to get started.
17 In and around 30 days.

18 Q. About a month?

19 A. Yeah.

20 Q. But by that time, the finance company
21 had called you back and said they weren't going to
22 approve him?

23 A. Yeah. They called me back almost
24 immediately.

25 Q. You never filed a civil suit against

JOHN TURSI - CROSS EXAM BY MR. MALLOY

1 Mr. Polite in this case, correct?

2 A. No.

3 Q. And you indicated Ms. Miller is the
4 finance agent that you worked with?

5 A. Yes.

6 Q. She would have been the individual that
7 filed out the finance application with Mr. Polite,
8 correct?

9 A. Yes. She did the interview and all
10 that stuff.

11 MR. MALLOY: Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. MALLOY: No further questions.

14 THE COURT: Any redirect?

15 MS. ASKINS: No.

16 THE COURT: Any objection to the
17 witness being excused? From the State?

18 MS. ASKINS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. MALLOY: None.

21 THE COURT: Sir, you're excused.

22 THE WITNESS: Done?

23 THE COURT: You're excused, yes, sir.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 You may call your next witness.

2 MS. ASKINS: The State calls Michelle
3 Miller.

4 MICHELLE MILLER,
5 being first duly sworn, testified as follows:

6 THE CLERK: Please be seated. Once
7 seated, please state your first and last name and
8 spell your last into the mic.

9 THE WITNESS: Michelle Miller,
10 M-I-L-L-E-R.

11 THE COURT: You may proceed.

12 MS. ASKINS: Thank you.

13 THE COURT: You're welcome.

14 DIRECT EXAMINATION

15 BY MS. ASKINS:

16 Q: Good morning.

17 A: Morning.

18 Q: Where do you live, Ms. Miller?

19 A: I live in Summerville, South Carolina.

20 Q: How long have you been in the
21 Charleston area?

22 A: 20 years.

23 Q: Is your family in this area?

24 A: Yes, ma'am.

25 Q: Tell the jury what you do.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 A. I'm a finance manager for an automobile
2 dealership.

3 Q. Is that for East Coast?

4 A. For right this minute, it's for Drive
5 Auto Sales.

6 Q. But did you work with East Coast Sports
7 and Imports in 2014?

8 A. Yes.

9 Q. Do you know Mr. Tursi?

10 A. Yes, ma'am.

11 Q. How long did you work for East Coast?

12 A. Five years.

13 Q. And what did you do for East Coast?

14 A. I was a finance manager for the
15 automobile dealership.

16 Q. How long have you been working in the
17 automobile financing industry?

18 A. 20 years.

19 Q. Tell the jury how this process normally
20 works.

21 A. As an F&I manager in an automobile
22 dealership, you as a consumer, I would ask you
23 information to put on the application to submit to
24 the lenders to try to get you an automobile loan.

25 Q. And what information do you obtain for

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 that?

2 A. The rule of thumb is last two years
3 residence and the last two years employment. So I
4 would get name, address, Social Security number,
5 your phone number, birth date, and employment and
6 salary information.

7 Q. Do you have a relationship with credit
8 companies, loan companies?

9 A. Yes, ma'am; relationships with
10 automobile finance companies across the United
11 States and locally.

12 Q. Do you work as an agent for them, a
13 facilitator for them?

14 A. Yes.

15 Q. What is generally required to obtain
16 funds?

17 A. The lender looks at stability and
18 income.

19 Q. Do you know Mr. Polite?

20 A. Yes.

21 Q. Did you have interactions with him?

22 A. Yes.

23 Q. Was he a customer of East Coast Sports
24 and Imports in March of 2014?

25 A. Yes ma'am.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. And what did he come into the
2 dealership for?

3 A. He wanted to come and buy a car.

4 Q. Do you recall what car?

5 A. An X5 BMW.

6 Q. Did you assist him in financing that
7 vehicle?

8 A. Yes, I did.

9 Q. How many times do you think Mr. Polite
10 came into the dealership to look at the car?

11 A. Probably five times.

12 Q. Did he provide any information to you?

13 A. Yes, ma'am.

14 Q. Did he eventually decide on a vehicle?

15 A. Yes, he did.

16 Q. And did you attempt to obtain financing
17 for him?

18 A. Yes, I did. I took a credit
19 application.

20 Q. Did he provide you information?

21 A. Yes, ma'am.

22 Q. If you would look on the monitor in
23 front of you, I'm showing you State's Exhibit
24 Number 2. Can you tell the jury what this document
25 is?

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 A. This is a customer contact form.
2 Basically, this is the customer's name and phone
3 numbers he can be reached at, employer name,
4 address and number as well, and his supervisor.

5 Q. What was the supervisor name -- and
6 where did you get the information from for this
7 contact form?

8 A. From Mr. Polite.

9 Q. In person?

10 A. Yes.

11 Q. Now, what did he provide as the
12 employer?

13 A. L&B Snacks.

14 Q. And the address?

15 A. 4337 Spruill Avenue, North Charleston,
16 South Carolina.

17 Q. Who was his supervisor?

18 A. Clarence brown.

19 Q. I'm showing you State's Exhibit
20 Number 3. What is this document?

21 A. This is a credit application that I
22 took on Mr. Polite.

23 Q. And who provided this information?

24 A. Mr. Polite.

25 Q. What date of birth did he provide?

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

- 1 A.
- 2 Q. And what address did he provide?
- 3 A. , Hanahan, South
4 Carolina, 29410.
- 5 Q. And, again, what did he tell you -- who
6 did he tell you his employer was?
- 7 A. L&B Snacks.
- 8 Q. And did he tell you how long he worked
9 there?
- 10 A. Nine years.
- 11 Q. And his salary?
- 12 A. 3,000 a month.
- 13 Q. I'm showing you State's Exhibit 4.
14 What is this document?
- 15 A. South Carolina driver's license.
- 16 Q. And where did you obtain this?
- 17 A. From Mr. Polite.
- 18 Q. And why do you obtain the driver's
19 license?
- 20 A. For DMV paperwork and for the lender
21 identification.
- 22 Q. I'm showing you State's Exhibit
23 Number 5. What is this document?
- 24 A. This is a pay stub provided by
25 Mr. Polite.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. And what does this pay stub indicate?

2 A. How much he makes, what his year to
3 date is.

4 Q. And what was the -- on this pay stub,
5 what were the dates of employment, pay periods?

6 A. The pay period is from 2/10/2014 to
7 2/16/2014.

8 Q. And the check amount for that period?

9 A. \$384.45.

10 Q. Again, that was provided by Mr. Polite?

11 A. Yes, ma'am.

12 Q. Showing you State's Exhibit Number 6.
13 What is this document?

14 A. A pay stub.

15 Q. What pay period does this cover?

16 A. 2/24/2014 to 3/2/2014.

17 Q. And the pay amount for this period?

18 A. 695.76.

19 Q. Why do you obtain -- did you ask for
20 the pay stubs?

21 A. Yes.

22 Q. Why do you obtain pay stubs?

23 A. To prove your income so you can show
24 the lender you can make the payment.

25 Q. Did you rely on this document?

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS.

1 A. I rely on the information based on what
2 you provide me on the credit app, yes, ma'am.

3 Q. I'm showing you State's Exhibit
4 Number 7. What is this document?

5 A. This is proof of residence, Verizon
6 bill. It states his name and address.

7 Q. Did you require this document?

8 A. Yes. We require proof of residence.

9 Q. Did he provide it to you?

10 A. Yes, ma'am.

11 Q. I'm showing you State's Exhibit 8.
12 What is this document?

13 A. This is a customer reference list
14 required by the lender.

15 Q. Who filled this out?

16 A. Mr. Polite.

17 Q. On 1 through 5, is that his
18 handwriting?

19 A. Yes.

20 Q. Who was Ruth Love?

21 A. A friend.

22 Q. A friend of whose?

23 A. Mr. Polite.

24 Q. Did you rely on these references in
25 allowing Mr. Polite to drive off the lot in the

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 vehicle?

2 A. Yes.

3 Q. I'm showing you State's Exhibit

4 Number 9. What is this document?

5 A. This is a customer delivery notice,
6 just stating that -- his down payment and the day
7 he took possession of the car.

8 Q. What was the down payment?

9 A. \$1,500.

10 Q. And the day he took possession?

11 A. 3/11/2014.

12 Q. I'm showing you State's Exhibit

13 Number 10. What is this document?

14 A. This is a form at East Coast Sports and
15 Imports that basically says, you know, your down
16 payment becomes nonrefundable at this time since
17 you have closed on the contract and you're planning
18 on driving away with the car.

19 Q. Did you eventually agree to return his
20 down payment when issues arose?

21 A. Yes.

22 Q. I'm showing you State's Exhibit

23 Number 11. And what is this document?

24 A. This is the bill of sale. Basically
25 says the customer's name, Mr. Polite, address,

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 contact number, the vehicle price and the amount
2 financed.

3 Q. And what was the vehicle price?

4 A. The vehicle price was 13,862.

5 Q. And the amount financed?

6 A. Was \$12,093.

7 Q. Whose signature is at the bottom of
8 that?

9 A. It's my signature on the left, Michelle
10 Miller; and Mr. Polite's on the right as the
11 purchaser.

12 Q: I'm showing you State's Exhibit
13 Number 12. What is this?

14 A. This is a dealer funding checklist.
15 Each lender has a different one. In order to fund
16 the loan, all these documents must be in the file
17 submitted to the lender and must verify what you've
18 stated on your credit application.

19 Q. Who filled out this form?

20 A. I did.

21 Q. And who made the checkmarks?

22 A. I did.

23 Q. Does that verify that you undertook
24 those duties?

25 A. Yes, ma'am.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. Did you obtain proof of income?

2 A. Yes.

3 Q. Did you obtain five complete
4 references?

5 A. Yes.

6 Q. Did you obtain proof of residence?

7 A. Yes.

8 Q. And driver's license?

9 A. Yes.

10 Q. Once you gathered all of this
11 information, what did you do with it?

12 A. I Fed Exed it to the lender.

13 Q. Describe that process for the jury.

14 A. After a customer leaves with the car
15 and is contracted out, I follow the checklist and
16 I'm re-verifying everything as I'm going through
17 the whole thing, and I put it together and package
18 it up and overnight it.

19 Q. Who did you overnight it to?

20 A. Pelican Finance.

21 Q. And did they give you any indication of
22 whether they would approve this loan?

23 A. Everything is preapproval based on the
24 information -- verifiable information you state on
25 the application.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. And what do you mean by preapproval?

2 A. When it goes into underwriting, it goes
3 through a process of verifying employment, either
4 by verbal or fax, and verifying the income.

5 Q. And that occurred in this situation?

6 A. Yes, ma'am.

7 Q. I'm showing you State's Exhibit 13.
8 What is this document?

9 A. This is a conditional approval from the
10 lender based on the information we put on the
11 credit app. These numbers here to the right
12 matches my numbers on the buyer's order we looked
13 at a minute ago because this is an approval from
14 the lender itself. And this tells you all of the
15 steps we need to fund the loan.

16 Q. And this is a conditional approval?

17 A. Yes.

18 Q. And what is it conditioned upon?

19 A. Everything on the application -- credit
20 application that we stated, everything we must
21 verify, the nine years on the job, your birth date,
22 your residence, your salary.

23 Q. And can you see where it says,
24 stipulations? Under stipulations, that first
25 sentence?

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 A. All dealer inputted info must be
2 verified as stated.

3 Q. That's a requirement of the finance
4 company?

5 A. Yes, ma'am.

6 Q. That was a condition of the loan going
7 through?

8 A. Yes.

9 Q. Did you make efforts to verify
10 Mr. Polite's employment information?

11 A. Yes, I did.

12 Q. Tell the jury what you did.

13 A. I called L&B Snacks and spoke to
14 someone named Priscilla and verified his
15 employment.

16 Q. And she confirmed the information that
17 was provided on the employment application?

18 A. Yes.

19 Q. Did you believe her?

20 A. Yes.

21 Q. After reviewing the information
22 provided by Mr. Polite and confirmation from
23 Priscilla, did you believe Mr. Polite was employed
24 by L&B Vending?

25 A. Yes, I did.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. Based on that information, did you
2 allow Mr. Polite to drive off the lot with the BMW?

3 A. Yes.

4 Q. Even though the deal was not finalized
5 and the loan was not approved?

6 A. Yes.

7 Q. Why did you do that?

8 A. It's the nature of our business.

9 Q. What do you mean by that?

10 A. In the automobile industry, you know,
11 you're calling and verifying yourself and you're
12 looking at the pay stub. I've been doing it for a
13 long time; it's just the nature of the industry
14 where, you know, you hope everything --

15 Q. You trust?

16 A. Yes.

17 Q. Did you trust Mr. Polite?

18 A. Yes.

19 Q. Would you have let him drive off the
20 lot if you didn't trust him?

21 A. No.

22 Q. What do you believe his income to be?

23 A. I believe it be \$3,000 a month.

24 Q. Did you check -- before Mr. Polite
25 drove off the lot, did you check his references?

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

- 1 A. No.
- 2 Q. You did not?
- 3 A. No.
- 4 Q. At some point, did you check his
5 references?
- 6 A. Yes.
- 7 Q. I'll get to that in a moment. At some
8 point you learned the financing was not going
9 through; is that correct?
- 10 A. Yes.
- 11 Q. And what did you do when you learned of
12 that?
- 13 A. I called Mr. Polite.
- 14 Q. Okay. And what did you say to
15 Mr. Polite?
- 16 A. I told him there was a discrepancy on
17 his pay stub.
- 18 Q. And what did you ask him to do?
- 19 A. He said it was an accounting error and
20 the company was being contacted.
- 21 Q. I didn't quite catch that, an
22 accounting error?
- 23 A. Yes.
- 24 Q. And who was he going to contact?
- 25 A. He was going to contact the HR manager,

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 whoever does payroll.

2 Q. He was going to contact the HR manager?

3 A. Yes.

4 Q. Did you ever hear from the HR manager?

5 A. No.

6 Q. Did anybody provide you any corrected
7 information?

8 A. No.

9 Q. How many times did you talk to
10 Mr. Polite?

11 A. At least five, or more.

12 Q. Okay. Tell the jury the substance of
13 the conversations. What did you say to him?

14 A. At one point I did ask him to bring the
15 car, and he agreed. And I told him he would get a
16 refund on the down payment. And he agreed.

17 Q. Did he return the car?

18 A. No.

19 Q. Did he ever call and tell you he wasn't
20 going to return the car after that?

21 A. No. We just quit -- he quit answering
22 the phone.

23 Q. And so you continued to make contact
24 with him --

25 A. Yes.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. -- and he didn't answer your phone?

2 A. (Shaking head)

3 Q. Did you ever try to locate the car?

4 A. Yes. We hired a repo company.

5 Q. Did they locate the car?

6 A. No..

7 Q. Did you ever attempt to go to his

8 residence that he provided on Dixon Avenue?

9 A. Yes.

10 Q. What did you find there?

11 A. Did not live there.

12 Q. That information was false that he
13 provided?

14 A. Yes.

15 Q. Let's go back to the references. After
16 the financing didn't go through, did you attempt to
17 contact Mr. Polite's references?

18 A. Yes, ma'am.

19 Q. And what did you find out?

20 A. I went to every single residence and
21 either they didn't know him or it was some kind of
22 boarded house. That's what I found out.

23 Q. Okay. Ms. Delona Jenkins, did you
24 speak to her? Number two?

25 A. No.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. Is that your notation on the right-hand
2 side?

3 A. Yes. }

4 Q. If you could read that, please.

5 A. I said, went there, crack house, lady
6 said she doesn't know him.

7 Q. Did you speak to Ms. Jenkins based on
8 the --

9 A. I don't know if that was her or not.

10 Q. Okay. You spoke to someone at that
11 residence; is that correct?

12 A. Yes.

13 Q. And they indicated they did not know
14 Mr. Polite?

15 A. Yes.

16 Q. Okay. And what about number five,
17 Clarence Brown? Who is Mr. Clarence Brown?

18 A. The owner of L&B.

19 Q. Okay. And what did he provide you?
20 What did he tell you?

21 A. In my notes, he did not know Wayne,
22 falsified info, does not work for him.

23 Q. You indicated you initially spoke to
24 Priscilla?

25 A. Yes.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. You had initial contact with Mr.
2 Polite?

3 A. Yes.

4 Q. After you found out that Mr. Polite
5 didn't work for L&B, did you have a follow-up
6 conversation with Priscilla?

7 A. Yes.

8 Q. Did you talk to her again?

9 A. Yes.

10 Q. What did she say?

11 MR. MALLOY: Objection, hearsay.

12 THE COURT: She can only say what she
13 did as a result of the conversation. The objection
14 is sustained.

15 BY MS. ASKINS:

16 Q. After you talked to Priscilla, did you
17 do anything further? Don't tell me what she said.

18 A. Yes. I continued going to the
19 addresses and working with the repo company.

20 Q. Continued to look for Mr. Polite?

21 A. Yes.

22 Q. Did you ever find the vehicle?

23 A. No, ma'am.

24 Q. Did he ever return the vehicle?

25 A. No.

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 Q. Even though he promised that after one
2 conversation?

3 A. Yes.

4 Q. Did he ever make any payments on the
5 vehicle?

6 A. No.

7 MS. ASKINS: Beg the Court's
8 indulgence.

9 THE COURT: Yes, ma'am.

10 BY MS. ASKINS:

11 Q. Were you ever able to secure financing
12 for Mr. Polite?

13 A. No.

14 Q. On the vehicle that he had, when you
15 let him drive off the lot, did he have title to the
16 vehicle?

17 A. No, we had the title.

18 Q. Because the vehicle was never sold to
19 him?

20 A. Correct.

21 Q. So he drove off with a vehicle that you
22 had title to?

23 A. Yes.

24 Q. Okay. Can anybody sell a car without a
25 title to a vehicle, legally?

MICHELLE MILLER - DIRECT EXAM BY MS. ASKINS

1 A. No.

2 Q. Can you get tags on the vehicle that
3 you don't have a title to?

4 A. No.

5 Q. Would you have let Mr. Polite drive off
6 the lot if you had known he wasn't employed for L&B
7 Vending Services?

8 A. No, I would not.

9 Q. When he mentioned his accountant, what
10 did he say? You called him initially and he said
11 there was an accounting error. What did Mr. Polite
12 tell you?

13 A. He said the accountant was on vacation,
14 he was going to call. It was an accounting error.

15 Q. Did he call, the accountant ever call?

16 A. No.

17 MS. ASKINS: Please answer any
18 questions that Mr. Malloy may have.

19 THE COURT: Any questions for the
20 witness?

21 MR. MALLOY: Yes, Your Honor.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. MALLOY:

25 Q. Ms. Miller, you work in auto finance

MICHELLE MILLER - CROSS EXAM BY MR. MALLOY

1 still today?

2 A. Yes, sir.

3 Q. You no longer work at East Coast
4 Sports?

5 A. No.

6 Q. When did you leave East Coast Sports
7 and Imports?

8 A. February 2015.

9 Q. And, obviously, you're familiar with
10 the information that the finance company wants when
11 they're choosing or not to make an auto loan,
12 correct?

13 A. Yes.

14 Q. And you mentioned the checklist that
15 Pelican provided in this case?

16 A. Yes.

17 Q. It's important to follow up on that and
18 get the correct information so the finance company
19 eventually does approve financing, correct?

20 A. Yes.

21 Q. After the preapproval stage, correct?

22 A. Correct.

23 Q. And it's also very important for the
24 car dealer because if finance is not approved,
25 they're not going to get paid, correct?

MICHELLE MILLER - CROSS EXAM BY MR. MALLOY

1 A. Yes.

2 Q. And in this case, you filled out all
3 the requirements that Pelican asked for in their
4 checklist?

5 A. Yes.

6 Q. You mentioned some references that
7 Mr. Polite gave?

8 A. Yes.

9 Q. He gave addresses?

10 A. Names and addresses.

11 Q. And the addresses you went to, would
12 you describe these as trailer parks, multiple
13 units?

14 A. I would describe it as maybe a rougher
15 part of town, some trailers and boarded-up houses.

16 Q. Multiple units in the neighborhood,
17 correct?

18 A. Yes.

19 Q. Did you check with the other units,
20 other trailers, other houses, to make sure you were
21 at the correct address?

22 A. Yes.

23 Q. Other than the addresses that were
24 listed on the reference given by Mr. Polite?

25 A. Yes. I would have to say, yes.

MICHELLE MILLER - CROSS EXAM BY MR. MALLOY

1 Q. So you checked in with all the
2 neighbors in those neighborhoods?

3 A. Not all. If somebody was out, I might
4 have asked.

5 Q. Correct. And you did follow up with
6 L&B Snacks, with Priscilla Patterson?

7 A. Yes.

8 Q. And she indicated that he worked at
9 L&B?

10 A. Correct.

11 Q. And based on the information that you
12 were able to receive in your follow-up March 11th,
13 Mr. Polite was allowed to drive the vehicle off of
14 the lot from East Coast Sports and Imports?

15 A. Yes.

16 Q. In this installment contract, I believe
17 the interest -- the interest was 25 percent on the
18 auto contract; is that correct?

