



23109
ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Roger L. Couch, Circuit Court Judge

RECEIVED

JAN 26 2017

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

TIMOTHY WAYNE JOHNSON,

APPELLANT

APPELLATE CASE NO 2016-000608

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (March 14-16, 2016).....	1
PARTIAL GUILTY PLEA.....	12
PRELIMINARY INSTRUCTIONS TO JURY.....	24
<i>NEIL V. BIGGERS</i> HEARING.....	28
TESTIMONY	
JOHN WALTER	
Direct Examination by Solicitor Mabbs.....	35
Cross Examination by Mr. Shealy.....	40
KIM RITTER	
Direct Examination by Solicitor Mabbs.....	44
Cross Examination by Mr. Shealy.....	49
SEAN WARRICK	
Direct Examination by Solicitor Mabbs.....	50
Cross Examination by Mr. Shealy.....	55
ARGUMENTS FROM COUNSEL.....	73
RULING BY THE COURT.....	79
MOTION <i>IN LIMINE</i>	82
RULING BY THE COURT.....	84
DISCUSSION WITH JUROR.....	85
PRELIMINARY INSTRUCTIONS TO JURY.....	92
OPENING STATEMENT BY SOLICITOR GHENT.....	105
OPENING STATEMENT BY MR. SHEALY	110

TESTIMONY

MICHAEL BREWTON	
Direct Examination by Solicitor Mabbs.....	114
Cross Examination by Mr. Shealy.....	124
Redirect Examination by Solicitor Mabbs	126
TIFFANY BREWTON	
Direct Examination by Solicitor Mabbs.....	129
Cross Examination by Mr. Shealy.....	133
JUSTINA ESOPA	
Direct Examination by Solicitor Mabbs.....	137
Cross Examination by Mr. Shealy.....	142
JOHN WALTER	
Direct Examination by Solicitor Mabbs.....	148
Cross Examination by Mr. Shealy.....	154
Redirect Examination by Solicitor Mabbs	162
KIM RITTER	
Direct Examination by Solicitor Mabbs.....	165
Cross Examination by Mr. Shealy.....	170
SEAN WARRICK	
Direct Examination by Solicitor Mabbs.....	172
Cross Examination by Mr. Shealy.....	181
Redirect Examination by Solicitor Mabbs	190
JAMES RHODES	
Direct Examination by Solicitor Mabbs.....	193
Cross Examination by Mr. Shealy.....	200
KYLE JUREK	
Direct Examination by Solicitor Mabbs.....	203
Cross Examination by Mr. Shealy.....	217
MOTION FOR DIRECTED VERDICT	224
RULING ON MOTION FOR DIRECTED VERDICT	238
MOTION TO SETTLE DEFENDANT’S RECORD	238
COLLOQUY REGARDING DEFENDANT’S RIGHT TO TESTIFY	242

TESTIMONY

JACKIE GREGORY (<i>IN CAMERA</i>)	
Examination by the Court.....	247
Examination by Mr. Shealy.....	252
Examination by Solicitor Ghent.....	252
Examination by the Court.....	254
JACKIE GREGORY	
Direct Examination by Mr. Shealy.....	256
Cross Examination by Solicitor Ghent.....	264
Redirect Examination by Mr. Shealy.....	273
Recross Examination by Solicitor Ghent.....	275
RENEWAL OF MOTION FOR DIRECTED VERDICT	277
RULING ON MOTION FOR DIRECTED VERDICT	278
CHARGE CONFERENCE.....	278
CLOSING ARGUMENT BY MR. SHEALY	285
CLOSING ARGUMENT BY SOLICITOR MABBS	294
JURY CHARGE.....	310
QUESTIONS FROM THE JURY	331
VERDICT	334
MOTION FOR NEW TRIAL	335
RULING ON MOTION FOR NEW TRIAL	335
SENTENCING HEARING.....	336
SENTENCE IMPOSED.....	344
INDICTMENT	347
CERTIFICATE OF COUNSEL	349

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THE COURT:
STATE'S EXHIBIT NOS. 18 – 22 (photographs)**

1 STATE OF SOUTH CAROLINA } COURT OF GENERAL SESSIONS
2 COUNTY OF SPARTANBURG }

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4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 TIMOTHY WAYNE JOHNSON,) 2015-GS-42-4776
8 DEFENDANT.) 2015-GS-42-4777

9
10 March 14th, 15th, 16th, 2016
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Guilty Plea	12
5	Jury Selection	23
6		
7	Motions	45
8	JOHN WALTER	
9	Direct examination by Sol. Mabbs	51
10	Cross-examination by Mr. Shealy	56
11	KIM RITTER	
12	Direct examination by Sol. Mabbs	60
13	Cross-examination by Mr. Shealy	65
14	SEAN WARRICK	
15	Direct examination by Sol. Mabbs	66
16	Cross-examination by Mr. Shealy	71
17		
18	Discussion with Juror	101
19		
20	Opening by the Court	108
21	Opening by Solicitor Ghent	121
22	Opening by Mr. Shealy	126
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	MICHAEL BREWTON	
4	Direct examination by Sol. Mabbs	130
5	Cross-examination by Mr. Shealy	140
6	Redirect examination by Sol. Mabbs	142
7	TIFFANY BREWTON	
8	Direct examination by Sol. Mabbs	145
9	Cross-examination by Mr. Shealy	149
10	JUSTINE ESOPA	
11	Direct examination by Sol. Mabbs	153
12	Cross-examination by Mr. Shealy	158
13	JOHN WALTER	
14	Direct examination by Sol. Mabbs	164
15	Cross-examination by Mr. Shealy	170
16	Redirect examination by Sol. Mabbs	178
17	KIM RITTER	
18	Direct examination by Sol. Mabbs	181
19	Cross-examination by Mr. Shealy	186
20	SEAN WARRICK	
21	Direct examination by Sol. Mabbs	188
22	Cross-examination by Mr. Shealy	197
23	Redirect examination by Sol. Mabbs	206
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	JAMES RHODES	
4	Direct examination by Sol. Mabbs	209
5	Cross-examination by Mr. Shealy	216
6	KYLE JUREK	
7	Direct examination by Sol. Mabbs	219
8	Cross-examination by Mr. Shealy	233
9		
10	Motions	240
11		
12	JACKIE GREGORY (Out of presence of the Jury)	
13	Examination by the Court	263
14	Examination by Mr. Shealy	266
15	Examination by Solicitor Ghent	268
16	JACKIE GREGORY	
17	Direct examination by Mr. Shealy	272
18	