19 A. I don't have the contract in front of
20 me, but if it says 25 percent, that's the interest
21 rate.

22 Q. Would that be normal in this kind of
23 situation?

24 A. Yes, it would.

25 MR. MALLOY: Court's indulgence, Your

MICHELLE MILLER - REDIRECT EXAM BY MS. ASKINS

1 Honor.

2 THE COURT: Uh-huh.

3 By MR. MALLOY:

4 Q. All right. And on the references
5 Mr. Polite provided, he did not put Priscilla
6 Patterson, right? He put Clarence Brown, correct?

7 A. Yes.

8 MR. MALLOY: No further questions.

9 THE COURT: Any redirect.

10 REDIRECT EXAMINATION

11 BY MS. ASKINS:

12 Q. 25 percent interest rate, that's pretty
13 high, isn't it?

14 A. It is. The interest rate is based on
15 your credit.

16 Q. Based on risk?

17 A. Yes.

18 Q. And do you normally deal with risky --
19 credit risky --

20 A. 90 percent of the time.

21 Q. -- customers?

22 A. Yes.

23 Q. And that's why the interest rate is so
24 high?

25 A. Yes, ma'am.

1 MS. ASKINS: I think the next two will
2 be shorter than the first two, and then I have a
3 case agent, and then we have --

4 THE COURT: Just give me an estimate of
5 how much time do you think it's going to be for the
6 witness you have here present?

7 MS. ASKINS: I think we would be
8 finished in about 30 minutes, 35 minutes.

9 THE COURT: With all four witnesses?

10 MS. ASKINS: With three witness.

11 THE COURT: Then you probably need to
12 go ahead and get the other witness here.

13 MS. ASKINS: Thank you.

14 THE COURT: Go ahead and get your next
15 witness, too, so the jury won't be waiting.

16 MS. ASKINS: Your Honor, the -- this
17 witness is Clarence Brown, and the issue of whether
18 his pending charge comes in -- he has the pending
19 unlawful carrying from 2014. Mr. Malloy intended
20 to get him to --

21 MR. MALLOY: Your Honor, I did submit
22 some additional case law yesterday supporting our
23 argument that we should be allowed to cross-examine
24 him regarding that charge.

25 THE COURT: Actually, I got it this

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 morning at 9:04. You submitted it at 5:53. When
2 we get to that, just indicate that you have a
3 matter of law. I need to create a proffer.

4 Is the jury outside?

5 THE BAILIFF: Yes, ma'am.

6 (Jury in, 11:24 a.m.)

7 THE BAILIFF: All jurors present, Your
8 Honor.

9 THE COURT: You may be seated.
10 State may call their next witness.

11 MS. ASKINS: State calls Clarence
12 Brown.

13 CLARENCE BROWN,
14 being first duly sworn, testified as follows:

15 THE CLERK: Please be seated. Once
16 seated, please state your first and last name and
17 spell your last name. Speak loudly and clearly
18 into the mic.

19 THE WITNESS: Clarence Brown.

20 THE COURT: Spell your last name.

21 THE WITNESS: B-R-O-W-N.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MS. ASKINS:

25 Q. Morning, Mr. Brown. How are you today?

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 A. I'm fine. How are you?

2 Q. Thank you for being here. Where do you
3 live, Mr. Brown?

4 A. (phonetic) Road.

5 THE COURT REPORTER: Say again.

6 THE WITNESS: Edbillellis, one word.

7 By MS. ASKINS:

8 Q. If you could scoot up a little bit and
9 move the mic so everyone can hear you.

10 Is that in Charleston?

11 A. North Charleston.

12 Q. How long have you lived in the
13 Charleston area?

14 A. All my life.

15 Q. Do you have family here?

16 A. Yes.

17 Q. Do you have any children?

18 A. Three boys.

19 Q. What do you do?

20 A. I'm a vendor slash MSB check-cashing
21 store.

22 Q. What do you mean a vendor?

23 A. I do vending machines. I service drink
24 and snack machines.

25 Q. And the other business was a

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 check-cashing business?

2 A. MSB.

3 Q. MSB?

4 A. MSB, money service business.

5 Q. And where is that located?

6 A. 4337 Spruill Avenue, North Charleston.

7 Q. Do you know Mr. Polite?

8 A. Yes, ma'am, I do.

9 Q. How long have you known him?

10 A. For close to -- since late '90s to be
11 exact.

12 Q. You all are friends?

13 A. Somewhat, I thought. Yeah. We were
14 kind of friends. We used to go to clubs, strip
15 clubs, when I was single.

16 Q. Okay. How did you get to know him?

17 A. Through the clubs.

18 Q. Okay. Have you ever employed him at
19 L&B Snacks?

20 A. No, not working for me.

21 Q. Full-time? Have you ever employed him
22 full-time --

23 A. No, ma'am.

24 Q. -- at L&B?

25 A. No, ma'am.

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 Q. Did you employ him in February 2014?

2 A. No, ma'am.

3 Q. Has he ever worked for you 35 to
4 40 hours a week on a regular basis?

5 A. No, ma'am.

6 Q. Have you ever paid him a monthly income
7 around \$3,000 a month?

8 A. No, ma'am.

9 Q. In February of 2014, or any other time?

10 A. No, ma'am.

11 Q. If you would look at the screen in
12 front of you. I'm showing you State's Exhibit 6.
13 Can you see that document?

14 A. Yes, I can.

15 (Off the record.)

16 MS. ASKINS: I apologize.

17 THE COURT: No worries. You may
18 proceed.

19 BY MS. ASKINS:

20 Q. Mr. Brown, I'm showing you State's
21 Exhibit Number 7. Is this one of your pay stubs?

22 A. I don't have paychecks.

23 Q. So the answer would be, no?

24 A. No.

25 Q. Would you look at the pay period on

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

- 1 Exhibit Number 6? What is the date?
- 2 A. February 24th.
- 3 Q. To what date?
- 4 A. 2014. That would be it.
- 5 Q. And what is the ending date of that pay
- 6 period?
- 7 A. March 2, '14.
- 8 Q. Did you employ Mr. Polite during this
- 9 period of time?
- 10 A. No, ma'am.
- 11 Q. Did you issue him a paycheck in the
- 12 amount indicated, which I believe is \$625?
- 13 A. No.
- 14 Q. Is this a fake document?
- 15 A. It's not by my company.
- 16 Q. You're L&B Snacks, correct?
- 17 A. Yes, ma'am. I'm L&B Snacks, LLC.
- 18 Q. And did you ever employ Mr. Polite?
- 19 A. No, ma'am.
- 20 Q. I'm showing you State's Exhibit 5.
- 21 What are the pay periods indicated on this
- 22 document?
- 23 A. February 10, '14 through February 16,
- 24 '14.
- 25 Q. Did Mr. Polite work for you during this

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 period of time?

2 A. No, ma'am.

3 Q. Did you pay him any check in the amount
4 of \$384.46 during this period of time?

5 A. No, ma'am.

6 Q. Did you issue this document to
7 Mr. Polite?

8 A. No, ma'am.

9 Q. Is this a document coming from your
10 business?

11 A. No, ma'am.

12 Q. We talked about full-time employment.
13 Has Mr. Polite ever done any odd jobs for you?

14 A. Yes, ma'am.

15 Q. Tell the jury about the odd jobs that
16 he has done for you.

17 A. Well, one day when Mr. Polite came by
18 the store, I was having some problems with my
19 computer, I had a virus, and Mr. Polite assisted me
20 in getting that -- we went to Office Depot to get
21 some supplies and copy machine. And he tried to
22 help me get my computer back up and running.

23 Q. When was this, do you recall?

24 A. I'm not sure, but it was during that
25 time.

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 Q. During the period of March 2014?

2 A. I would assume. I'm not sure. It was
3 somewhere around that time, I'm not sure.

4 Q. Okay. Did you pay him?

5 A. Not for the computer, no. He was -- he
6 said he could help me with it.

7 Q. Do you recall any other odd jobs that
8 you might have got Mr. Polite to help you with?

9 A. Well, one day he got kicked out and he
10 was willing to help me do routes. This was about
11 4:00 or 5:00 in the morning, and he called me. And
12 I said, fine. I let him store his belongings in my
13 warehouse, and we went and did some routes. He
14 helped me with the routes.

15 Q. Is this one day?

16 A. Yeah. One day, I believe so.

17 Q. Go ahead.

18 A. Mr. Polite is self-employed, he don't
19 work for me.

20 Q. Did you pay him for that day's work?

21 A. I might have gave him some money, a few
22 dollars out of my pocket, but not like a paycheck
23 or anything, no.

24 Q. Any other odd jobs that you remember
25 him doing for you?

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 A. Oh, yes, ma'am. When I was opening up
2 my restaurant, he told me about Habitat of Humanity
3 because I needed a door -- a transporting door to
4 transport my food back and forth. And we drove up
5 to Goose Creek to look at some -- the door, but
6 there was never pay involved. He rode around with
7 me for a little bit.

8 Q. Did he help you out as a friend?

9 A. Yes, ma'am.

10 Q. Do you know Priscilla Patterson?

11 A. Yes.

12 Q. And who is she?

13 A. She works at my store.

14 Q. And how long has she worked for you?

15 A. Off and on, Priscilla worked for me
16 about -- a couple of years now.

17 Q. Sorry, I didn't mean to interrupt?

18 A. Two years, over two years.

19 Q. Did she work for you in March of 2014,
20 March of last year?

21 A. Yeah, she was working then.

22 Q. What does she do for you?

23 A. Well, she worked the check-cashing
24 store. Customers come in, she takes payments for
25 the home phone service, and perhaps she'll call me

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 on a check if a check came through. But at that
2 time, we -- the store was not doing a whole lot
3 because MSB was not -- we wasn't licensed to take
4 checks at the time. We had lost bank privileges.

5 Q. Okay. Is she friends with Mr. Polite;
6 do you know?

7 A. I saw them spoke and she gave him a
8 ride somewhere a couple of times, but I don't know.
9 I'm assuming that they are friends because me and
10 Mr. Polite, we were friends.

11 Q. And are you aware of the incident at
12 issue here today about the 2004 BMW?

13 A. I was aware of it. Well, I wasn't at
14 the time, until I got a call from someone from a
15 car dealership inquiring about the car and
16 Mr. Polite.

17 Q. Tell the jury about the phone call. Do
18 you recall who it was from?

19 A. A young lady called me from -- I can't
20 remember the name of the car --

21 Q. East Coast?

22 A. Something of that sort. She called
23 asking about his whereabouts. And I told her I
24 don't know where he is, at that time. And then she
25 let me learn about -- if he was employed by me, and

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 I told them no.

2 Q. She asked if he was employed by you?

3 A. Yes. And I said, he don't work for me.

4 I said, we're friends, but he don't work for me
5 like that.

6 Q. Did you ever talk to Detective
7 MacDonald about this case?

8 A. Not until the time she came by the
9 store.

10 Q. Detective MacDonald came to your store?

11 A. To my restaurant. I guess she was
12 looking for Priscilla Patterson at the time when
13 this whole incident came up about the car. And she
14 told me about a check stub, but I never had time to
15 go to the City to look at it.

16 Q. Did she ask you whether or not
17 Mr. Polite was employed by you?

18 A. At the time, yes, she did ask me, and I
19 told her no. He had helped me out, did a couple of
20 things, and I remember paying him some money out of
21 my pocket, but not in the sense of an employee.

22 Q. Did you give a written statement to
23 Detective MacDonald?

24 A. Yes, ma'am, I believe I did at the
25 time.

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 Q. Did you indicate that he had not worked
2 for you?

3 A. Yes, ma'am.

4 Q. He had never been an employee of yours?

5 A. Yes, ma'am. I told him he didn't work
6 for me like that.

7 Q. Did you indicate to her that you had
8 never issued Wayne Polite a paycheck?

9 A. Oh, no. No, ma'am.

10 Q. Oh, no, you never issued --

11 A. No. I never issued him no paycheck or
12 --

13 Q. That's what you told Detective
14 MacDonald?

15 A. Yes, ma'am.

16 MS. ASKINS: Your Honor, may we
17 approach?

18 THE COURT: Yes.

19 (Bench conference)

20 MS. ASKINS: Judge, this is the time,
21 if he's allowed, to get into the testimony that I
22 would ask him about pending charges. I just don't
23 know --

24 THE COURT: You need to take it up as a
25 matter of law.

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 (End of bench conference)

2 THE COURT: Madame Forelady, ladies and
3 gentlemen, we have a brief matter of law to
4 discuss. During the break, please do not discuss
5 the case and please leave your notepads in your
6 seats. We appreciate your patience.

7 (Jury out, 11:37 a.m.)

8 You may be seated. Proceed with the
9 questions.

10 BY MS. ASKINS:

11 Q. Mr. Brown?

12 A. Yes, ma'am.

13 Q. Do you have a pending charge in the
14 Solicitor's Office?

15 A. Yes, ma'am.

16 Q. And what is that charge for?

17 A. It's my gun that I had in my car. I
18 had it in the car at the time, it was a leased car.
19 I just had transferred my -- transferred vehicles
20 and I didn't have a key to the glove compartment,
21 and I located my gun on the left side in a little
22 hidden area of my car.

23 Q. Was the charge unlawful carrying of a
24 pistol?

25 A. Yes. When I got pulled over for --

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 going to my restaurant I got pulled over for not
2 making a traffic signal by the speed team. And the
3 first thing he asked if we had any weapons in the
4 car. And I told him, yes. And that's when they
5 asked us to get out of the car. And I told them
6 where -- the gun was on one side of the car and the
7 clip was inside the glove compartment. I separated
8 the two.

9 Q. When were you charged?

10 A. Right before I opened up my restaurant.
11 I just --

12 Q. Would it have been April 21, 2014?

13 A. April? Yes, ma'am. It could be around
14 that time.

15 Q. Was it after you gave a statement to
16 Detective MacDonald concerning Wayne Polite?

17 A. I'm not sure. I can't remember if that
18 was the exact -- the charge?

19 Q. I'm showing you --

20 MS. ASKINS: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 MS. ASKINS: I'm showing you -- I guess
24 I need to mark it for ID purposes.

25 (PLF. EXH. 16, Copy of statement, was

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 marked for identification.)

2 BY MS. ASKINS:

3 Q. I'm showing you State's Exhibit 16 for
4 ID purposes. Do you recognize that document?

5 A. Yes, ma'am. I didn't write it. I
6 asked her to write it for me.

7 Q. What is this document?

8 A. It was a witness. I mean, she asked me
9 to write what -- she needed a statement --

10 THE COURT: I'm sorry, I can't hear the
11 witness.

12 THE WITNESS: The officer asked for my
13 statement, to write a written statement.

14 BY MS. ASKINS:

15 Q. Is this a statement that you gave to
16 Detective MacDonald in the investigation of Wayne
17 Polite?

18 A. Yes, ma'am.

19 Q. And is that your signature on the
20 bottom?

21 A. Yes, ma'am.

22 Q. And what is the date that you gave this
23 statement?

24 A. March, that's March 21st.

25 Q. What year?

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 A. 2014.

2 Q. So you gave this statement March 21,
3 2014?

4 A. Yes, ma'am.

5 (PLF. EXH. 17, Copy of arrest warrant,
6 was marked for identification.)

7 BY MS. ASKINS:

8 Q. Okay. I'm showing you another exhibit
9 for ID purposes, number 17. Do you recognize this
10 document?

11 A. Yeah, that's unlawful carrying of a
12 firearm.

13 Q. Is this the arrest warrant for the
14 charge?

15 A. Yes, when I got pulled over.

16 Q. Would you look at the first paragraph
17 of that? What was the date that you got pulled
18 over?

19 A. April 21, 2014.

20 Q. So you got pulled over after you gave
21 your statement to Detective MacDonald?

22 A. You mean that both of them happened at
23 the same day?

24 Q. No. Based on your testimony, you gave
25 your statement to Detective MacDonald in March, on

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 March 21, 2014, based on your statement; is that
2 correct?

3 A. I don't -- that can't be -- that can't
4 be I don't think. Both --

5 Q. What is the date you gave the
6 statement?

7 A. I can't remember.

8 Q. Well, what is the date on this --

9 A. On the paper it says March 21st.

10 Q. Did you sign this document?

11 A. I signed this, but I didn't write that.
12 I asked her to write it for me.

13 Q. She wrote it for you?

14 A. Yes, ma'am.

15 Q. Okay. So on March 21st, Detective
16 MacDonald talked to you, you provided her
17 information; is that correct?

18 A. Right, yes, ma'am.

19 Q. And she wrote this statement?

20 A. Yes.

21 Q. And you signed the statement?

22 A. Yes, ma'am.

23 Q. Okay. And that happened March 21,
24 2014?

25 A. That's what it says, yes, ma'am.

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 Q. Okay. And when were you pulled over by
2 the North Charleston Speed Team, based on your
3 arrest warrant? What is the date?

4 A. April 21st.

5 Q. So you got pulled over after you gave
6 Detective MacDonald a statement; is that correct?

7 A. After -- yeah. That would be the case.
8 There's a month difference.

9 Q. That's correct. Why did you have a
10 gun?

11 A. Well, I work in a high-risk area on
12 Spruill Avenue. And I owned that gun for over five
13 years, maybe longer, and I just had it in my car.
14 I was trying to transport it from the car --
15 different cars that I had, and I forgot about
16 having put it back into where it needed to go and I
17 got pulled over.

18 Q. You didn't have it in the glove box?

19 A. I didn't have a key to the glove box.
20 I told the officer that when he pulled me over.

21 Q. You have met with me a couple of times;
22 is that correct?

23 A. Yes.

24 Q. And you've met with Ms. Niblock back
25 here?

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 A. Yes, ma'am.

2 Q. Have I ever asked -- other than today,
3 have I ever asked you about this case, your gun
4 charge?

5 A. No, ma'am.

6 Q. Have we ever discussed it?

7 A. No, ma'am.

8 Q. Have you ever been promised anything or
9 given a deal on that charge in exchange for your
10 testimony here today?

11 A. No, ma'am. Everything, from my
12 knowledge, is still pending from my attorney.

13 MS. ASKINS: I don't have anything
14 further to proffer.

15 THE COURT: Do you have an objection to
16 asking -- I guess I'm trying to figure out what is
17 the basis of the State's objection?

18 MS. ASKINS: Well --

19 THE COURT: And how are you really
20 prejudiced by asking him these questions?

21 MS. ASKINS: It's a pending charge. I
22 mean, it is -- there is no conviction.

23 THE COURT: Doesn't have to be.

24 MS. ASKINS: And if it comes in, I
25 guess, really the scope that he's allowed to go

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 into.

2 THE COURT: I'm sorry, say that one
3 more time.

4 MS. ASKINS: What would be the scope of
5 interrogation, cross-examination --

6 THE COURT: Well, if you ask the
7 questions, it's done. I mean, he can still ask
8 some questions, but what is there left to ask?
9 Except, do you expect any favorable consideration
10 from the State? I guess I'm trying to figure out
11 the difference it would make --

12 MS. ASKINS: I just want to make
13 sure --

14 THE COURT: I think it eliminates an
15 issue. None of the cases Mr. Malloy has given to
16 the Court are on point. They all really deal with
17 harmless error and really just reinforces the
18 discretionary call of the court, but I'm just
19 trying to figure out what -- the real difference it
20 makes because it eliminates the whole issue of
21 whether he expects any consideration from the
22 State.

23 MS. ASKINS: Well, Mr. Malloy hasn't
24 shown any evidence that --

25 THE COURT: Doesn't have to, and it

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 doesn't have to be related to this case. I guess
2 I'm still trying to figure out what --

3 MS. ASKINS: Yesterday, I believe the
4 indication was it wasn't going to come in, that it
5 wasn't going to come in, that you were --

6 THE COURT: I said -- I would think
7 about it is what I said. And if it came out, it
8 would be dealt with as a matter of law so I could
9 create a proffer in the event I didn't let it in.

10 So I guess my question is, still, does
11 the State have any exception to the line of
12 questions? If you don't have an exception, there's
13 no issue. If you do have an exception, then I need
14 to rule on it.

15 MS. ASKINS: I don't know the questions
16 that Mr. Malloy is going to ask, so...

17 THE COURT: I would imagine you've
18 already asked every question.

19 MR. MALLOY: She did cover most of it.
20 I mean, the biggest issue for us is the pending
21 nature of the charge and a source of potential
22 bias --

23 THE COURT: I think the pending nature
24 of the charge is irrelevant. What is relevant is
25 he has a pending charge and whether he expects any

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 consideration from the State. Now, if you all want
2 to go into the specifics and you have no objection,
3 I'm not going to object; it's not my job, but
4 really none of it is relevant. The only thing
5 that's relevant in terms of credibility and bias,
6 do you have a charge pending and do you expect some
7 consideration from the State, some special
8 dispensation, some break in the charge or a
9 dismissal of the charge? That's all that's
10 relevant.

11 It's no different than if somebody has
12 had a conviction. All you need to ask is, did you
13 have a conviction? Period. You don't need to get
14 into why they had it, what it's about. It's not
15 relevant. The issue is whether you have it and
16 whether it bears on your credibility. All the
17 details don't come in.

18 MR. MALLOY: Your Honor, I really don't
19 plan on going into the factual details of the
20 carrying charge. What I want to get in is the fact
21 that he has a pending charge and there is bias to
22 gain favor with the Solicitor's Office via
23 testimony today?

24 THE COURT: What else are you going to
25 ask other than what she's already asked? I mean,

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 she's pretty much covered it.

2 MR. MALLOY: She probably has.

3 THE COURT: If you don't have any
4 objection about details, I'm not going to object.
5 You don't have any -- I'm not an advocate, I don't
6 object. If you don't have any problem with her
7 going into the details, I certainly don't --

8 MR. MALLOY: I don't have any problem
9 with that.

10 THE COURT: Do you have any exception
11 with the line of questioning that she has elicited
12 from the witness?

13 MR. MALLOY: No, Your Honor, as long as
14 I'm able to cross-examine him. That was my main
15 issue, whether or not I would be allowed to
16 cross-examine him on the fact that he has a pending
17 charge.

18 THE COURT: Anything further from the
19 State?

20 MS. ASKINS: No, Your Honor.

21 THE COURT: The State may pursue the
22 line of questioning.

23 Please get the jury.

24 And just for the record, I notice, sir,
25 you have your counsel with you? Is your lawyer

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 here with you today?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Mr. Buchanan?

4 THE WITNESS: Correct.

5 THE COURT: Right. How are you,
6 Mr. Buchanan?

7 MR. BUCHANAN: Very well, Your Honor.
8 Thank you.

9 (Jury in, 11:51 a.m.)

10 THE BAILIFF: All jurors are present
11 and seated.

12 THE COURT: You may be seated.

13 You may proceed.

14 MS. ASKINS: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MS. ASKINS: May it please the Court.

17 THE COURT: Yes, ma'am.

18 BY MS. ASKINS:

19 Q. Mr. Brown, you have a pending charge
20 with the Solicitor's Office, don't you?

21 A. Yes.

22 Q. And that charge is unlawful carrying of
23 a handgun?

24 A. Yes, ma'am.

25 Q. Were you arrested April 21, 2014, for

CLARENCE BROWN - DIRECT EXAM BY MS. ASKINS

1 that charge?

2 A. Yes, ma'am.

3 Q. You met with me a couple of times
4 before today, haven't you?

5 A. Yes.

6 Q. And you've met with my investigator,
7 Ms. Niblock?

8 A. Yes.

9 Q. Have we ever discussed your pending
10 charge with you?

11 A. No, ma'am.

12 Q. Have we ever raised the issue at all?

13 A. No.

14 Q. With regard to your pending charge,
15 have you ever been given a deal or been promised
16 anything on that charge in exchange for your
17 testimony here today?

18 A. No, ma'am.

19 Q. Do you expect to curry any favor or
20 gain any favor here today by testifying?

21 A. No, ma'am.

22 Q. And the statement that you gave to
23 Detective MacDonald when she was investigating
24 Mr. Polite --

25 A. Yes.

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 Q. -- did you give that statement on
2 March 21, 2014?

3 A. Yes, ma'am.

4 MS. ASKINS: I don't have anything
5 further, Your Honor.

6 THE COURT: Any cross-examination of
7 the witness?

8 MR. MALLOY: Yes, Your Honor.

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MR. MALLOY:

12 Q. Mr. Brown, do you advertise your
13 business?

14 A. Yes.

15 Q. Do you give your employees T-shirts?

16 A. I have a few T-shirts.

17 Q. You had T-shirts made for L&B?

18 A. For vending, yes, sir.

19 Q. And you met with Detective MacDonald, I
20 think we established the date March 21, 2014?

21 A. Yes, sir.

22 Q. And she was asking you about
23 Mr. Polite, the case we are here about today?

24 A. Yes.

25 Q. And you told Detective MacDonald that

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 Mr. Polite had never worked for me?

2 A. He did some --

3 Q. You told Detective MacDonald that he
4 had never worked for you?

5 A. No. He never worked for me as on like
6 payroll, paying somebody on the payroll like she
7 mentioned about the check stub.

8 Q. You gave a statement to Detective
9 MacDonald and she wrote it down; is that correct?

10 A. Yes, sir.

11 MR. MALLOY: Your Honor, may I approach
12 the witness?

13 THE COURT: Uh-huh.

14 BY MR. MALLOY:

15 Q. I'm handing you what's been marked as
16 State's Exhibit 16. And is that the statement that
17 you gave to Detective MacDonald when she first
18 talked to you about this case?

19 A. Yes, sir, this is it.

20 Q. And in that statement you said Wayne
21 Polite does not work for me, has never been an
22 employee of mine, correct?

23 A. Yes.

24 Q. You didn't mention anything about --
25 thee's nothing in the statement about you knowing

CLARENCE BROWN. - CROSS EXAM BY MR. MALLOY

1 Mr. Polite for years, correct?

2 A. She didn't ask me that.

3 Q. But you could have -- you could have
4 told her that, correct?

5 A. I could have, but she didn't ask me
6 that.

7 Q. At the bottom of that statement it
8 says, I have read the foregoing statement and had
9 it read to me and it is true and correct to the
10 best of your knowledge?

11 A. Yes.

12 Q. I have given the statement freely and
13 voluntarily and have been provided a copy of the
14 statement, correct?

15 A. Yes, sir.

16 Q. You didn't tell her anything about him
17 helping you fix computers?

18 A. I can't recall, sir. I can't remember;
19 it's been awhile.

20 Q. It's nowhere in the statement that's in
21 front of you right now, correct?

22 A. She asked me about the check stubs and
23 I said, no, I didn't provide him a check stub, he
24 didn't work for me like that.

25 Q. She was obviously asking you about any

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 work that he had done for you?

2 A. No, sir, she didn't ask me that. She
3 asked me about the paycheck stubs.

4 Q. The paycheck stubs -- you never went
5 down to North Charleston City Hall to see what they
6 were talking about?

7 A. No. She just told me about a paycheck
8 stub that was printed out with my company name on
9 it, and told me the time allowed for me to go down
10 there, but I never went down there to see the
11 paycheck stub. I just didn't get to that point.

12 Q. So you didn't see what the Solicitor
13 put up on the projector until today?

14 A. No. I saw that when she presented it
15 to me at times.

16 Q. You saw it when you were talking to the
17 Solicitor in preparation for this case?

18 A. Yes, sir, that's when I saw it.

19 Q. But just to be clear, Mr. Polite has
20 done work for you before, and you testified to that
21 today?

22 A. Yes, sir.

23 Q. You testified that he's helped you fix
24 computers --

25 A. I have one computer that had a virus,

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 yes.

2 Q. He helped you find some things,
3 correct?

4 A. Yeah. We located some items that I
5 needed for the restaurant.

6 Q. And he would have been around the
7 business at L&B, correct?

8 A. Occasionally, he'll pop in and out.
9 Maybe he might sell -- he was selling items to some
10 of the people. He worked on phones, he worked on
11 my sister-in-law's cell phone. He fixed her phone.

12 Q. But none of that information is in the
13 statement, the statement written by Detective
14 MacDonald?

15 A. He didn't work for me.

16 Q. Well, I'm asking you, none of the
17 information you just told me about, about your
18 interactions with Mr. Polite are in the statement
19 you gave to Detective MacDonald?

20 A. No, it's not in there.

21 Q. Your business is an LLC, correct?

22 A. Correct, yes.

23 Q. You filed the necessary paperwork with
24 the City of North Charleston?

25 A. Yeah. That was done back in 2004.

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 Q. As a business owner, you're aware of
2 your requirements to report income for the business
3 for tax purposes, employment --

4 A. Yes.

5 Q. -- amount of employees that you have?
6 Did you bring any employment records with you
7 today?

8 A. No, I didn't bring anything.

9 Q. You pay people in cash?

10 A. Some, yes, sir.

11 Q. How many employees do you have on an
12 average basis?

13 A. It's ongoing. It's me, myself,
14 Priscilla, and Torey.

15 Q. And but you are aware of the reporting
16 requirements for employees to the IRS and state
17 government, correct?

18 A. Yeah. I turned all that over to my
19 bookkeeper who does my taxes?

20 Q. But mostly you pay people in cash,
21 correct?

22 A. Well, not everybody. Just a few people
23 come around might ask to cut the grass and do a
24 little clean-up; I pay them 10 or \$15.

25 Q. Do you have an accountant or payroll

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 company?

2 A. I have a CPA who assists me with the
3 taxes.

4 Q. Does he help you issue paychecks?

5 A. No; we don't do paychecks. It's not a
6 paycheck -- my setup is not set up like that. It's
7 not a paycheck.

8 Q. You mentioned Ms. Priscilla Patterson,
9 is she a full-time employee of yours?

10 A. No.

11 Q. She's been off and on for about two
12 years?

13 A. Yes.

14 Q. But she currently works for you?

15 A. Yes.

16 Q. And that's at L&B. That's a
17 check-cashing business, correct?

18 A. She helps me in both of the stores.

19 Q. You mentioned earlier that you knew
20 Wayne, you've known him for several years, you went
21 to the strip clubs with him when you were single?

22 A. Yes.

23 Q. But Ms. Patterson is your current
24 girlfriend, too, correct?

25 A. Yes. That's after me and my wife got a

CLARENCE BROWN - CROSS EXAM BY MR. MALLOY

1 divorce.

2 Q. And the letter, the statement you gave
3 to our office, you mentioned that she assumed Wayne
4 was an employee of yours when she began working at
5 L&B?

6 A. She -- I mean, when I was aware -- when
7 I found out that -- when the car dealership called
8 and said that someone by the name verified his
9 employment with me. And I said, he never worked
10 for me, that's what I told the caller. And I told
11 her he never worked for me, and they did mention
12 something about the paycheck stub. But I never --
13 I spoke to the lady over the phone from the car
14 lot.

15 Q. And we've already discussed that you
16 have a pending unlawful carrying of a firearm
17 charge, correct?

18 A. Yes.

19 Q. And you're a resident of North
20 Charleston?

21 A. Yes.

22 Q. That case is being prosecuted by the
23 9th Circuit Solicitor's Office?

24 A. Yes.

25 Q. You have an attorney here today that is

CLARENCE BROWN - REDIRECT EXAM BY MS. ASKINS

1 representing you on that charge?

2 A. Yes, sir.

3 Q. And you haven't worked out any deals or
4 anything regarding that case, correct?

5 A. No, sir.

6 Q. You certainly don't want to go to
7 prison for that, do you?

8 A. For the gun charge?

9 Q. You don't want to go to prison for
10 that, do you?

11 A. No, sir.

12 MR. MALLOY: Court's indulgence.

13 No further questions.

14 THE COURT: Any redirect?

15 MS. ASKINS: Thank you, Your Honor.

16 THE COURT: Yes, ma'am.

17 REDIRECT EXAMINATION

18 BY MS. ASKINS:

19 Q. The pay stubs that Mr. Polite gave to
20 East Coast Auto Sports, those are fake; isn't that
21 correct?

22 A. Yes.

23 MR. MALLOY: Objection; speculation and
24 form of the question.

25 THE COURT: You have to establish the

CLARENCE BROWN - REDIRECT EXAM BY MS. ASKINS

1 foundation to ask that question.

2 MS. ASKINS: Yes, ma'am.

3 THE COURT: Sustained, rephrase.

4 BY MS. ASKINS:

5 Q. We talked about the pay stubs -- the
6 pay stub --

7 A. Yes, ma'am.

8 Q. -- that Mr. Polite provided to East
9 Coast and tried to obtain the car -- a loan for the
10 car. I'm showing you State's Exhibit 5 and State's
11 Exhibit 6. You looked at those before; is that
12 correct? We talked about those before?

13 A. Yes, ma'am, when you showed it to me
14 weeks ago.

15 Q. Those are not pay stubs that you
16 issued?

17 A. No, ma'am, I did not issue these.

18 MS. ASKINS: Thank you. I don't have
19 anything further.

20 THE COURT: Any objection to the
21 witness being excused? From the State?

22 MS. ASKINS: No.

23 THE COURT: From the defense?

24 MR. MALLOY: No, Your Honor.

25 THE COURT: Sir, you're excused.

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 State may call its next witness.

2 MR. COOPER: The State calls Priscilla
3 Patterson.

4 PRISCILLA PATTERSON,
5 being first duly sworn, testified as follows:

6 THE CLERK: Please be seated. Once
7 seated, please state your first and last name
8 spelling your last name loudly and clearly into the
9 microphone.

10 THE WITNESS: Priscilla Patterson,
11 P-A-T-T-E-R-S-O-N.

12 THE COURT: You may proceed.

13 MR. COOPER: Thank you, judge.

14 DIRECT EXAMINATION

15 BY MR. COOPER:

16 Q. Good morning -- well, I guess
17 afternoon, Ms. Patterson. How are you?

18 A. All right.

19 Q. Where do you live?

20 A. Road in Charleston.

21 Q. In Charleston. Where do you work?

22 A. L&B Check-Cashing.

23 Q. And what does that business do?

24 A. We cash checks, buy gift cards, we sell
25 budget phones, government phones to customers, and

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 that's really it. We used to do Western Union, not
2 no more.

3 Q. What is your position there? What do
4 you do for L&B?

5 A. I'm like a manager.

6 Q. Okay. How long have you worked there?

7 A. About two-and-a-half-years.

8 Q. Is Clarence Brown your boss?

9 A. Yes.

10 Q. Do you know if there were any other --
11 any other employees that work with you now?

12 A. Yes.

13 Q. How many?

14 A. One.

15 Q. How many were there working with you
16 back in the spring of last year?

17 A. Me, just me.

18 Q. Just you and Mr. Brown in February and
19 March 2014?

20 A. Uh-huh.

21 THE COURT: Ma'am, if you could say yes
22 or no.

23 THE WITNESS: Yes.

24 BY MR. COOPER:

25 Q. We just -- they need a verbal response

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 so they can put in the record.

2 Do you know Mr. Polite?

3 A. Yes.

4 Q. How do you know Mr. Polite?

5 A. He helped fix computers at
6 check-cashing and helped Clarence load the truck
7 with sodas.

8 Q. So he helped out with odd jobs?

9 A. Yes.

10 Q. How long have you known Mr. Polite?

11 A. Six months. I met him through
12 check-cashing.

13 Q. Would you describe your relationship as
14 being friends?

15 A. Associates.

16 Q. Now, I want to take you back to March
17 of 2014. Did the Defendant ever discuss with you
18 buying a vehicle?

19 A. Yes.

20 Q. Did he say he was looking to buy a
21 vehicle?

22 A. Yeah, he said he was looking for one.

23 Q. Did he ask you for assistance?

24 A. He said -- he wanted me to say he
25 worked for six months, he came to the store and

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 helped here and there and Clarence paid him cash
2 for odd jobs.

3 Q. So he asked you to say --

4 A. That he worked there for like six
5 months. That's what I told the lady.

6 MR. COOPER: Your Honor, if I could
7 approach the witness.

8 THE COURT: You can.

9 (PLF. EXH. 18, Copy of statement, was
10 marked for identification.)

11 BY MR. COOPER:

12 Q. Ms. Patterson, do you remember giving a
13 written statement to Detective MacDonald from the
14 North Charleston Police Department --

15 A. Yes.

16 Q. -- back in -- you do remember?

17 A. Yes.

18 MR. COOPER: May I approach the
19 witness, Judge?

20 THE COURT: You may.

21 MR. COOPER: I'm showing the witness
22 what has been premarked as State's Exhibit 18 for
23 ID only.

24 BY MR. COOPER:

25 Q. What is that document?

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 A. Wayne called --

2 Q. What is that document? Do you remember
3 the document?

4 A. Yes.

5 Q. Why?

6 A. It's a witness statement document.

7 Q. Do you remember giving that statement

8 --

9 A. Yeah.

10 Q. -- to Detective MacDonald?

11 A. Yes.

12 Q. Is that your signature at the bottom of
13 the page?

14 A. Uh-huh.

15 Q. What is the date on there that it says
16 that you gave the statement?

17 A. 3/21/14.

18 Q. March 21st, '14?

19 A. Yes.

20 Q. Can you read that first sentence?

21 A. Wayne called check-cashing, asked me to
22 say he worked for L&B for seven years and made 700
23 weekly.

24 Q. So you told Detective MacDonald from
25 the North Charleston Police Department that Wayne

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 asked you to say that he worked for seven years and
2 made \$700 a week?

3 A. Yes. And I did not do that.

4 Q. But that's what he asked you to do?

5 A. Yeah, he asked me to do that.

6 Q. He did call and asked you to say that?

7 A. Yes.

8 Q. Was that truthful?

9 A. What?

10 Q. What he asked you to say?

11 A. No.

12 Q. Now, do you remember giving -- or
13 telling Detective MacDonald on March 2014 that you
14 did, in fact, say what he asked you to say?

15 A. No. I told her I did not do that.

16 Q. Do you remember asking Michelle Miller,
17 who worked for East Coast Sports and Imports, in
18 March 2014, that -- what he asked you, to say that
19 the Defendant had been there for seven years and
20 made \$700 a week?

21 A. No, I did not.

22 Q. So you don't remember telling either
23 person --

24 A. I said for six months I've known Wayne.
25 For six months he's been doing little odd jobs for

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 Clarence, fixing computers, the copier, the
2 scanner. He was good at computers. That's what I
3 told the lady.

4 MR. COOPER: Judge, if we may approach?

5 THE COURT: You may.

6 (Bench conference.)

7 MR. COOPER: I'm going to hand up a
8 South Carolina Supreme Court case. Judge, I
9 believe I've laid the foundation to impeach this
10 witness with the prior inconsistent statement with
11 extrinsic proof --

12 THE COURT: You want to impeach your
13 own witness? You should have brought this up. I
14 will have to take this up outside the jury's
15 presence.

16 Stand back please.

17 (End of bench conference.)

18 THE COURT: Madame Forelady, ladies and
19 gentlemen, I have a brief matter of law to take up
20 with the attorneys. During the break, please do
21 not discuss the case and please leave your notepads
22 in your seats.

23 (Jury out, 12:10 p.m.)

24 THE COURT: You may be seated.

25 Now, first and foremost, you should

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 have given me notice of this before now. Second,
2 I'm very familiar with Rule 609 and I know what is
3 required for extrinsic proof. I don't need any
4 case law to tell me what is required. And third,
5 I'm not going to have her inculcate herself of any
6 criminal activity without advising her of her
7 rights against self-incrimination.

8 What you're asking her now to do is
9 inculcate herself in this crime, correct? Or in
10 criminal activity, unless you plan to give her
11 immunity. Because I think you knew before now what
12 you intended to do and you should have given the
13 Court notice of it.

14 MS. ASKINS: Your Honor, if I may --

15 THE COURT: Because it is your witness.

16 MS. ASKINS: Yes. This line of
17 inquiry, we were going to take her statement, leave
18 that statement, not ask her anything else about
19 that --

20 THE COURT: First, you ask her -- what
21 you do is you ask her the question, you give her
22 the opportunity to admit or deny it. You then give
23 her the opportunity to review her statement and
24 refresh her memory. If she still answers
25 inconsistently, then you get to use extrinsic proof

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 to impeach her. You did not do that.

2 You asked her a question. She answered
3 the question, I assume, inconsistently. You never
4 gave her the opportunity to review her statement,
5 and then you wanted -- then you asked to approach
6 the bench asking that I allow you to impeach her
7 with extrinsic evidence.

8 MR. COOPER: The issue is not the
9 written statement. I showed her the written
10 statement. The issue is the oral statement that
11 she's given, and I asked her if she were giving it
12 to --

13 THE COURT: How are you going to
14 impeach her with an oral statement without any
15 proof -- without that witness? You don't -- you
16 can't impeach her -- the way you impeach her with
17 extrinsic proof under those circumstances is you
18 call the witness you claim made the statement.

19 MR. COOPER: The extrinsic evidence
20 introduced, Judge, the testimony of two witnesses
21 that would testify, which would have been a hearsay
22 objection, which would have been allowed under this
23 Rule, that she did, in fact, tell them --

24 THE COURT: But it's not right for this
25 witness. You call those witnesses and you take it

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 up then as extrinsic proof. You don't take it up
2 with her.

3 MR. COOPER: Then my timing is -- I
4 wanted just to make the objection here in case the
5 defense wanted me to lay more proffered foundation
6 under that Rule.

7 THE COURT: You have to judge that and
8 it's his job to make a contemporaneous objection.
9 You can't anticipate what is going to happen. You
10 need to do what the Rules require. You need to ask
11 her a question.

12 MR. COOPER: Yes, Judge.

13 THE COURT: But if she's going to
14 inculcate herself, I need to know because then I
15 need to get her a lawyer. And she needs to be well
16 advised of her rights.

17 MS. ASKINS: Thank you, Your Honor.

18 MR. COOPER: Thank you.

19 THE COURT: Basically, what you're now
20 asking her is a level of financial fraud, if you're
21 saying that she was collusive with him in this
22 activity. And I need to advise her under the Fifth
23 Amendment because she doesn't have to testify
24 against herself. She does not have to give you
25 proof of illegal activity; not without a lawyer

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 advising her of her rights.

2 MR. COOPER: Judge, I will stay away
3 from that line of questioning, and I just have a
4 few more questions --

5 THE COURT: That doesn't solve the
6 problem. I need to know if you're asking her to
7 inculpate herself in a crime.

8 MR. COOPER: No, Judge, I'm not.

9 THE COURT: If you're asking her to say
10 she provided false statements, that's inculpating
11 her in a crime that you can prosecute her for, and
12 I need to advise her of her rights to
13 self-incrimination.

14 Ma'am, are you represented by Counsel?

15 THE WITNESS: They told me just to come
16 in and say my statement and I wouldn't go to jail.
17 That's what they told me.

18 THE COURT: I'm sorry, say that one
19 more time.

20 THE WITNESS: No, ma'am. No, ma'am. I
21 don't know what's going on.

22 THE COURT: Have you all charged her
23 with anything?

24 MS. ASKINS: No, Your Honor. We have
25 no intention of charging her with anything.

PRISCILLA PATTERSON - DIRECT EXAM BY MR. COOPER

1 THE COURT: Okay. Are we ready to
2 proceed?

3 MR. COOPER: Yes, Judge.

4 THE COURT: State ready to proceed?

5 MS. ASKINS: Yes.

6 THE COURT: Defense ready to proceed?

7 MR. MALLOY: Yes, Your Honor.

8 THE COURT: Please bring in the jury.
9 (Jury in, 12:16 p.m.)

10 THE BAILIFF: All jurors are present
11 and seated.

12 THE COURT: Thank you. You may be
13 seated.

14 You may proceed.

15 MR. COOPER: Thank you, Judge.

16 THE COURT: You're welcome.

17 BY MR. COOPER:

18 Q. Ms. Patterson, are you aware of what
19 kind of car Mr. Polite got from that dealership?

20 A. They told me it was a BMW.

21 Q. Did you ever see him drive that car?

22 A. No.

23 Q. Do you, by any chance, know who Ruth
24 Love is?

25 A. No.

PRISCILLA PATTERSON - CROSS BY MR. MALLOY

1 Q. Did you ever see her drive that BMW?

2 A. That's his girlfriend.

3 Q. Did you ever see her drive that BMW?

4 A. No. I never seen the car.

5 MR. COOPER: Please answer any
6 questions that the defense may have for you.

7 THE COURT: You may proceed.

8 MR. MALLOY: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MALLOY:

11 Q. Ms. Patterson, when East Coast Sports
12 and Imports called you about Mr. Polite working at
13 L&B, you said he was an employee there, correct?

14 A. Yes.

15 Q. And, obviously, you knew who Mr. Polite
16 was?

17 A. Yes.

18 Q. And you knew who he was because you had
19 seen him with Clarence at L&B before?

20 A. Yes, sir.

21 Q. You saw the two of them hanging out
22 together?

23 A. They used to go out together because
24 Clarence know him from back in the days.

25 Q. They had known each other for awhile?

PRISCILLA PATTERSON - CROSS BY MR. MALLOY

1 A. Yes.

2 Q. And you had seen him doing work for
3 Clarence before?

4 A. Yes, sir.

5 Q. You had seen him fix computers --

6 A. Printers.

7 Q. -- office equipment?

8 A. Help with vending machines.

9 Q. Helped out with vending machines --

10 A. Yes.

11 Q. -- with L&B Snacks and helped out with
12 office equipment --

13 A. Yes.

14 Q. -- around L&B, correct?

15 A. Yes, sir.

16 Q. You -- have you used the term,
17 subcontractor, to describe Wayne before?

18 A. That's what you consider it when you do
19 odd jobs and you pay him cash. It's considered
20 subcontractor.

21 Q. So that's -- in your own words,
22 subcontractor is what you would refer to him as?

23 A. Like odd jobs, pick up trash or
24 something -- odd jobs.

25 Q. After you initially told East Coast

PRISCILLA PATTERSON - CROSS BY MR. MALLOY

1 Sports that Wayne was an employee there, did
2 Clarence come to you about that conversation you
3 had?

4 A. No, not until after the fact when East
5 Coast called him.

6 Q. And then he came to you about that?

7 A. Yes.

8 Q. To this day you're still working at
9 L&B?

10 A. Yes, sir.

11 Q. Do you reside with Mr. Brown?

12 A. Yes, sir.

13 MR. MALLOY: Beg the Court's
14 indulgence.

15 THE COURT: Uh-huh.

16 MR. MALLOY: No further questions, Your
17 Honor.

18 THE COURT: Any redirect.

19 MR. COOPER: Beg the Court's
20 indulgence.

21 THE COURT: Yes, sir.

22 MR. COOPER: No redirect.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MR. COOPER: No objection.

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 microphone.

2 THE WITNESS: Karen MacDonald

3 M-A-C-D-O-N-A-L-D.

4 THE COURT: You may proceed.

5 MR. COOPER: Thank you, judge.

6 DIRECT EXAMINATION

7 BY MR. COOPER:

8 Q. Good afternoon, Detective. How are
9 you?

10 A. Good.

11 Q. Where do you live?

12 A. Where do I live?

13 Q. Where do you live? What area of town
14 do you live in?

15 A. I live in Goose Creek.

16 Q. Goose Creek, South Carolina?

17 A. Uh-huh.

18 Q. Where do you work?

19 A. North Charleston.

20 Q. North Charleston Police Department?

21 A. Yes.

22 Q. What is your position with the North
23 Charleston Police Department?

24 A. I'm a detective in the white collar
25 division.

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 Q. What kind of crimes does the white
2 collar division investigate?

3 A. Any kind of fraud that has to do with
4 money, forgery, credit card fraud, obtaining by
5 false pretense, breach of trust.

6 Q. How long have you been in that
7 division?

8 A. About four-and-a-half-years.

9 Q. Were you with North Charleston prior to
10 being in that position?

11 A. Yes.

12 Q. What position did you hold prior to
13 being a detective?

14 A. I was a patrol officer.

15 Q. And how long were you a patrol officer?

16 A. About five-and-a-half-years.

17 Q. And where did you work prior to joining
18 North Charleston Police Department?

19 A. College of Charleston.

20 Q. And you worked in what capacity there?

21 A. Police officer.

22 Q. How long were you there?

23 A. About two years and ten months.

24 Q. Detective, did you happen to be
25 involved in an investigation concerning East Coast

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 Sports and Imports back in March 2014?

2 A. Yes.

3 Q. How did you become involved in that
4 case?

5 A. Ms. Miller came to the department
6 inquiring about if the case had not been assigned.
7 I went to go speak to her, but she had left the
8 building because I guess she was busy. And then
9 later Mr. Tursi called and spoke to me about it,
10 and I agreed to take it.

11 Q. So you were the lead detective on the
12 case?

13 A. Yes.

14 Q. And what was the nature of your
15 involvement in the case?

16 A. Gathering information on the case,
17 getting witness statements, evidence. Basically
18 investigating it.

19 Q. And you mentioned Mr. Tursi. Did you
20 have a chance to speak to him?

21 A. Yes.

22 Q. Can you tell the jury about your
23 conversation with him?

24 A. He stated that the Defendant came into
25 the dealership, provided --

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 MR. MALLOY: Objection to hearsay.

2 THE COURT: Sustained; hearsay.

3 By MR. COOPER:

4 Q. As a result of speaking with Mr. Tursi,
5 what direction did your investigation lead? How
6 did you investigate the case?

7 A. I requested that he give me any
8 documentation provided in order to acquire the
9 vehicle that he was mentioning; and then I spoke to
10 a couple of witnesses, Ms. Priscilla Patterson and
11 Clarence Brown; and I examined the documentation
12 provided to acquire the vehicle; and I checked a
13 couple of residents where the Defendant was
14 supposed to have lived.

15 Q. Who was the subject of your
16 investigation?

17 A. Wayne Polite.

18 Q. Did you have the -- did you attempt to
19 locate the Defendant in that case or did you
20 attempt to locate Mr. Polite?

21 A. Yes, I did.

22 Q. By what means?

23 A. I went to the -- I had Detective Reel
24 go to the residence listed on the application
25 filled out for the vehicle. And he reported back

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 to me that it was vacant.

2 Q. That location, was that

3 ?

4 A. Yes.

5 Q. They were unable to find Mr. Polite
6 there?

7 A. No.

8 Q. No, they didn't find him?

9 A. No, he was not there and it was vacant.

10 Q. Did you check a subsequent address?

11 A. I checked the mobile home park off of
12 Oakwood.

13 Q. Were you able to locate him there?

14 A. No.

15 Q. Did you attempt to try to contact him
16 over the telephone?

17 A. I attempted to get Ms. Patterson to
18 call him on the phone.

19 Q. Did you attempt to get ahold of
20 Mr. Polite on the phone?

21 A. She gave me a number that she said he
22 gave her to call him and I tried to call that
23 number, but there was no answer.

24 Q. So you never had a chance to speak with
25 Mr. Polite about the case?

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 A. No.

2 Q. You spoke -- you said you spoke to Ms.
3 Patterson?

4 A. Yes.

5 Q. And Ms. Patterson -- why did you speak
6 to Ms. Patterson?

7 A. Because Mr. Tursi said that they called
8 her in reference to his claims to working at L&B
9 Check-Cashing.

10 Q. Was she an employee of L&B?

11 A. Yes.

12 Q. Okay. And you had the chance to speak
13 to her over the phone?

14 A. And in person, yes.

15 Q. What did she tell you over the phone?

16 MR. MALLOY: Objection.

17 THE COURT: Sustained; hearsay.

18 MR. COOPER: Judge can we -- may we
19 approach?

20 THE COURT: Yes.

21 (Bench conference)

22 THE COURT: The officer -- you have the
23 witness available to say what they said and then
24 you can cross-examine them. The objection is
25 sustained. She can say what she said as a result

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 of that conversation, and that is based on the most
2 recent case that came out.

3 MR. COOPER: Can I be heard on the
4 other case where our Supreme Court allowed for the
5 State to impeach its own witness? Ms. Patterson
6 stated that she did not -- or stated that the
7 context of the conversation she had would be
8 contrary to what the Detective said.

9 THE COURT: Stand back.

10 (End of bench conference.)

11 THE COURT: Madame Forelady, ladies and
12 gentlemen, I have a brief matter of law to take up
13 with the attorneys. During the break, please do
14 not discuss the case and please leave your notepads
15 in your seats.

16 (Jury out, 12:29 p.m.)

17 THE COURT: Please be seated.

18 You may proceed with your questions you
19 want to ask.

20 MR. COOPER: Thank you, Judge.

21 BY MR. COOPER:

22 Q. Detective MacDonald, can you tell us
23 what Ms. Patterson told you over the phone when you
24 spoke with her?

25 A. She said that Mr. Polite asked her to

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 say that he worked there so that he could acquire a
2 vehicle.

3 THE COURT: How is that inconsistent?
4 She testified to that.

5 BY MR. COOPER:

6 Q. Did she give you specifics as to what
7 she told East Coast Sports and Imports, about how
8 long he had worked there and about how much money
9 he made?

10 A. I don't remember how long, but I know
11 it was in years. I don't recall how long she said.
12 I think --

13 Q. I can give you your report if it would
14 refresh your recollection.

15 THE COURT: You're talking about a
16 phone conversation, not a report. It's two
17 separate incidents that you're asking her to
18 testify about. You're asking her to repeat what
19 Ms. Patterson said to her on the telephone. Ms.
20 Patterson testified she provided a statement, which
21 she asked the officer to write out, which she then
22 signed; two separate incidents.

23 MR. COOPER: I'm asking about the oral
24 statement she spoke on the phone about --

25 THE COURT: That's not going to help

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 refresh her memory.

2 MR. COOPER: Her incident report where
3 she would have noted what Ms. Patterson would have
4 told her.

5 THE COURT: That's her incident report
6 or the written statement from Ms. Patterson?

7 THE WITNESS: Well, I do write notes.

8 THE COURT: I asked, which are you
9 referring, to the written statement or the incident
10 report?

11 MR. COOPER: The incident report,
12 Judge.

13 THE COURT: She can use the incident
14 report to refresh her memory.

15 MR. COOPER: May I approach the
16 witness?

17 THE COURT: You may.

18 THE WITNESS: Well, right here it says,
19 I called her and I talked to her about it.

20 MR. COOPER: Your recollection is that
21 she said that --

22 THE COURT: You need to ask her what is
23 her recollection.

24 BY MR. COOPER:

25 Q. What is your recollection of that

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 conversation you had with Ms. Patterson, as far as
2 what she told East Coast Sports and Imports?

3 A. With the phone conversation it was more
4 like, you know, she would help me try to find him
5 and then she tried to call him. And she said --
6 then she called me back and said he refuses to
7 bring the vehicle back, but then she showed up at
8 the precinct.

9 Q. Did Ms. Patterson tell you what she
10 told East Coast Sports --

11 A. When she showed up at the precinct, not
12 over the phone per say, that I recall. It could
13 have been over the phone, but I know when she
14 showed up at the precinct she said that he asked
15 her to lie for him, that he worked -- worked for
16 L&B.

17 Q. Did she tell you verbally that she lied
18 for him?

19 A. Right. She said that she did it to
20 help him get the vehicle knowing that she was just
21 trying to help him with the reference.

22 MR. COOPER: Judge, what the State is
23 attempting to prove is that under direct testimony
24 Ms. Patterson testified that Mr. Polite asked her
25 to lie and say that he had been there for seven

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 years and made \$700 a week. She testified, Ms.
2 Patterson, that she told East Coast he had only
3 worked there for six months and that is
4 inconsistent with what --

5 THE COURT: She testified that he asked
6 her to help him buy a car, and that he mentioned it
7 to her. And that when they called she said that he
8 had worked for them off and on doing odd jobs for a
9 period of six months, including the computer work.
10 That is not exactly what this -- first of all, the
11 witness is testifying that she verbally came in --
12 I don't see how it's inconsistent. It's the same
13 thing.

14 MR. COOPER: The inconsistency is --
15 and maybe I should have done this a couple of
16 questions earlier, when Detective MacDonald
17 testified that what Ms. Patterson told her was in
18 terms of -- she didn't remember the number of
19 years.

20 THE COURT: She's not able to testify
21 to that. She said she has no independent
22 recollection of it.

23 MR. COOPER: She did say that it was a
24 matter of years what the --

25 THE COURT: She said she had no

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 independent recollection of that being said during
2 the oral conversation. And that's when you asked
3 her to review her report, to refresh her memory.

4 MR. COOPER: She stated it before she
5 refreshed her memory.

6 THE COURT: She said she had no
7 independent recollection of it. I can go back into
8 the transcript and look at it. She said, I have no
9 -- she said, it could be, I have no independent
10 recollection. And then you asked to let her review
11 her investigative report to refresh her memory.

12 So I need to be clear as to her
13 independent recollection of the phone conversation,
14 and then we need to be clear as to what her
15 independent recollection is of what Ms. Patterson
16 said to her when she spontaneously, my word, not
17 hers, showed up at the precinct.

18 MR. COOPER: I'll ask the other
19 questions and see if I can obtain that information.

20 By MR. COOPER:

21 Q. Do you have, Detective MacDonald, an
22 independent recollection of what Ms. Patterson told
23 you that she said to East Coast when they called to
24 verify employment, about how long he had worked
25 there and how much he made?

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 THE WITNESS: Okay. What I was saying
2 was that I didn't remember exactly how many years,
3 but she did say it was years.

4 MR. COOPER: And, Judge, that is what
5 the State would seek to introduce because Ms.
6 Patterson's testimony on direct would be that she
7 worked -- she told East Coast that Mr. Polite was
8 employed for six months and done odd jobs. That --
9 even though Detective MacDonald does not remember
10 the exact number of years, she testified that her
11 independent recollection would be at least years,
12 which would be inconsistent with Ms. Patterson's
13 testimony. That is what the State is seeking to
14 introduce under 613 --

15 THE COURT: It's not 613, it's Rule
16 609. Not 609 --

17 MR. COOPER: 613(B) I believe it is,
18 Judge.

19 THE COURT: I'm trying to figure out
20 how this establishes any element of the offense.
21 You haven't charged him with conspiracy. You
22 haven't charged her with conspiracy. You're
23 charging him with breach of trust because he
24 provided false information.

25 MR. COOPER: Yes, Judge. The State's

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 position is he provided the false pay stubs as well
2 as asking a friend who worked at that company to
3 lie for him and then procured that false
4 information from Ms. Patterson to East Coast in
5 furtherance of obtaining that vehicle.

6 And the State would have another
7 recall --

8 THE COURT: You never asked Mrs. -- I
9 will have to go back and look at the testimony, but
10 I do not recall you asking her about a phone
11 conversation that she had with the Detective. You
12 asked her about her written statement.

13 MR. COOPER: I did that, Judge, and
14 then I asked her two questions. I asked Ms.
15 Patterson if she recalled telling Detective
16 MacDonald that as well as Ms. Michelle Miller in
17 laying the foundation for the Rule.

18 I believe my question was --

19 THE COURT: I'm trying to review the
20 transcript. My notes say you asked her about the
21 statement which you have marked for 18 ID only, and
22 her testimony was that she told the detective what
23 the Defendant asked her to say, which was that he
24 was employed with this company for a period of time
25 to corroborate his employment.

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 MR. COOPER: And it is my best
2 recollection, Judge, that after that I would have
3 gone into the two oral statements she made to both
4 Detective MacDonald --

5 THE COURT: But I don't recall that. I
6 will have to go back and read the transcript at
7 lunch and determine whether, in fact, it is
8 extrinsic proof of an inconsistent statement.

9 MR. COOPER: How would you like me to
10 proceed with the witness --

11 THE COURT: We're going to break for
12 lunch until I can review it and then the witness
13 can retake the stand.

14 MR. COOPER: Thank you. I don't mean
15 to be argumentative. I just wanted to make sure --

16 THE COURT: I didn't take it that way
17 but, you know, when you're advocating, your
18 recollection is often different than what actually
19 happens.

20 MR. COOPER: Just like you tell the
21 jury about taking notes.

22 THE COURT: Yes. We tend to have
23 tunnel vision, I've been there. I practiced law
24 for a minute.

25 MR. COOPER: Thank you, Judge.

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 THE COURT: You may be seated. It's my
2 understanding that the State wishes to withdraw the
3 line of questioning regarding the -- regarding
4 offering extrinsic proof; is that correct?

5 MS. ASKINS: That's correct, Your
6 Honor.

7 THE COURT: So we can then resume
8 questioning of the witness?

9 MS. ASKINS: Yes, Your Honor.

10 THE COURT: Ma'am, if you would please
11 retake the stand. I'll remind you you're still
12 under oath.

13 All right. Defense ready to proceed?

14 MR. MALLOY: Yes, Your Honor.

15 THE COURT: Please bring in the jury.

16 And you all said you have Ms. Love
17 present and ready to testify?

18 MS. ASKINS: She is out there, Your
19 Honor.

20 THE COURT: My question becomes, how
21 are YOU going to play the tape without identifying
22 the voices on the tape? Who is going to
23 authenticate?

24 MS. ASKINS: We have Detective
25 Sherbine --

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 THE COURT: All he can prove is it's a
2 business record. He can't authenticate the voices.
3 You may want to think about that.

4 MS. ASKINS: Your Honor, we can
5 establish that the number --

6 THE COURT: Doesn't matter. Somebody
7 has to authenticate the voices. Might want to make
8 sure that your witness is here.

9 (Jury in, 2:30 p.m.)

10 THE BAILIFF: All jurors are seated,
11 Your Honor.

12 THE COURT: You may be seated.

13 Ladies and gentlemen, I hope that you
14 had a pleasant luncheon recess. We will now resume
15 with the testimony of the witness.

16 The State may proceed.

17 MR. COOPER: Thank you, Your Honor.

18 By MR. COOPER:

19 Q. Detective MacDonald, a few more
20 questions about the investigation. Through the
21 course of your initial investigation, were you ever
22 able to locate the 2004 BMW at the center of the
23 investigation?

24 A. Not until recently.

25 Q. So you have located the vehicle since

KAREN MACDONALD - DIRECT EXAM BY MR. COOPER

1 then?

2 A. Yes.

3 Q. How did you come to locate the vehicle?

4 A. It was really just a shot in the dark.

5 I took the VIN number and I Google searched it and
6 found that it was at tow lot in Georgia.

7 Q. To the best of your knowledge, is it
8 still in Georgia?

9 A. I believe it's been picked up.

10 Q. Do you know how it came to be in
11 Georgia?

12 A. It was abandoned at an apartment
13 complex in that area.

14 Q. Do you know what area that was, by any
15 chance?

16 A. I believe they were called Magnolia
17 Apartments.

18 Q. Do you know where in Georgia that
19 apartment complex is located?

20 A. I'm trying to remember.

21 Q. If I would show you correspondence from
22 you to our office, would that refresh your
23 recollection?

24 A. Yeah, that would.

25 MR. COOPER: If I could approach the

KAREN MACDONALD - CROSS EXAM BY MR. MALLOY

1 witness, Judge?

2 THE COURT: You may.

3 THE WITNESS: Yes. Yeah. It was
4 Marietta.

5 BY MR. COOPER:

6 Q. So the vehicle was located in Marietta,
7 Georgia?

8 A. Correct.

9 Q. And then at the end, as a result of
10 your investigation, you decided to issue an arret
11 warrant for Mr. Polite for obtaining goods under
12 false pretenses?

13 A. Yes.

14 MR. COOPER: No further questions for
15 the witness, Judge. Please answer any questions
16 the defense may have.

17 CROSS-EXAMINATION

18 BY MR. MALLOY:

19 Q. Detective MacDonald, you are the lead
20 detective in this case, correct?

21 A. Correct.

22 Q. And, obviously, a central issue in the
23 case is Mr. Polite's employment status at L&B
24 Snacks?

25 A. Correct.

KAREN MACDONALD - CROSS EXAM BY MR. MALLOY

1 Q. You did not attempt to obtain any
2 employment records from Mr. Clarence Brown, the
3 owner there?

4 A. I spoke with him.

5 Q. You spoke with him?

6 A. And I got a written statement.

7 Q. You spoke with him and you got a
8 written statement. In terms of physical records,
9 you did not attempt to obtain any, correct?

10 A. Correct. He said he never issued any
11 checks to any of his employees.

12 Q. And you made the decision to charge
13 Mr. Polite based on Mr. Brown's statements,
14 correct? And Ms. Patterson's statements, correct?

15 A. Not just based on those, no.

16 Q. As well as the statements that you
17 obtained from East Coast Sports?

18 A. No; there was other things.

19 Q. Regarding the check stubs that you
20 mentioned, you did not submit those to be analyzed
21 for authenticity?

22 A. No. But I've seen enough forged
23 documents, I believe I have enough experience and
24 knowledge that I can tell they're forged.

25 Q. You're not an expert on the

KAREN MACDONALD - CROSS EXAM BY MR. MALLOY

1 authentication of documents, whether they're forged
2 or authentic?

3 A. No, sir, I'm not an expert.

4 MR. MALLOY: No further questions, Your
5 Honor.

6 THE COURT: Any redirect?

7 MR. COOPER: Nothing from the State.

8 THE COURT: Ma'am, you may step down.
9 Call your next witness.

10 MS. ASKINS: May we approach, Your
11 Honor?

12 THE COURT: Yes.

13 (Bench conference.)

14 MS. ASKINS: Your Honor, we will be
15 authenticating the jail calls by Mr. Polite's pin
16 number.

17 THE COURT: That's not enough,
18 especially if you're going to be offering what she
19 said is truth. If she is here, she can
20 authenticate. I've listened to the tapes. I know
21 what they say.

22 MR. COOPER: They say his name and her
23 name and the --

24 THE COURT: That has nothing to do with
25 it. I can call and say, I'm Avril Lavigne. Who is

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 THE WITNESS: Kevin Sherbine,
2 S-H-E-R-B-I-N-E.

3 THE COURT: You may proceed.

4 MR. COOPER: Thank you, Judge.

5 DIRECT EXAMINATION

6 BY MR. COOPER:

7 Q. Afternoon, Officer Sherbine. How are
8 you?

9 A. Fine. You?

10 Q. I'm good. Thank you.

11 Would you tell the jury where you work?

12 A. I work at the Sheriff Al Cannon
13 Detention Center.

14 Q. And that's in Charleston County?

15 A. Yes, sir.

16 Q. How long have you worked there?

17 A. Four-and-a-half-years.

18 Q. What position do you currently hold?

19 A. I'm the professional visitation
20 officer.

21 Q. And could you explain to the jury what
22 that entails?

23 A. I'm the main point of contact between
24 the inmates in the jail and their attorneys, public
25 defenders, law enforcement agencies, non-law

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 enforcement agencies. I handle about 90 percent of
2 the Subpoenas that are served on the jail. I also
3 assist the regular lobby officers with their
4 day-to-day functions.

5 Q. Thank you, Officer. Can you please
6 tell the jury what you do when you receive a
7 Subpoena for jail calls in particular?

8 A. When I get a Subpoena for jail calls,
9 what I do is I look to see what information they're
10 looking for, the inmate, the date range that
11 they're looking for. Once I have that, I enter
12 that into our database and it provides me the
13 search results. I then print out a hard copy which
14 is a listing of the call, the time the call was
15 made, the length, and then I burn the audio onto a
16 disk and I label the disk in the log, and the disk
17 is placed in the folder, labeled for the agency
18 that requested it, and then it's sealed until the
19 agency picks it up.

20 Q. Can you explain how you maintain those
21 call records?

22 A. The call records are maintained on a
23 database that is tracked using the inmate's pin
24 number that they're given when they come into the
25 booking process. Once they are fingerprinted and

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 photographed, they're given a unique pin that is
2 used to track all of their phone calls that are
3 stored in that database.

4 Q. So each inmate has one pin?

5 A. Yes.

6 Q. And that pin only goes to one inmate?

7 A. That's correct.

8 Q. And you received a Subpoena from our
9 office regarding this case against Wayne Polite?

10 A. I did, yes.

11 MR. COOPER: And, Judge, if I may
12 approach the witness?

13 THE COURT: You may.

14 MR. COOPER: I'm showing the witness
15 what's been marked for ID purposes State's Exhibit
16 14.

17 (PLF. EXH. 14, CD, was marked for
18 identification.)

19 BY MR. COOPER:

20 Q. Do you recognize what I'm handing you?

21 A. Yes, I do.

22 Q. And what is that?

23 A. It is an audio disk for inmate phone
24 calls that I made.

25 Q. How do you recognize that?

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 A. That is my handwriting and my name and
2 I recognize the name of the inmate.

3 Q. That's how you typically respond to
4 Subpoenas of jail calls?

5 A. Yes.

6 Q. In the ordinary course of your
7 business?

8 A. Yes.

9 MR. COOPER: Judge, at this time the
10 State would like to move this CD in evidence as
11 State's 14 under the business records exception.

12 THE COURT: It will be admitted for ID
13 only at this time subject to connection regarding
14 authenticity and subject to the objection, which
15 has already been heard and overruled.

16 MR. MALLOY: Thank you, Your Honor.
17 Thank you.

18 THE COURT: You're welcome.

19 BY MR. COOPER:

20 Q. Officer Sherbine, did you also receive
21 a Subpoena from our office regarding jail
22 visitation logs for Mr. Polite?

23 A. I believe so.

24 Q. How do you respond to Subpoenas of that
25 nature in regards to the visitor logs?

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 A. The visitor logs are pulled -- it's a
2 separate database from the audio records. We go
3 into the inmate's -- their file, and there's a
4 separate section for their -- whoever is coming to
5 visit them. When I find that, I print that log out
6 and stick it in the folder, label it, and wait for
7 the agency to pick it up.

8 (PLF. EXH. 15, Visitation log, was
9 marked for identification.)

10 BY MR. COOPER:

11 Q. Officer, I'm showing you what was
12 marked for ID purposes only as State's Exhibit 15.
13 Do you recognize that document?

14 A. I do.

15 Q. What is that?

16 A. A visitation log for Wayne polite.

17 Q. How do you know what it is?

18 A. It says, visitor's log, at the top.

19 Q. And that's how you typically respond to
20 Subpoenas for visitors?

21 A. Yes.

22 MR. COOPER: Your Honor, at this time I
23 would like to move in as State's Exhibit Number 15
24 the visitor logs for Mr. Wayne Polite.

25 THE COURT: Any objection?

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 MR. MALLOY: I object to relevance,
2 Your Honor.

3 THE COURT: Let him see them. Have you
4 seen them already?

5 MR. COOPER: Did you want us to
6 approach?

7 THE COURT: Do you object?

8 MR. MALLOY: I object to relevance,
9 Your Honor.

10 THE COURT: Please approach.

11 (Bench conference.)

12 MR. MALLOY: We object.

13 THE COURT: I would assume that.
14 What's the objection?

15 MR. MALLOY: The same objections as the
16 ones to the calls.

17 THE COURT: These are people that come
18 to visit him in the jail, so it's relevant.

19 MR. MALLOY: Okay. Well, later, I can
20 put in --

21 THE COURT: It's relevant now. They
22 don't have to wait for you to put in the evidence.

23 (End of bench conference)

24 THE COURT: Overruled. It is relevant
25 and appropriate.

KEVIN SHERBINE - DIRECT EXAM BY MR. COOPER

1 You may proceed.

2 MR. COOPER: And just to clarify,
3 Judge, we can have that moved into evidence --

4 THE COURT: Marked and
5 admitted.

6 (PLF. EXH. 14 in evidence.)

7 (PLF. EXH. 15 in evidence.)

8 MR. COOPER: Thank you.

9 THE COURT: You're welcome.

10 BY MR. COOPER:

11 Q. Officer Sherbine, can you tell me whose
12 name appears on the visitor logs? Let me phrase
13 that question a little bit better. Who is the
14 Defendant for which this visitor log pertains to.

15 A. Wayne Polite.

16 Q. The list of names, is that the person
17 or persons who visit him?

18 A. Yes.

19 Q. And can you tell -- can you read off
20 the name of the person who has visited him eight
21 times?

22 A. Ruth Love.

23 Q. And the dates for each of those eight
24 visits, please?

25 A. July 19, 2014, August 1, 2014,

KEVIN SHERBINE - CROSS EXAM BY MR. MALLOY

1 August 18, 2014, August 28, 2014, September 25,
2 2014, February 19, 2015, April 12, 2015, and
3 June 15, 2015.

4 Q. And based on this document, would this
5 lead you to believe that this was the only person
6 that visited him during the dates listed on that
7 log?

8 A. Yes.

9 MR. COOPER: Thank you. The State has
10 no further questions. Answer any that the defense
11 may have.

12 THE COURT: You may proceed.

13 MR. MALLOY: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 CROSS-EXAMINATION

16 BY MR. MALLOY:

17 Q. Afternoon, Mr. Sherbine.

18 A. Mr. Malloy.

19 Q. You are -- regarding the calls on the
20 CD, which you just identified, you're identifying
21 Mr. Polite by using his inmate pin, correct?

22 A. That's correct.

23 Q. Which was assigned to him when he was
24 booked in at the jail?

25 A. Yes.

KEVIN SHERBINE - CROSS EXAM BY MR. MALLOY

1 Q. You're not familiar with the sound of
2 his voice on the calls, correct?

3 A. No.

4 Q. You're not familiar with him
5 personally?

6 A. No, sir.

7 MR. MALLOY: No further questions.

8 THE COURT: Any redirect?

9 MR. COOPER: Nothing from the State.

10 THE COURT: Any objection to this
11 witness being excused? From the State?

12 MR. COOPER: Not from the State.

13 THE COURT: From the defense?

14 MR. MALLOY: None.

15 THE COURT: Sir, you're excused.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Call your next witness.

18 MS. ASKINS: The State calls Ruth Love.

19 RUTH LOVE,

20 being first duly sworn, testified as follows:

21 THE CLERK: Please be seated. Please
22 state your first and last name spelling your last
23 name loudly and clearly into the microphone.

24 THE WITNESS: Ruth Love, L-O-V-E.

25 THE COURT: You may proceed.

RUTH LOVE - DIRECT EXAM BY MS. ASKINS

1 DIRECT EXAMINATION

2 BY MS. ASKINS:

3 Q. Afternoon, Ms. Love.

4 A. How are you doing?

5 Q. I'm doing well. Do you know

6 Mr. Polite?

7 A. Yes, I do.

8 Q. How do you know him?

9 A. He's my child's father.

10 Q. And do you have an ongoing relationship
11 with him?

12 A. I would think so.

13 Q. And how long have you known him?

14 A. Eight years now.

15 Q. Have you been girlfriend and boyfriend
16 for that amount of time?

17 A. Yes, ma'am.

18 Q. Are you familiar with him and his
19 voice?

20 A. Yes, ma'am.

21 Q. During the period of time when he was
22 incarcerated at the Charleston County Detention
23 Center, did you go visit him?

24 A. Yes.

25 Q. And did you speak to him over the

RUTH LOVE - DIRECT EXAM BY MS. ASKINS

1 phone?

2 A. Yes, sometimes. Whenever he would
3 call.

4 Q. Okay. And did you have conversations
5 with him concerning a BMW?

6 A. Yes, ma'am.

7 Q. Did you have several conversations with
8 him concerning a BMW?

9 A. Yes, ma'am.

10 MS. ASKINS: Beg the Court's
11 indulgence?

12 THE COURT: Yes, ma'am.

13 BY MS. ASKINS:

14 Q. I'm going to -- Ms. Love, I'm going to
15 play a phone call for you.

16 A. That's fine.

17 Q. I will let the call go through and then
18 I'll ask you a couple of questions.

19 (Audio being played.)

20 MS. ASKINS: Beg the Court's indulgence
21 while we find the right place, Your Honor.

22 (Audio being played.)

23 MR. MALLOY: We object to lack of
24 authentication.

25 THE COURT: You don't need to play it

RUTH LOVE - DIRECT EXAM BY MS. ASKINS

1 that long for authentication.

2 BY MS. ASKINS:

3 Q. Ms. Love, is that your voice?

4 A. Yes, ma'am.

5 Q. Is that Mr. Polite's voice?

6 A. Uh-huh.

7 THE COURT: Is that a yes or no?

8 THE WITNESS: Yes, ma'am.

9 MS. ASKINS: Your Honor, the phone
10 calls have been authenticated.

11 THE COURT: I didn't hear you, say it
12 again.

13 MS. ASKINS: I would submit that this
14 phone call has been authenticated.

15 THE COURT: I don't want any speaking
16 objections. Are you moving --

17 MS. ASKINS: I would move to have the
18 phone call admitted into evidence.

19 THE COURT: Admitted, subject to the
20 exception rule which the Court has already ruled
21 on.

22 You may proceed.

23 BY MS. ASKINS:

24 Q. Is that your voice, Ms. Love?

25 A. Yes.

RUTH LOVE - DIRECT EXAM BY MS. ASKINS

1 Q. Is that Mr. Polite' voice on the other
2 end?

3 A. Yes, ma'am.

4 MS. ASKINS: I'm playing a phone call,
5 September 16, 2014.

6 (Audio tape played.)

7 BY MS. ASKINS:

8 Q. Is that your voice, Ms. Love?

9 A. Yes, ma'am.

10 Q. Is that Mr. Polite's voice?

11 A. Yes, ma'am.

12 Q. Next I'll play a phone call from
13 September 23, 2014.

14 (Audio tape played.)

15 BY MS. ASKINS:

16 Q. Is that your voice, Ms. Love?

17 A. Yes, ma'am.

18 Q. Is that Mr. Polite's voice?

19 A. Yes, ma'am.

20 MS. ASKINS: Your Honor, I would move
21 that these four phone calls --

22 THE COURT: I've already admitted them
23 subject to the objection.

24 MS. ASKINS: Okay.

25 THE COURT: Which is State's Exhibit

RUTH LOVE - DIRECT EXAM BY MS. ASKINS

1 Number 15, correct?

2 State's 14.

3 BY MS. ASKINS:

4 Q. We will play a phone call -- the
5 entirety of a phone call from August 28, 2014,
6 9:03.

7 (Audio tape played.)

8 Q. And that was you having a conversation
9 with Mr. Polite?

10 A. Yes, about my vehicle.

11 Q. I'm going to play a call from
12 September 3, 2014.

13 (Audio tape played.)

14 (Bench conference.)

15 THE COURT: That is him and her having
16 a conversation. None of that is relevant to
17 anything. They're having pillow talk basically.
18 All of that is not relevant.

19 (End of bench conference.)

20 THE COURT: Proceed.

21 (Audio tape played.)

22 THE COURT: It needs to be moved to
23 2:45.

24 (Audio tape played.)

25 MS. ASKINS: I will play a phone call

RUTH LOVE - DIRECT EXAM BY MS. ASKINS

1 from September 16, 2014.

2 THE COURT: I think you should skip the
3 next one that you referenced. It's not relevant,
4 9/16/14. That would be used to establish
5 authentication and you have already done that.

6 MS. ASKINS: Thank you, Your Honor.

7 BY MS. ASKINS:

8 Q. September 23rd, 2014.

9 THE COURT: 9/16/2014 from 5:16 to 5:58
10 is what would be relevant, but not the entirety.

11 MS. ASKINS: Okay. We will go to
12 September 16, the second part of the phone call.

13 Thank you, Your Honor.

14 THE COURT: Uh-huh.

15 (Audio tape played.)

16 MS. ASKINS: Finally, September 23rd,
17 2014.

18 THE COURT: And it does not become
19 relevant until 8:30.

20 MS. ASKINS: Thank you.

21 (Audio tape played.)

22 MS. ASKINS: Nothing further from this
23 witness.

24 THE COURT: Any questions for the
25 witness?

RUTH LOVE - CROSS EXAM BY MR. MALLOY

1 MR. MALLOY: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 CROSS-EXAMINATION

4 BY MR. MALLOY:

5 Q. Afternoon, Ms. Love.

6 A. How you doing?

7 Q. Doing well. Ms. Love, we just heard
8 some telephone calls between you and Mr. Polite
9 regarding a car. Were those conversations about a
10 2004 silver BMW X3?

11 A. No; it was a green two-door BMW.

12 Q. Okay. And you referred to that as your
13 car?

14 A. He gave it to me.

15 Q. You have known Mr. Polite for eight
16 years?

17 A. Yes, sir.

18 Q. How many cars has he purchased during
19 that time?

20 A. He's had like four BMWs.

21 Q. Okay. Have you ever known Mr. Polite
22 to work for L&B Snacks?

23 A. Yes.

24 Q. And how do you know that he worked
25 there?

RUTH LOVE - CROSS EXAM BY MR. MALLOY

1 A. I dropped him off to work sometimes.
2 Well, I'm good friend with Clarence -- I was. He
3 wore their shirts, the L&B light blue shirts, did a
4 lot of paperwork, did a lot of errands for
5 Mr. Clarence. They're really good friends and
6 coworkers.

7 Q. He had L&B t-shirts?

8 A. Uh-huh. Yes.

9 Q. He would do paperwork for Clarence
10 Brown?

11 A. Yes, sir.

12 Q. And he would help him with sales and
13 things like that?

14 A. Yes, sir. He also refilled their --
15 those machines, like the soda machines and stuff
16 like that. He would do that too, because I would
17 go up there and take my daughter and get some
18 snacks.

19 Q. He worked in the vending machine
20 company?

21 A. Yeah, the vending machines for him.

22 Q. And you indicated that Mr. Brown would
23 call him to do work?

24 A. Yes, sir.

25 MR. MALLOY: Court's indulgence?

RUTH LOVE - CROSS EXAM BY MR. MALLOY

1 THE COURT: Uh-huh.

2 MR. MALLOY: No further questions.

3 THE COURT: Any redirect?

4 MS. ASKINS: Nothing further from this
5 witness.

6 THE COURT: Any objection to the
7 witness being excused? From the State?

8 MS. ASKINS: No, Your Honor.

9 THE COURT: From the defense?

10 MR. MALLOY: None, Your Honor.

11 THE COURT: Ma'am, you're excused.
12 State may proceed.

13 MS. ASKINS: The State rests, Your
14 Honor.

15 THE COURT: Madame Forelady, ladies and
16 gentlemen, the State has rested their case. There
17 is some matters of law that I need to take up with
18 the attorneys. During the break, please do not
19 discuss the case and please leave your notepads on
20 your seats. We appreciate your patience.

21 (Jury out, 3:17 p.m.)

22 THE COURT: State has rested. Any
23 motions?

24 MR. MALLOY: Yes, Your Honor. At this
25 time we would renew all previous motions and

1 objections and also move for a directed verdict,
2 Your Honor. Specifically, I would move for a
3 directed verdict based on the value of the property
4 in question being greater than \$10,000. That is
5 the code that it was indicted under, and I would
6 move for a directed verdict based on lack of proof
7 of that element of the offence.

8 THE COURT: State like to respond?

9 MS. ASKINS: Yes, Your Honor. We put
10 -- we submitted evidence to the value of the car
11 being \$10,000, or greater. This car was purchased
12 for \$10,000 by Mr. Tursi and it was resold to
13 Mr. Polite for around \$14,000, Your Honor, and I
14 believe that sets the value of the vehicle. The
15 value of the vehicle is what someone would pay for
16 an item in the open market, the fair market value.
17 And I believe there is sufficient testimony that
18 this car was \$10,000, or greater.

19 THE COURT: Anything further?

20 MR. MALLOY: Nothing further.

21 THE COURT: The statute does say
22 \$10,000, or greater; does it not? I need the
23 indictment.

24 Statute defines the -- under subsection
25 1 it says, the amount defines the penalty, and if

1 it is \$10,000 or more, it's 0 to 10; if it's 2000
2 to 10,000, it's 0 to 5. I think the State has more
3 than established that the fair market value of the
4 vehicle was at least \$10,000, but on the open
5 market was being sold for more than \$10,000.

6 Fair market value is established by
7 what a seller and a willing -- what a seller offers
8 property for and what a willing buyer will pay for
9 the property, and the bill of sale establishes that
10 Mr. Tursi paid \$10,000 for the car. So the
11 statutory elements under 16-13-240 is met;
12 therefore, the motion is denied.

13 MR. MALLOY: Thank you.

14 THE COURT: You're welcome. Anything
15 further before we proceed?

16 MS. ASKINS: Nothing from the State,
17 Your Honor.

18 THE COURT: Anything further from the
19 defense?

20 MR. MALLOY: Your Honor, may I have a
21 moment to speak with Mr. Polite regarding --

22 THE COURT: I have to question him. I
23 assumed you were going to ask me if you could have
24 time to talk to him about testifying?

25 MR. MALLOY: Yes, Your Honor.

WAYNE POLITE - EXAM BY THE COURT

1 THE COURT: I have to question him.

2 MR. MALLOY: Your Honor, I will
3 mention, now that we're talking about the statue, I
4 was going to request a lesser included.

5 THE COURT: I will take that up at
6 charge conference.

7 Sir, stand and raise your right hand to
8 be sworn.

9 WAYNE POLITE,
10 being first duly sworn, testified as follows:

11 THE DEFENDANT: Yes, ma'am.

12 EXAMINATION

13 BY THE COURT:

14 Q. You can put your hand down. State your
15 full name for the record.

16 A. Wayne Gary Polite.

17 Q. And, sir, we have now reached the stage
18 of the trial where you may present your own
19 defense, and I'm going to explain certain of your
20 rights to you. If you do not understand something
21 that I say, let me know. If you need me to explain
22 something in more detail, please let me know. Do
23 you understand?

24 A. Yes, ma'am.

25 Q. As I've already indicated, we have

WAYNE POLITE - EXAM BY THE COURT

1 reached the stage of the trial where you may
2 present your own defense. You have the right to
3 claim the protections given to you by the Fifth
4 Amendment of the Constitution of the United States,
5 and that Amendment reads in part: No person shall
6 be compelled in any criminal case to be a witness
7 against himself. This means that you cannot be
8 required to testify. Testifying is a personal
9 right and only you can make that decision. Again,
10 you cannot be required to testify.

11 If you decide to testify, however, you
12 need to be aware that the same rules that govern
13 other witnesses also apply to you, which means you
14 will be examined and subject to cross-examination
15 by the State. If you have any convictions
16 involving dishonesty or false statements, or for
17 any crimes that are punishable by imprisonment for
18 more than one year and this Court determines that
19 the probative value in admitting that evidence
20 outweighs its prejudicial effect to you, the State
21 will be allowed to introduce that record to impeach
22 your credibility. If you are -- or to attack your
23 credibility.

24 If you decide to testify, this decision
25 on your part must be made freely, voluntarily, and

WAYNE POLITE - EXAM BY THE COURT

1 intelligently with knowledge of the consequences of
2 your decision to testify, as well as your right to
3 remain silent. If you decide not to testify, I
4 will instruct the jury that they cannot consider
5 that fact whatsoever, that you have no burden of
6 proof in this case, that the burden of proof
7 remains on the State to prove each and every
8 element of the offence beyond a reasonable doubt,
9 that there is to be no prejudice to you, and the
10 fact that you did not testify could not be
11 discussed in deliberations in any manner
12 whatsoever.

13 Sir, it's left entirely up to you
14 whether or not you testify. You may speak with
15 your attorney, your family members, or anyone else,
16 but, ultimately, the decision is yours.

17 Do you understand your rights as I have
18 just explained them to you?

19 A. Yes, ma'am.

20 Q. Do you need to ask me any questions
21 about what I have just explained to you?

22 A. No, ma'am.

23 THE COURT: Is there any record the
24 State would be seeking to use to impeach the
25 Defendant's credibility?

WAYNE POLITE - EXAM BY THE COURT

1 MS. ASKINS: Yes, Your Honor.

2 THE COURT: Okay. I'm listening.

3 MS. ASKINS: 2005 bank fraud --

4 THE COURT: Bear with me one second. I
5 believe we went over this yesterday, didn't we?

6 MS. ASKINS: That's correct.

7 THE COURT: I just need to find my
8 notes. We had calculated periods of confinement I
9 believe. And what else would the State be seeking
10 to introduce?

11 MS. ASKINS: In addition to the 2005
12 bank fraud, there is a 2008 forgery, a 2009
13 financial identity fraud, a 2009 forgery, a 2009
14 manufacturing false ID --

15 THE COURT: Did you find out in Georgia
16 whether that involved a theft of some type or what
17 exactly that involved?

18 MS. ASKINS: It involved just what it
19 implies, manufacturing false documents, Your Honor.

20 There are also two counts of forgery
21 and two counts of financial identity fraud --

22 THE COURT: Does it involve theft? You
23 were supposed to figure that out and you also were
24 to determine if they were in fact substantive.

25 MS. ASKINS: Your Honor, I have -- I

WAYNE POLITE - EXAM BY THE COURT

1 did pull that information. Bear with me one
2 moment. The forgery in Georgia, Your Honor, is a
3 first degree. With intent to defraud, a person
4 knowingly makes off or possess in writing a
5 fictitious name or in such a manner that writing
6 that name would alter --

7 THE COURT: I understand the elements
8 of what it is, but you still have to prove that it
9 involved a theft; in other words, if he presents a
10 check to the bank that didn't go through, you still
11 have to prove that there was a theft involved.

12 MS. ASKINS: I believe under the
13 statute I have to prove that it involves
14 dishonesty.

15 THE COURT: Under the case law you have
16 to prove it was a theft, under the most recent line
17 of cases. You don't just get to say it's a
18 forgery. There are certain classifications of
19 crimes for you to have to prove that it involved a
20 theft as well.

21 MS. ASKINS: Under the indictment from
22 Georgia, Your Honor, the indictment said that he
23 did on May 30, 2001, with intent to defraud,
24 present a writing made by Travellers Express, and
25 it was a check for \$500. So it is presenting a

WAYNE POLITE - EXAM BY THE COURT

1 forged instrument for \$500 to obtain \$500. I do
2 believe that is a theft, Your Honor.

3 THE COURT: Not unless you get the
4 money. Not unless you actually get the money.
5 That's a theft if you actually got the money. Most
6 times the bank catches you before they cash it and
7 negotiate it.

8 What was the penalty that carried?

9 MS. ASKINS: One to 10 years, Your
10 Honor.

11 THE COURT: And he's on probation in
12 Charleston right now for financial identity fraud;
13 is that correct?

14 MS. ASKINS: He's on probation for the
15 two counts, Your Honor, 2013.

16 THE COURT: What I will do -- does the
17 defense have any exception to his record being used
18 to impeach him?

19 MR. MALLOY: Your Honor, I'll just
20 state again, the similarity to the crime charged,
21 our position is it creates undue prejudice to
22 Mr. Polite, especially since he would be testifying
23 in his own defense and that those previous
24 convictions should be kept out. Especially the
25 forgery, since they're alleging forgery in this

WAYNE POLITE - EXAM BY THE COURT

1 case.

2 THE COURT: They're not alleging
3 forgery. He's charged with providing false
4 information and he wanted them to rely on that
5 information.

6 MR. MALLOY: Also the check stubs.

7 THE COURT: They're saying the
8 information is inaccurate. They didn't say he
9 forged them, they haven't gone that far. Now, I
10 don't know whether they came from him or not, but
11 there has been no testimony as to him forging them.

12 But, in any event, the State will be
13 able to ask him if in 2005 he had a felony. They
14 will be able to ask him if in 2008 -- no, 2009, he
15 had a felony. I'm going to limit it to -- if he
16 had two -- I'm going to limit it to South Carolina
17 felonies. They will be allowed to ask him if he
18 had two felonies in 2009, and they will be allowed
19 to ask him if he had a felony in Georgia in 2009.
20 Well, actually, I will leave that out altogether.

21 They will be able to ask him if in 2005
22 he was convicted of a felony, if in 2009 he was
23 convicted of two felonies, and if in 2013 he was
24 convicted of a felony. You will not be allowed to
25 say what those felonies were, however, because I

WAYNE POLITE - EXAM BY THE COURT

1 agree with the defense that they are more
2 prejudicial than probative because of the
3 similarity of the offense.

4 MS. ASKINS: The 2013, I can say one
5 felony, not two?

6 THE COURT: Yes. It just gets to be a
7 little cumulative. Did I say one or two?

8 MS. ASKINS: You just said a felony.

9 THE COURT: A felony. I would have to
10 go back and see -- read what I said. I can't
11 remember, but I will just go back through the list
12 to be on the safe side; 2005, a felony, two
13 felonies in 2009, and even though there are two
14 felonies in 2013, I assume they arose out of the
15 same offence, so one felony in 2013.

16 Sir, have you discussed with your
17 attorneys whether you should or should not testify?
18 It's a yes or no question.

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Do you wish to discuss with
21 your attorneys whether you should or should not
22 testify?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. We'll be at ease for
25 a few moments for you to do that.

1 (A recess transpired.)

2 BY THE COURT:

3 Q. Sir, if you would stand, I will remind
4 you you are still under oath.

5 Have you discussed with your lawyers
6 whether you should or should not testify?

7 A. Yes, ma'am.

8 Q. Do you need to speak with them any
9 further at this time?

10 A. No, ma'am.

11 Q. And, sir, do you wish to testify?

12 A. No, ma'am.

13 Q. You may take your seat.

14 THE COURT: Does the defense have any
15 further witnesses they will be calling?

16 MR. MALLOY: None, Your Honor.

17 THE COURT: So will the defense be
18 resting in the presence of the jury?

19 MR. MALLOY: Yes, Your Honor.

20 THE COURT: Please get the jury.

21 (Jury in, 3:53 p.m.)

22 THE BAILIFF: All jurors present.

23 THE COURT: You may be seated.

24 Defense may proceed.

25 MR. MALLOY: Your Honor, at this time

1 your 12 in the privacy of your jury room once the
2 trial is completed.

3 Also, please do not make any comments
4 regarding your status on any social networking
5 sites as well as not doing any research on the
6 Internet.

7 When you return in the morning, you
8 will come directly to your jury room, and please do
9 not have any contact with anyone in or about the
10 courthouse that you do not recognize to be a fellow
11 juror.

12 You all have been incredibly patient
13 with us and we appreciate your time. Hope you have
14 a wonderful evening and we will see you in the
15 morning at 9:30.

16 If you will leave your notepads in your
17 seats.

18 (Jury out, 4:01 p.m.)

19 You can take your seats. I will give
20 the jury a general instruction regarding their
21 responsibility and my responsibility, how they are
22 to judge witness credibility as well as
23 believability. I will give a general instruction
24 on direct versus circumstantial evidence, as well
25 as a general instruction on the charge, the arrest,

1 and the indictment not being evidence, and on the
2 presumption of innocence.

3 I will charge Victor v. Nebraska on
4 reasonable doubt. I will also instruct regarding
5 the fact that the Defendant did not testify in this
6 case. I will instruct the elements of 16-13-240,
7 which is that the State must prove beyond a
8 reasonable doubt that the Defendant obtained a
9 signature of a person to a written instrument, or
10 obtained from another person any chattel, money,
11 valuable, security or other property, real or
12 personal, with the intent to cheat and deprive the
13 person of that property. I will instruct on the
14 form of the verdict.

15 Are there any exceptions from the
16 State?

17 MS. ASKINS: No, Your Honor.

18 THE COURT: Any exceptions from the
19 defense?

20 MR. MALLOY: Your Honor, we would ask
21 something regarding the dollar amount controversy.

22 THE COURT: And what would support
23 that? That's a penalty provision. It's not for
24 the jury to decide.

25 MR. MALLOY: It is listed in the

1 indictment, Your Honor.

2 THE COURT: And there is evidence that
3 the value is \$10,000, or more. So what instruction
4 would I give? The only instructions that are
5 regarding money in the statute deals with penalty
6 and you would never instruct penalty to the jury.
7 That's not within their province.

8 MR. MALLOY: Your Honor, we would
9 request the lesser included.

10 THE COURT: Which is what?

11 MR. MALLOY: Between --

12 THE COURT: Either the State --

13 MR. MALLOY: -- less than \$10,000 --

14 THE COURT: The only way they can find
15 him guilty is that the State establishes -- the
16 only way they will be able to meet the elements of
17 the offence, if he's found guilty by virtue of
18 that, they would have proven that it was \$10,000,
19 or more. And that's the only evidence in the
20 record as to the value of the car. There is no
21 other testimony in the record regarding the value
22 of the chattel.

23 MR. MALLOY: I think there was
24 testimony regarding the older model vehicle. He
25 bought it for \$10,000, he adjusted that threshold

1 between the 1613241 and 1613242.

2 THE COURT: There's no testimony to
3 adjust the value in the difference. I didn't hear
4 anything. You would have to tell me which witness
5 testified to that.

6 MR. MALLOY: That would have been John
7 Tursi. He testified he bought it for \$10,000.

8 THE COURT: That was the fair market
9 value of the vehicle. There's been no testimony as
10 to Blue Book value.

11 MR. MALLOY: Thank you.

12 THE COURT: The only evidence in the
13 record that's uncontroverted is that the value of
14 the car was \$10,000. Now, if the jury finds him
15 not guilty, then they may well have found that they
16 didn't establish the value of the vehicle, or that
17 he -- or one of the other elements, that he didn't
18 have the intent to defraud or he didn't -- one of
19 the other elements.

20 So the State is going to have to
21 establish that element, but the only evidence in
22 the record is that's the value of the vehicle.

23 All right. Anything else further
24 before we adjourn? From the State?

25 MS. ASKINS: No, Your Honor.

1 THE COURT: From the defense?

2 MR. MALLOY: Nothing further.

3 THE COURT: Thank you very much. See
4 you in the morning. Make sure that all the
5 evidence is accounted for.

6 Any exceptions from the State?

7 MS. ASKINS: No, Your Honor.

8 THE COURT: Any exceptions from the
9 defense?

10 MR. MALLOY: No, Your Honor.

11 THE COURT: Thank you.

12 (These proceedings were recessed at
13 4:11 p.m., to be resumed 8/14/2015 @9:30 a.m.)

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CLOSING ARGUMENT - BY MS. ASKINS

1 undivided attention.

2 The defense may proceed.

3 I'm sorry, I forgot; the State may
4 proceed.

5 MS. ASKINS: May it please the Court?

6 THE COURT: Yes, ma'am. You may
7 proceed, and I apologize for my oversight.

8 MS. ASKINS: Good morning, ladies and
9 gentlemen of the jury, Mr. Malloy, Ms. Ford,
10 Mr. Polite. We appreciate you being here and we
11 appreciate your time and patience for this trial.

12 Con artists. That's what Wayne Polite
13 is. That's why we are here today, his actions, his
14 words, his deeds. In March 2014, he went to East
15 Coast Sports and lied about his employment in order
16 to drive off the lot with a 2004 BMW. The crime is
17 called obtaining by false pretense. Sometimes it's
18 called larceny by trick; stealing something by
19 trickery, by deceit. That's why we're here.

20 The judge has instructed you and will
21 further instruct you that we have the burden of
22 proof here today. We have to prove to you beyond a
23 reasonable doubt that Mr. Polite committed this
24 crime. Now, that's not proof beyond all doubt,
25 just that we have to leave you firmly convinced of

CLOSING ARGUMENT - BY MS. ASKINS

1 his guilt, and I submit to you that we have met
2 that burden of proof. We have to prove to you that
3 Mr. Polite lied with the intent to defraud or
4 deceive, that East Coast Sports was, in fact,
5 deceived and turned over the vehicle to Mr. Polite.

6 Let's talk about Mr. Polite's lies. He
7 lied about working for Clarence Brown at L&B. He
8 lied about the income. He said he received about
9 \$3,000 a month. He lied, said he had been working
10 there for around seven years. He lied when he
11 produced fake pay stubs. He lied about where he
12 lived. He said he lived on Dixon Avenue. He lied
13 about his references, and he furthered those lies
14 by asking Priscilla Patterson to lie for him when
15 Michelle called to verify his income and his
16 employment information.

17 How do you know these were lies? You
18 heard Clarence Brown. He got on that stand and he
19 said, Wayne polite has never been employed by me
20 full-time. He wasn't employment by me for seven
21 years. I did not pay him approximately \$3,000 a
22 month and those pay stubs aren't mine; they're
23 fake. He did say he's known him about 20 years.
24 They hung out at the strip club together; they're
25 buddies. He occasionally did odd jobs. He

CLOSING ARGUMENT - BY MS. ASKINS

1 occasionally did odd jobs for him. You heard about
2 working on a computer, moving some furniture, maybe
3 running a route with him, but he was not employed
4 by Mr. Brown.

5 Now, Mr. Malloy probably is going to
6 argue today that Wayne -- that Clarence Brown lied
7 to curry favor with our office because of his
8 criminal pending charge, possession of a stolen
9 gun. That's not true. You know that's not true
10 because Clarence Brown told you that's not true.
11 He told you that he and I had met several times to
12 discuss this case, and not one single time had we
13 discussed his pending charges. He told you we had
14 not -- we offered him nothing about that charge, he
15 has received no benefit for testifying.

16 How else do you know that is true?
17 Let's look at the facts. This event -- this
18 occurrence occurred in March 2014. Mr. Brown spoke
19 to Detective MacDonald I believe it was March 21,
20 2014, and he gave the statement -- he gave a
21 written statement and he talked to Detective
22 MacDonald and he said, Wayne Polite does not work
23 for me, he has not worked for me, I have never
24 given him a paycheck.

25 He wasn't arrested until a month later,

CLOSING ARGUMENT - BY MS. ASKINS

1 April 2014, and yet his statement has remained
2 consistent from March 2014 until he got on the
3 stand yesterday. He didn't lie, he told the truth.
4 Why would he -- you know, he's here because of what
5 Mr. Polite did. The only liar is Wayne Polite.

6 How else do you know Clarence Brown
7 told the truth? Because Priscilla told you the
8 exact same thing, Wayne Polite didn't work here.
9 Never worked here in March of 2014, it was just
10 Wayne and I working here. And she also told you
11 that Wayne called me up and he said, lie for me.
12 When East Coast Sports calls, tell them I've been
13 working here, verify that I work about 40 hours a
14 week and make about \$3,000 a month. He told and
15 asked Priscilla to lie for him.

16 Look at the other lies, where he lived.
17 He said he lived on Dixon Avenue -- Dixon Drive.
18 He didn't live there. Detective MacDonald told you
19 she went looking for him, the police went looking
20 for him. He wasn't there. Michelle Miller said,
21 we went looking for him at that address, the
22 address he gave. His references, none of those
23 panned out. And he furthered those lies by asking
24 Priscilla to help him out by submitting fake pay
25 stubs.

CLOSING ARGUMENT - BY MS. ASKINS

1 Let's talk about fraudulent intent. He
2 gave these lies with an intent to deceive East
3 Coast Sports. It's not a mistake. This isn't some
4 civil action. It's criminal intent here. Let's
5 look at what he did. You can determine the
6 criminal intent by his words, actions, and deeds
7 and everything surrounding this event, why we're
8 here today. We talked about his lies. We talked
9 about the fake documents, asking Priscilla to cover
10 up his lies in furtherance of his scheme.

11 What else did he do? When he was
12 discovered -- when it was discovered by East Coast
13 Sports that he didn't work at L&B, he continued to
14 lie. He said, oh, it's an accounting mistake. The
15 accountant will get you the right information.
16 Never happened. They continued to talk -- both
17 John Tursi and Michelle Miller told you they kept
18 calling him, they kept talking to him. They
19 eventually said, pay the money -- we'll return your
20 down payment, just bring us back the car. He said
21 he would and he never did. Another lie of Wayne
22 Polite. And, eventually, he just stopped talking
23 to them, didn't take the phone calls. Basically
24 went in hiding.

25 They went looking for him. They had

CLOSING ARGUMENT - BY MS. ASKINS

1 somebody go out, a repo, to try to find the car,
2 they wanted the car back, and he evaded them. He
3 didn't want to be found. He, basically, went in
4 hiding.

5 What else shows fraudulent intent?
6 Where that car was. That car was in Atlanta,
7 Georgia. You heard Ruth Love get on the stand
8 yesterday, his girlfriend for seven or eight years,
9 the mother of his child, they have a continued
10 relationship; she talked about a car. Those
11 conversations were about a car in Atlanta.

12 Now, she tried to tell you that's about
13 another BMW that Mr. Polite had. That's a lie.
14 She lied about that. How do you know she lied
15 about that? Because she has every reason to get on
16 the stand and lie. He's her future. She doesn't
17 want him in trouble, she's in love with him. She
18 has ever reason to lie because they were talking
19 about the car, they were busted. It was on the
20 audio and she had to get up there and lie and
21 explain it away. And look at what they were
22 talking about, ladies and gentlemen, talking about
23 this car.

24 They were talking about trying to sell
25 the car for \$800, for junk, for scrap value. Now,

CLOSING ARGUMENT - BY MS. ASKINS

1 I don't know the condition of the car because no
2 one has seen the car since March of 2014, but one
3 reason that this car could -- probably is only
4 worth scrap value is because there is no title to
5 the car. There are no tags on the car. East Coast
6 never transferred the tag because it was -- they
7 allowed him to drive off on conditional approval;
8 title never transferred. They had the title.
9 Mr. Polite could not sell that car legally without
10 title so it's only worth junk value. They said a
11 value of \$800.

12 She's talking about wanting to move the
13 car back to Charleston. She's scared to do that,
14 said it's not safe to move the car. You know why?
15 Because people in Charleston are looking for the
16 car. It's safe up in Atlanta, nobody knows where
17 it is. It's at her grandparents' house.

18 What else does she do? She's
19 complaining about the situation. She says, I am so
20 sick of not having a car that I can drive. And she
21 said, it's all your fault, Wayne. All your fault.
22 I knew something like this was going to happen and
23 it happened. And how else do you know Ruth Love
24 lied on that stand? Low and behold, where was the
25 car? You heard Detective MacDonald say, we finally

CLOSING ARGUMENT - BY MS. ASKINS

1 found that car in Marietta, abandoned. Where is
2 Marietta? Right next to Atlanta.

3 Fraudulent intent, hiding the car.
4 Tells you what he was thinking. Tells you that he
5 intended to deceive East Coast. And they, in fact,
6 were deceived. They let him drive off the lot with
7 conditional approval for a loan based on his lies.
8 They trusted him, they believed him. They called
9 Priscilla and had the information verified and they
10 said it was verified. They were lied on to their
11 detriment. And to their detriment of at least
12 \$10,000, the value of the car.

13 We have to prove to you that the value
14 of the car was \$10,000, or more. And I submit we
15 have done that. There are only two pieces of
16 evidence about the value of the car. The first
17 one, I believe it's Exhibit Number 1, the purchase
18 document where John Tursi bought this car from
19 Fanelli Auto. He paid \$10,000 for that car.

20 The other piece of evidence is the
21 purchase price Mr. Polite was willing to pay for
22 the car. I think it's \$13,800, some odd dollars.
23 That's what he was willing to pay for the car.
24 Fair market value of a car, fair market value of an
25 item, what a willing buyer is willing to pay for

CLOSING ARGUMENT - BY MR. MALLOY

1 something, what the Defendant was willing to pay
2 for it. He can't argue now that it's not \$10,000
3 because that's what he was going to pay for it,
4 fair market value. We've met our burden of proof
5 to the value of the car.

6 Now, Mr. Malloy is going to be able
7 argue before you after I get through. Don't be
8 distracted by his theories of what he says other
9 people have done or should have done. We are here
10 today because of Mr. Polite's words, actions, and
11 deeds. That's what's at issue here today, what he
12 did. Liar, schemer, cheat, whatever words you want
13 to call him, they all fit. Call him something
14 else, a criminal, because he committed a crime of
15 what he did and I ask you to return a verdict of
16 guilt obtained by false pretenses over \$10,000.

17 Thank you.

18 THE COURT: Mr. Malloy, you may
19 proceed.

20 MR. MALLOY: Thank you, Your Honor, May
21 it please the Court?

22 THE COURT: Yes, sir.

23 MR. MALLOY: The critical issue in this
24 case is whether Wayne lied in order to drive that
25 BMW off the lot at East Coast Sports. This is not

CLOSING ARGUMENT - BY MR. MALLOY

1 a civil case. This is a criminal matter. Whether
2 money is owed is irrelevant in this case. Whether
3 the car was returned and whether money was owed to
4 East Coast Sports is not something that you
5 consider. The State must prove every element of
6 the offence beyond a reasonable doubt, including
7 that Wayne made a misrepresentation in order to get
8 this car. Mr. Polite is not guilty because he did
9 not lie to get this car.

10 Priscilla Patterson said what she saw,
11 and that was Wayne working at L&B with Clarence
12 Brown. She was the person who just happened to
13 pick up the phone when East Coast Sports called,
14 and she told the truth. She told the truth the
15 first time. Clarence Brown came and testified
16 today. He told part of the truth, but then Ruth
17 Love testified to the whole truth.

18 The State's case hinges on Clarence
19 Brown. Clarence is a sketchy businessman that runs
20 a sketchy business. When questioned by Detective
21 MacDonald and Michelle Miller at the very beginning
22 of the case, he denied all involvement with Wayne.
23 He didn't tell them he had known him for years and
24 he said he did not work for L&B in any capacity.

25 He said that Wayne was fraudulently

CLOSING ARGUMENT - BY MR. MALLOY

1 using the name of his business; however, he didn't
2 report that to the police, the police had to come
3 to him. But when confronted with the statements of
4 his own employee, he changes his story. And he
5 concedes, well, Wayne worked here sometimes, he did
6 some odd jobs around the business, because he knew
7 we were going to be able to find out that Wayne was
8 there all the time, that he was there a lot.

9 He said he didn't bother to go down to
10 City Hall and take a look at the check stubs that
11 are a critical issue in this case. He didn't see
12 those stubs until a month later when he comes to
13 meet with the Solicitor regarding his testimony in
14 this case. By that time he had a gun charge with
15 the same Solicitor's Office, and that charge is
16 still pending today.

17 Wayne listed him as a reference on his
18 auto application knowing very well that he may get
19 a call about that. Wayne has nothing to hide. He
20 disclosed Clarence Brown on the application.
21 Clarence Brown is the person that has something to
22 hide.

23 Priscilla Patterson, she said what she
24 saw and knew, and that is that Wayne was an
25 employee of L&B Snacks. She did not change her

CLOSING ARGUMENT - BY MR. MALLOY

1 story until she was confronted by her boss and
2 boyfriend, Clarence Brown, who she continues to
3 work for and currently lives with today.

4 The State belabored the point that
5 there is a relationship between Ruth Love and Wayne
6 polite. They neglected to acknowledge that two of
7 their witnesses are currently dating, currently
8 living together, and currently working together.
9 Ms. Patterson's story does not match up with
10 Clarence's. She says that Wayne had been working
11 with the vending services for several months. At
12 the time she was contacted about his employment
13 there, she had only been working there several
14 months. That means he had been working there the
15 entire time that she was there. She had to be the
16 person that picked up the phone on that day and she
17 told the truth the first time.

18 Now, let's talk about East Coast Sports
19 and John Tursi. His involvement in this case is a
20 civil matter. Obviously, he lost out on this deal.
21 As I said before, you're not to determine
22 Mr. Polite's guilt or innocence based on money that
23 someone might be owed. John Tursi sells used cars
24 to low income people and gets paid the full price
25 by the finance companies.

CLOSING ARGUMENT - BY MR. MALLOY

1 The State must prove beyond a
2 reasonable doubt that the BMW he sold Wayne is
3 worth \$10,000. In 2014, that vehicle was ten years
4 old. John Tursi testified he bought it for that
5 much, but it might not be worth that much.

6 Now, Michelle Miller. Michelle Miller
7 filled out all the information on the application
8 for Wayne's application to the finance company,
9 which was approved. Her goal for the finance
10 company is to accept the application so the
11 dealership will get paid. She knows the numbers
12 the finance company wants in order to approve a
13 loan for wages, monthly income. She knows the
14 documents the finance company wants to see, like
15 pay stubs from an employer, and she knows they want
16 to see a certain amount of references. For all we
17 know, she could have come up with the numbers in
18 the finance application and provided the pay stubs
19 so that Mr. Polite's loan application would be
20 approved hoping the finance company would not
21 follow up.

22 The State has not shown that Mr. Polite
23 has the ability to create the kind of documents
24 that are at issue in this case. Despite the
25 numbers she provided on the finance application

CLOSING ARGUMENT - BY MR. MALLOY

1 regarding Wayne's wages and employment, they
2 charged him 25 percent interest on this loan, and
3 they use the term, subprime lending, to describe
4 this practice. That is not subprime lending, that
5 is predatory lending.

6 And, finally, Ruth Love. She was
7 straightforward and to the point. You saw her
8 demeanor, her body language, and the way she
9 answered the questions. That's important. That's
10 the reason why accusers must confront the person
11 they are accusing in front of you, the jury. You
12 not only have to judge their testimony, you also
13 have to judge their body language and appearance on
14 the stand apart from any biases they might have or
15 reasons to lie. She knows most of the people
16 involved in this case. Obviously, she knows Wayne,
17 she knows Clarence, and she knows Priscilla too.

18 The State produced some phone calls
19 between her and Wayne that you can barely
20 understand, and wanted you to believe that they
21 showed that she and Wayne were conspiring to get
22 rid of the car at issue in this case. She cleared
23 that up; they weren't talking about the BMW from
24 East Coast Sports. They were talking about a
25 totally different vehicle.

CLOSING ARGUMENT - BY MR. MALLOY

1 She filled in the gaps that Clarence
2 Brown and Priscilla Patterson left out in their
3 story, and that is that Wayne worked at L&B
4 Services. And she knows that because she would
5 drive him home and pick him up on a regular basis.
6 She said Clarence would call Wayne into work on a
7 regular basis. In fact, Wayne even had L&B
8 Services shirts that he wore.

9 This case is as much about sketchy
10 businesses involved as much as it is about Wayne
11 getting caught in the middle of it. It is your
12 duty to judge the testimony of all witnesses in
13 light of their background and bias.

14 Mr. Polite did not testify. As the
15 Judge will instruct you, he did not need to and you
16 are not to consider that. He is not guilty because
17 he did not lie. Your decision today will have
18 great consequences for Mr. Polite. This is his
19 day. You owe it to him to give him the benefit of
20 the doubt.

21 Your decision on guilt or innocence
22 must be your own decision, not the decision of your
23 fellow jurors. You must stand by your beliefs and
24 your convictions. If there is a doubt in your
25 mind, your verdict must be one for not guilty.

JURY CHARGE

1 Thank you.

2 THE COURT: During this trial, ladies
3 and gentlemen, you and I have certain duties to
4 perform. As the trial judge, it is my
5 responsibility to preside over the trial of this
6 case. I also have the duty to rule upon or pass
7 upon the admissibility of evidence that's been
8 offered during the trial. You are to consider only
9 the competent evidence before you, and you are to
10 disregard and disabuse from your mind any testimony
11 ordered stricken from the record in this case
12 during the progress of this trial, if there has
13 been any.

14 You are to consider only the testimony
15 which has been presented from the witness stand
16 together with any exhibits which have been made a
17 part of the record of this case.

18 I have the additional duty to charge or
19 instruct you on the law applicable to this case.
20 As the presiding judge, I'm the sole judge of the
21 law of this case and it is your duty as jurors to
22 accept and apply the law as I now state it to you.
23 If you have a preconceived idea as to what the law
24 is, or what the law ought to be in a case, or in
25 this case, and it should not agree with what I now

JURY CHARGE

1 tell you the law is, you are obligated under the
2 oath which you have taken to abandon this
3 preconception on your part, because you are sworn
4 to accept the law and apply the law precisely as I
5 now state it to you.

6 In every case tried in this court
7 before a jury, the jury becomes the sole and
8 exclusive judges of the facts. You are the judges
9 of the facts in this case. This Court is the judge
10 of the law.

11 The Constitution of our state has
12 declared a trial judge shall not intimate, state,
13 comment upon or make any statement to a trial jury
14 about the facts in a case. Since you, the jury,
15 are the sole judges of the facts in this case, you
16 are not to infer anything from what I have said
17 during the progress of this trial in ruling upon
18 the admissibility of evidence, or otherwise, or
19 anything that I say now to you during the course of
20 these instructions that I have any opinion about
21 the facts. The law does not allow me to have an
22 opinion about the facts.

23 This is a matter solely for you, the
24 jury, to determine. As jurors then, it is your
25 duty as I have instructed to determine the effect,

JURY CHARGE

1 the value, the weight, and the truth of the
2 evidence presented during this trial. Necessarily,
3 you must assess the credibility of witnesses who
4 have testified in this case.

5 Credibility is simply a legalistic term
6 meaning believability. It becomes your duty as
7 jurors to analyze and to evaluate the evidence and
8 determine that evidence which convinces you of its
9 truth.

10 Some of the things you may consider as
11 you decide whether or not to believe a witness's
12 testimony about a particular matter include what
13 was the manner and appearance of the witness who
14 testified? Was he or she straightforward or
15 hesitant in answering? Was the testimony of the
16 witness consistent or inconsistent? How did the
17 witness come to know the facts that he or she
18 testified to, or what was his or her ability to
19 know the facts? Is there some reason a witness
20 would want to give testimony that would help or
21 hurt one side or the other; in other words, was the
22 witness biased or prejudiced, and was the testimony
23 of a witness strengthened or weakened by other
24 testimony or evidence.

25 I instruct you that in determining the

JURY CHARGE

1 question of the credibility or believability of
2 witnesses who have testified, you may believe one
3 witness as against several witnesses or several
4 witnesses as against one witness. You may believe
5 a part of the testimony of a witness and reject the
6 remaining part of the testimony of that same
7 witness. If you have a good and sound reason, you
8 may believe the testimony of a witness -- of a
9 witness in its entirety or reject the testimony of
10 a witness in its entirety. You may consider the
11 demeanor of a witness, that is the manner and
12 appearance of the witness from the witness stand.

13 Ladies and gentlemen, you can believe
14 as much or as little of each witness's testimony as
15 you think proper. Throughout this process you have
16 but one objective, to seek the truth regardless of
17 its source.

18 There are two types of evidence which
19 are generally presented during a trial, direct
20 evidence and circumstantial evidence. Direct
21 evidence is the testimony of a person who asserts
22 or claims to have actual knowledge of a fact, such
23 as an eyewitness. Circumstantial evidence is proof
24 of a chain of facts and circumstances indicating
25 the existence of a fact.

JURY CHARGE

1 The law makes absolutely no distinction
2 between the weight or value to be given to either
3 direct or circumstantial evidence, nor is a greater
4 degree of certainty required of circumstantial
5 evidence than of the direct evidence. You should
6 weigh all of the evidence in this case.

7 And as I've indicated, crimes may be
8 proven by circumstantial evidence. And, again, the
9 law makes no distinction between the weight or
10 value to be given to either direct or
11 circumstantial evidence; however, to the extent the
12 State relies on circumstantial evidence, all of the
13 circumstances must be consistent with each other,
14 and when taken care together, point conclusively to
15 the guilt of the accused beyond a reasonable doubt.
16 If these circumstances merely portray the
17 Defendant's behavior as suspicious, the proof has
18 failed.

19 The State has the burden of proving the
20 Defendant's guilt beyond a reasonable doubt. This
21 burden rests with the State, regardless of whether
22 the State relies on direct evidence, circumstantial
23 evidence, or some combination of the two.

24 Again, ladies and gentlemen, you should
25 weigh all of the evidence in this case. After

JURY CHARGE

1 weighing all of the evidence if you are not
2 convinced of the guilt of the defendant beyond a
3 reasonable doubt, you must find the Defendant not
4 guilty. Conversely, if you're convinced of the
5 guilt of the Defendant beyond a reasonable doubt,
6 then you must find him guilty.

7 I instruct you the fact that the
8 Defendant was arrested, charged, and indicted is
9 not evidence in this case, nor can it be considered
10 by you as evidence of guilt in this case, nor does
11 it create any presumption or inference of guilt.
12 This documentation is simply the formal written
13 instrument which may contain the charge or charges
14 made against a Defendant. It simply serves as the
15 formal documentation by which this case is
16 processed or brought into court.

17 The Defendant pled not guilty to the
18 indictment and that plea casts the burden on the
19 State to prove the Defendant guilty, because a
20 person charged with committing a criminal offense
21 in South Carolina is never required to prove
22 himself innocence.

23 I instruct you Madame Forelady, ladies
24 and gentlemen of the jury, that it is a cardinal
25 and important rule, of evidence that the Defendant

JURY CHARGE

1 in a criminal trial, no matter what the seriousness
2 of the charge made against him may be, will always
3 be presumed to be innocent of the crime for which
4 he is indicted unless his guilt has been proven by
5 evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 This presumption of innocence does not
8 cease when you retire to deliberate, but it
9 accompanies the Defendant from the time of his
10 appearance throughout the trial until you reach a
11 verdict in this case. Our supreme court has said
12 that the presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 Defendant and it remains with him and assigns him
15 to that class, the innocent, until that presumptive
16 robe of righteousness has been stripped from his
17 person by evidence satisfying you of that guilt
18 beyond a reasonable doubt.

19 Madame Forelady, ladies and gentlemen,
20 the presumption of innocence is not mere legal
21 theory. It is not just a legal phrase. It is a
22 substantial right to which every Defendant is
23 entitled unless you, the jury, are satisfied from
24 the evidence of his guilt beyond a reasonable
25 doubt.

JURY CHARGE

1 The State has the burden of proving the
2 Defendant guilty beyond a reasonable doubt. Some
3 of you may have served as jurors in civil cases
4 where you were told that it is only necessary to
5 prove that a fact is more likely true than not
6 true, such as by the greater weight, or the
7 preponderance, of the evidence.

8 In criminal cases, the State's proof
9 must be more powerful than that; it must be beyond
10 a reasonable doubt. Proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced of
12 the Defendant's guilt. There are very few things
13 in this world that we know with absolute certainty,
14 and in criminal cases, the law does not require
15 proof that overcomes every possible doubt.

16 If, based on your consideration of the
17 evidence, you are firmly convinced that the
18 Defendant is guilty of the crime charged, you must
19 find the Defendant guilty. If, on the other hand,
20 you think there is a real possibility that the
21 Defendant is not guilty, you must give the
22 Defendant the benefit of that doubt and find him
23 not guilty.

24 I instruct you and emphasize that the
25 fact that the Defendant did not testify is not a

JURY CHARGE

1 factor to be considered by you in any way in your
2 deliberation and in your consideration on the
3 question of the guilt or innocence of the
4 Defendant. It must not be considered by you in any
5 manner whatsoever. A Defendant has the
6 constitutional right to remain silent, and the
7 assertion of this right must not be considered by
8 you in your deliberations. I repeat, ladies and
9 gentlemen, under your oath you are to draw no
10 conclusion whatsoever from the fact that the
11 Defendant in this case did not testify. The fact
12 that this Defendant did not testify should not be
13 discussed in any manner whatsoever in the jury
14 room.

15 The burden of proof is, as I have
16 stated to you, on the State. The Defendant is not
17 required to prove his innocence. The burden of
18 proof remains on the State to prove guilt beyond a
19 reasonable doubt.

20 The Defendant is charged with obtaining
21 goods by false pretenses. The State must first
22 prove beyond a reasonable doubt that the Defendant
23 used false pretense or representation. A false
24 pretense is a false representation of an existing
25 or past fact which is known by the Defendant to be

JURY CHARGE

1 false and is made to induce another person to give
2 up something of value.

3 Next the State must prove beyond a
4 reasonable doubt that the Defendant used the false
5 pretense to obtain the signature of a person on a
6 written instrument, or to obtain from another
7 person any money, valuable security, or other real
8 or personal property with the intent to cheat and
9 defraud the person of that property.

10 Intent means willful, intending the
11 result which actually occurs, not accidentally or
12 involuntarily. Intent may be shown by acts and
13 conduct of the Defendant and other circumstances
14 from which you may naturally and reasonably infer
15 intent.

16 The State must finally prove, beyond a
17 reasonable doubt that the value of the property was
18 \$10,000, or more.

19 Ladies and gentlemen, there are two
20 possible verdicts in this case. There is no
21 significance whatsoever to the order in which I
22 state these potential verdicts. It is simply that
23 one must be stated first -- and you don't need to
24 try to write this down because the verdict form
25 will go into the jury form with you.

JURY CHARGE

1 And it reads as follows: As to
2 Indictment Number 2014-GS-10-7246, we, the jury, by
3 unanimous consent, find the Defendant guilty of
4 obtaining property by false pretenses, or not
5 guilty. Again, there is no significance whatsoever
6 to the order in which I've stated the potential
7 verdicts.

8 Ladies and gentlemen, your verdict must
9 be a unanimous one, which means all 12 of you must
10 agree in order to reach a verdict in this case.
11 Madame Forelady, once the jury has reached a
12 verdict, it is your responsibility to fill out the
13 verdict form, to sign and date the form, knock on
14 the door and advise the bailiffs that the jury has
15 reached a unanimous verdict.

16 Also, if the jury has any questions
17 during deliberations, it is your responsibility to
18 write those question out, to sign and date the
19 note, and likewise knock on the door and advise the
20 bailiffs that the jury has a question.

21 Ladies and gentlemen, if you have any
22 questions during deliberations, please know that
23 there will be a delay in us responding to you.
24 Please don't think we're ignoring you. There's a
25 process that we must adhere to in answering your

JURY CHARGE

1 questions. If you have a question, we have to
2 follow that process before we answer you, so there
3 will be a delay. So please don't think we're
4 ignoring any inquiry you may have made of the
5 Court.

6 Also, Madame Forelady, in any notes
7 that are sent, please doesn't provide any numerical
8 breakdown of the jury as jury deliberations are
9 secret and they should not be divulged to anyone.

10 Ladies and gentlemen, I'm going to ask
11 that you return to your jury room, but do not yet
12 begin your deliberations. I have some matters of
13 law that I need to take up with the attorneys that
14 may require an additional instruction or may
15 require clarification of an instruction; however,
16 if there is no further instruction, we will send in
17 the evidence, your notebooks, and the verdict form
18 and excuse the alternate. At that time, you will
19 be allowed to begin your deliberation. If you
20 would, leave your notepads in your seats and go
21 with the bailiff.

22 Also, we have ordered your lunch and it
23 is scheduled to arrive at 11:30. I tell you that
24 for planning purposes.

25 (Jury out, 10:27 a.m.)

1 THE COURT: You may be seated.

2 MS. ASKINS: Thank you.

3 THE COURT: Any exceptions from the
4 State?

5 MS. ASKINS: None, Your Honor.

6 THE COURT: From the defense?

7 MR. MALLOY: Not from the defense.

8 THE COURT: Okay. You all didn't
9 remove any of the evidence during argument,
10 correct?

11 MS. ASKINS: We did not.

12 THE COURT: So everything is accounted
13 for, Madame Court Reporter?

14 THE COURT REPORTER: Yes, ma'am.

15 THE COURT: If you could get their
16 notepads, except the alternate's, as well as the
17 evidence and the verdict form.

18 MS. ASKINS: I have this redacted
19 version.

20 THE COURT: And you all have listened
21 to it?

22 MS. ASKINS: I have not had a chance to
23 listen to it.

24 THE COURT: Do you want to listen to it
25 just to be on the safe side?

VERDICT

1 publication of the verdict.

2 THE CLERK: Case Number
3 2014-GS-10-7246, the State of South Carolina V
4 Wayne Gary Polite, indictment for obtaining
5 property by false pretenses. We, the jury, by
6 unanimous consent, find the Defendant guilty of
7 obtaining property by false pretenses.

8 Signed, Foreperson of the jury, dated
9 August 14, 2015.

10 THE COURT: Madame Forelady, ladies and
11 gentlemen, if this is your verdict please raise
12 your right hand.

13 THE JURY: (Raised)

14 THE COURT: You may be seated.

15 Is there any request to poll the jury?

16 MS. ASKINS: None from the state, Your
17 Honor.

18 THE COURT: From the defense?

19 MR. MALLOY: We do request to poll the

20 jury THE COURT: Ladies and gentlemen, if
21 you would give the clerk your attention as she asks
22 you two questions; one, is this your verdict and,
23 two, is this still your verdict? Madame Clerk, you
24 may proceed.

25 THE CLERK: When I call your number

1 MS. ASKINS: Yes, Your Honor.

2 THE COURT: The maximum penalty on
3 those offenses is ten years, correct?

4 MS. ASKINS: That's correct, Your
5 Honor.

6 THE COURT: Anything further from the
7 defense?

8 MR. MALLOY: Nothing further, Your
9 Honor.

10 THE BAILIFF: Probation is on the way.

11 THE COURT: Okay. Are you all okay
12 with waiving probation's presence and me going
13 forward with the probation revocation since the
14 revocable offence would be the conviction on this
15 offence, or do you want to wait to see if there's
16 something else probation has for which they would
17 have been trying to violate him?

18 MS. ASKINS: The State would request
19 that probation be here.

20 THE COURT: I mean, his probation is
21 going to get revoked.

22 MR. MALLOY: Your Honor, we want to go
23 forward on the probation today and we would waive
24 on the other.

25 THE COURT: I don't know where they are

1 and I don't know how long it's going to take them
2 to do a report, and I would assume -- I don't know
3 if they are in the building. Are they in the
4 building?

5 MS. ASKINS: I know they have pleas
6 going on.

7 THE COURT: They're having pleas today?

8 MS. ASKINS: Judge Dennis is.

9 (Probation in, 11:46 a.m.)

10 THE COURT: Okay. Hello. How are you?

11 PROBATION: Good.

12 THE COURT: This is Wayne Gary Polite.
13 He's on -- did you have enough time to get any
14 information on him?

15 PROBATION: I've got his paperwork.

16 THE COURT: I apologize for giving you
17 last minute notice.

18 PROBATION: No problem.

19 THE COURT: Would this offence be the
20 basis of the revocation or is there some other
21 basis for the revocation?

22 PROBATION: There was a warrant issued
23 on April 10, 2014.

24 THE COURT: Okay. You can go ahead and
25 give the paperwork to -- you only have one copy

1 here? That's okay. You can give me the one copy
2 and I will have a copy made for him.

3 MR. MALLOY: I've reviewed it before.
4 I don't have my copy with me.

5 THE COURT: So you have reviewed it
6 beforehand. Have you had an opportunity to go over
7 it with Mr. Polite?

8 MR. MALLOY: We have talked about it
9 before.

10 THE COURT: Okay. That would be
11 Indictments 2011-GS-10-3886 and 3884, which are
12 financial identity fraud or identity fraud. He was
13 sentenced by Judge Hughston on 1/31/13 to
14 five years, suspended to 27 months satisfied by
15 time served and five years probation.

16 He had a Form Nine with Judge McDonald
17 on 12/20/13. He had another Form and intervention
18 on 3/16/13, and 12/20/13 a Form Nine, all of which
19 dealt with restructuring his Court-ordered
20 restitution.

21 It appears that he is behind \$200 in
22 his supervision. He's up to date on payment of his
23 fines, but still has a balance of 648.90 and a
24 surcharge of 133.90. He is behind 195 in his
25 restitution and the remaining restitution balance

1 is \$3,109.20.

2 The basis of the revocation is failing
3 to report, basically having absconded from
4 supervision, not giving them a valid residential
5 address. After checking that address, the notice
6 was -- the agency was notified THAT he did not live
7 at that address. After leaving several notices for
8 him to contact them, he failed to do that as well,
9 failing to notify the agent of the change in
10 address and failing to pay his financial
11 obligations, Probation is seeking a full
12 revocation.

13 Does Probation need to add anything to
14 -- the report will be made a part of the record.

15 PROBATION: Not at this time.

16 MS. ASKINS: Your Honor, one more thing
17 I forgot to mention. We also have three other
18 pending charges on Mr. Polite. We have a failure
19 to return rental object, which was over \$10,000,
20 that is a 0 to 10-year offence; we also have a
21 receiving stolen goods, which is an enhanced
22 offence, that is a 0 to 10-year fence; and then we
23 also have a forgery, which is 0 to 5, Your Honor.

24 THE COURT: Do you represent him on
25 those charges, Mr. Malloy?

1 MR. MALLOY: I do, Your Honor.

2 THE COURT: What do you plan to do with
3 them?

4 MR. MALLOY: Your Honor, I haven't
5 spoken to Mr. Polite since the beginning of this
6 trial about those.

7 THE COURT: Has the State extended any
8 offers on them?

9 MS. ASKINS: Your Honor, initially
10 there was no offer in this case.

11 THE COURT: Well, I would imagine
12 because this trial was pending, but I would imagine
13 your posture may have changed since then.

14 MS. ASKINS: Your Honor, when we were
15 on the courthouse steps last time, we were getting
16 ready to go to trial and we did extend an offer of
17 ten years, suspended on five to resolve it all, but
18 then that offer was rejected. That offer is no
19 longer on the table, and we -- depending on the
20 sentence here, we would plan on proceeding against
21 Mr. Polite on all charges.

22 THE COURT: Anything further,
23 Mr. Malloy?

24 MR. MALLOY: Your Honor, regarding the
25 probation, I will point out he's been incarcerated

1 in Charleston for over a year. Before that, I
2 believe he's been incarcerated continuously since
3 May 2014. He was arrested in North Carolina and
4 extradited back here. And so during that time he
5 couldn't make -- pay anything on the restitution.

6 THE COURT: Sir, have you had an
7 opportunity to go over the violation report with
8 your attorney?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: You don't know why
11 probation is seeking to revoke your probation.

12 THE DEFENDANT: I received the
13 warrant --

14 THE COURT: Okay. So you understand
15 why probation wants to revoke you.

16 THE DEFENDANT: Oh, yes, ma'am.

17 THE COURT: And, sir, do you agree or
18 disagree that you willfully violated the terms and
19 conditions having been found guilty of obtaining
20 goods under false pretenses on today's date?

21 THE DEFENDANT: Say that again.

22 THE COURT: In other words, when you're
23 on probation, you're not supposed to plead guilty
24 or be found guilty of any additional criminal
25 offences. You were found guilty of this crime

SENTENCING

1 today which would be a violation of your probation.
2 And I need to know if you agree or disagree that
3 that's a willful violation?

4 THE DEFENDANT: Me being found guilty
5 today, does that violate? Yeah, I would agree.

6 THE COURT: Okay. I find that you
7 willfully violated the following terms and
8 conditions of your probation: By failing to
9 report, having absconded from supervision, and
10 having been found guilty today of obtaining goods
11 under false pretenses having thereby failed to
12 refrain from violating any state or federal law.

13 I'm revoking each in full, giving you
14 credit for any time that you have served, reducing
15 all financial obligations to civil judgments, and
16 running it concurrent to 2014-GS-10-7246.

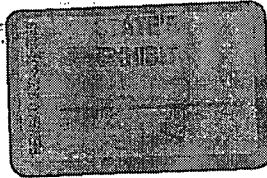
17 Sir, if you would stand please.

18 Having been found guilty of obtaining
19 goods under false pretences, you are sentenced to
20 the State Department of Corrections for a period of
21 seven years. You will get credit for any time that
22 you've served pursuant to 24-13-40. That time will
23 calculated and applied by the Department of
24 Corrections, and it is concurrent.

25 Do you need any drug treatment? And I

258

FANELLI'S AUTO
2008 N MAIN ST
SUMMERVILLE, SC 29483
843-452-1609



INVOICE NO. _____
DATE 3/11/14
STOCK NO. A62300

PURCHASER EAST COAST SPORTS & IMPORTS DRIVER'S LIC. # _____

STREET 5871 RIVERS AVE. HOME _____
BUS. _____

CITY CHARLESTON COUNTY CHARLESTON STATE SC ZIP CODE 29401

PLEASE ENTER MY ORDER FOR THE FOLLOWING

YR. 2004 MAKE BMW MODEL X3 BODY 4DR SALESMAN _____

USED	CAR	TRUCK	SERIAL NO.	W	B	X	P	A	9	3	4	2	4	W	A	6	2	3	0	0	COLOR	MILEAGE	<u>EXEMPT</u>
CASH PRICE OF VEHICLE										\$ 10,000.00		USED VEHICLE TRADE-IN AND/OR OTHER CREDITS											
ACCESSORIES										0.00		YEAR					MAKE						
										N/A		MODEL					BODY						
										N/A		COLOR					MILEAGE						
										N/A		VEHICLE IDENT. NO.											
										N/A		PAYOFF DUE											
TOTAL										\$ 10,000.00													
LOCAL TAXES (IF ANY)										N/A		P/O ACCT. #											
(License, License Transfer, Title, Registration Fee)										N/A		QUOTED BY											
PROTECTION PLAN										N/A		USED VEHICLE ALLOWANCE					\$ N/A						
DOCUMENTARY FEE										N/A		LESS BALANCE OWED					N/A						
TOTAL CASH DELIVERED PRICE										\$ 10,000.00		NET ALLOWANCE ON USED VEHICLE					\$ 0.00						
TOTAL DOWN PAYMENT										(Transfer from Right Column) 10,000.00		CASH WITH ORDER					10,000.00						
UNPAID CASH BALANCE DUE ON DELIVERY										\$ 0.00		TOTAL DOWN PAYMENT					(Transfer to Left Column) \$ 10,000.00						

LIEN INFO:

INS. PHONE: _____ VERIFIED BY _____

AGENT: _____

AGENCY NAME: _____

ADDRESS: _____

LIAB CO: _____

POL #: _____

COL. CO.: _____

POL #: _____

TAG TRANSF. INFO: EXP. DT. _____

TAG # _____ STICKER # _____

Purchaser agrees that this Order includes all of the terms and conditions on both the face and reverse side hereof, that this Order cancels and supersedes any prior agreement and as of the date hereof comprises the complete and exclusive statement of the terms of the agreement relating to the subject matters covered hereby, and that THIS ORDER SHALL NOT BECOME BINDING UNTIL ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE AND IN THE EVENT OF A TIME SALE, DEALER SHALL NOT BE OBLIGATED TO SELL UNTIL APPROVAL OF THE TERMS HEREOF IS GIVEN BY A BANK OR FINANCE COMPANY WILLING TO PURCHASE A RETAIL INSTALLMENT CONTRACT BETWEEN THE PARTIES HERETO BASED ON SUCH TERMS. Purchaser by his execution of this Order certifies that he is 18 years of age or older and acknowledges that he has read its terms and conditions and has received a true copy of this order.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISION IN THE CONTRACT OF SALE.

The Seller, FANELLI'S AUTO, hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the Seller, FANELLI'S AUTO, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the vehicle, and the purchaser acknowledges this disclaimer.

Upon acceptance, any deposit becomes non-refundable.

ACCEPTED: _____ BUYER HEREBY ACKNOWLEDGES THE RECEIPT OF A COPY OF THIS BUYER'S ORDER AND INVOICES.

BY: Michelle Hodson BUYER'S SIGNATURE _____ DATE 3/11/14

MANAGER _____



2014008897

Customer Contact Form

Buyer Name: Wayne Polite

Home phone # _____

Work phone # 843-554-6959

Cell Phone # 404-671-0737

Employer Name: LNB Snacks

Employer Address: 4381 Spruill Ave
N Charleston SC 29405

Supervisor: Clarence Brown

Supervisor Phone #: _____

Best time to contact you: Morning Lunchtime Afternoon Evening Saturday

Co-Buyer Name _____

Home phone # _____

Work phone # _____

Cell Phone # _____

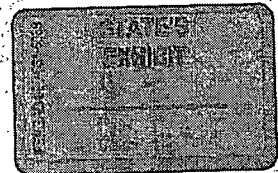
Employer Name: _____

Employer Address: _____

Supervisor: _____

Supervisor Phone #: _____

Best time to contact you: Morning Lunchtime Afternoon Evening Saturday



East Coast Sports and Imports
 2404 W. Aviation Ave., N. Charleston, SC 29406
 Phone: 843/554-0500 Fax: 843/266-9940

Applicant
 Name: Wayne Polite Date Birth: _____ SSN: _____
 Current Address: _____
 City: Hammer State: SC Phone: 404-621-0737
 ZIP: 29410
 Own Rent Family (Please circle) Monthly payment or rent: 0 How long? 19 yrs.
 Landlord Name: _____ Landlord Number: _____

Previous Address: _____
 City: _____ State: _____ ZIP: _____
 Owned Rented Family (Please circle) Monthly payment or rent: _____ How long? _____

Employment Information
 Current Employer: L And B Snarks How long? 9 yrs.
 Employer Address: 4337 Spruill Ave Phone: 843-554-6959
 Position: Sales + Vendor N. Charleston SC Monthly Income: 3000.-
 Previous Employer: _____ Hourly Rate: _____

Address: _____
 Phone: _____ How long? _____
 Position: _____ Monthly Income: _____
 Hourly Rate: _____
 Additional Income: _____ Monthly Amount: _____

Co-Applicant Information, if for a joint account

Name: _____ Date Birth: _____ SSN: _____
 Current Address: _____
 City: _____ State: _____ Phone: _____
 ZIP: _____
 Own Rent Family (Please circle) Monthly payment or rent: _____ How long? _____
 Landlord Name: _____ Landlord Number: _____

Previous Address: _____
 City: _____ State: _____ ZIP: _____
 Owned Rented Family (Please circle) Monthly payment or rent: _____ How long? _____

Employment Information
 Current Employer: _____ How long? _____
 Employer Address: _____ Phone: _____
 Position: _____ Monthly Income: _____
 Hourly Rate: _____

Previous Employer: _____
 Address: _____
 Phone: _____

Position: _____ Monthly Income: _____
 Hourly Rate: _____
 Additional Income: _____ Monthly Amount: _____

I/We authorize East Coast Sports and Imports and any Affiliate to verify information provided on this form regarding credit and employment history.

Signature of Applicant _____ Date _____
 Signature of Co-Applicant, if for joint account _____ Date _____



2014008897



Page 11

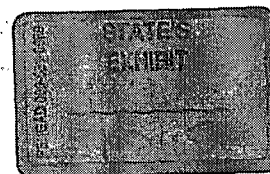
Customer Delivery Notice

Our goal is to provide the finest possible customer service in assisting with the financing of their vehicles. In an effort to help us meet this goal and complete the financing, please review the following items below:

1. I have signed a copy of the Retail Installment Contract ("RIC") when it was completely filled out in its entirety.
2. I have personally inspected the vehicle, had an opportunity to test drive it, and found it free from any reasonable discoverable damage/and or defects.
3. Everything that has been promised to me has been put in writing. If the dealer has agreed to fix items on the vehicle, I understand that the repair matter(s) are between myself and the dealership and I am responsible for scheduling the necessary repairs with the dealer.
4. I understand that I am purchasing the vehicle from dealership and repair problems are not the responsibility of Pelican Auto Finance, LLC ("PAF"). PAF is providing the financing for the customer to purchase the vehicle from the dealer.
5. This is to certify that I have made the down payment to the dealer in the amount of \$ 1500.- as reflected on the RIC dated: 3/11/14.
6. I have paid the down payment in full and there are no promissory notes, future, or "pick-up" payments due to the dealer.
7. Any questions that I may have about this transaction have been answered to my satisfaction, enabling me to completely understand the dealer is selling me a vehicle, in which I have agreed to purchase, and PAF is the financing source potentially enabling the customer to purchase such vehicle.

[Signature]
Buyer Signature

Co Buyer Signature



EAST COAST SPORTS AND IMPORTS

SUPPLEMENTAL DOWN PAYMENT STATEMENT

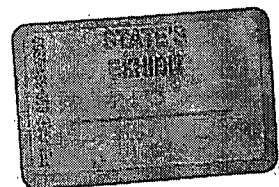
DOWN PAYMENTS BECOME NONREFUNDABLE UPON SIGNING OF CLOSING DOCUMENTS.

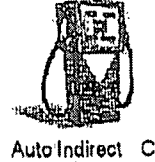
Blayne Rubin

Date March 11, 2014

[Signature]
EAST COAST SPORTS AND IMPORTS

Date March 11, 2014





CONDITIONAL APPROVAL

Date: 03/10/2014
 Dealer: East Coast Sports & Imports LI
 Loan Number: 021717
 Customer: POLITE, WAYNE
 Monthly Income: 3,000.00

Terms
 Sales Price: 13,862.00
 Trade In Allowance: 0.00
 Trade In Payoff:
 Net Trade in: 0.00
 Sales Tax: 300.00
 Registration: 39.00
 Warranty/Gap: 0.00
 Sub Total: 11,400.00
 Cash Down Payment: 1,500.00
 Amount Financed: 12,900.00
 Advance To Dealer: 10,200.00
 Assignment Fee: 99.00
 Rate: 25.00
 Term: 45.00
 Payment: 444.51

Collateral:
 Year: 2004
 Make: BMW
 Model: X3 Series
 Miles: 111978
 Clean Trade-In: 8,875.00
 LTV: 145.35%

339. -

STANDARD DEAL REQUIREMENTS:

- **W2 Employees need recent paystub (30 Days)
- **1099 employees need 3 months bank statements
- **Items in standard deal pack & at least 1 Drivers license required
- **Not in open BK/Not in Open Foreclosure/No Delinquent Mortgages
- **Comp and Collision Insurance with \$500 maximum deductibles
- **Please contract 30 days until first payment
- **Contract amount must be within \$50 of stated approval
- **FUNDING TURBO FAX #866-288-1207

STIPULATIONS:

- **All dealer inputted info must verify as stated.
- ***FAST TURBO FUNDING = \$50, FAX DOCS TO 866.288.1207***
- ***Customer ACH signup additional \$50***
- ***Added add'l amt financed for optional back-end products (please call Credit)

**COMMENTS
 THANK-YOU!! PHIL**



- No cost for Ensure Pay unit and installation
- PAF Hard Add Include: Sunroof, Leather, DVD Entertainment, In-Navigation, Tow Hitch/Trailer.

Lienholders/ Send funding packages to:

Pelican Auto Finance, LLC
 5 Christy Drive
 Suite 204
 Chadds Ford, PA 19317

PA ELT# 80085566301 • TX ELT# 80085588300 • NJ Corp Code# 64706534 7080 030 • VA Lienholder Code: 4DELT •
 GA ELT# 001106393652 • MD Corp Code: 1522 • SC ELT# 33121848 • OH ELT# E033698

Turbo Funding Fax #866-288-1207

Dealer hotline 866.989.9688 x 4 (open until 8pm EST)

*All approvals are good for 30 days from date of issue. Must be on deal & structure above.
 Pelican Auto Finance, LLC reserves the right to fully underwrite and reject any loan that does not meet guidelines.
 www.pelicanaf.com

MLA20140706906

DOCKET NO. 2014GS1007246

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2014008897

COURT OF GENERAL SESSIONS

December Term 2014

ARREST WARRANT NUMBER

2014A1021000285

DATE OF ARREST

July 7, 2014

ACTION OF GRAND JURY

THE STATE

vs.

WAYNE GARY POLITE

DOB:

B/M

TRUE BILL

Foreperson of Grand Jury

Date:

W. B. B.

DEC 2 - 2014

Indictment for

Obtaining Property by False Pretenses

VERDICT

Foreperson of Petit Jury

Date:

INDICT

FILED

12/11/2014 8:49:08 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON
STATE VS.

WAYNE GARY POLITE

AKA: Wayne Polite
Race: Black Sex: M Age: 43
DOB: _____ SS#: _____
Address: _____
City, State, Zip: North Charleston, SC 29405
DL# _____ SID#: SC00817106

INDICTMENT/CASE#: 2014GS1007246
A/W: 2014A1021000285
Date of Offense: 03/11/2014
S.C. Code §: 16-13-0240
CDR Code #: 3471

RECEIVED
SENTENCE SHEET
AUG 26 2015
SC Court of Appeals

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Obtaining Goods Under False Pretenses
In violation of § 16-13-0240 of the S.C. Code of Laws, beating CDR Code # 3471

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST

Marian L. Askins 63993 SC Bar # _____ Defendant 100169 SC Bar #
Marian L. Askins, Assistant Solicitor

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 7 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and or payment of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on probation revoked 2011-GS-10-3886 2011-GS-10-3884
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Del. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED

Payment Terms: _____
 Set by SCDPPPS _____
Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____

Recipient: _____
Substance Abuse Counseling

*Fine: _____ \$ _____
Random Drug/Alcohol Testing

§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 6.00
3% to County (if paid in installments) \$ \$ 3.90
TOTAL \$ 133.90

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk: Christine Pary
Court Reporter: Denise Lauder

Presiding Judge: Ok J. [Signature]
Judge Code: 2125 J 00
Sentence Date: 8/14/15

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 South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 5th day of July, 2016.

RECORDED

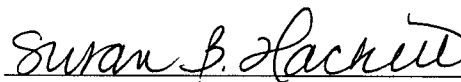
JUL 05 2016

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CERTIFICATE OF COUNSEL FOR APPELLANT
SC Court of Appeals

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Respectfully submitted,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 5th day of July, 2016.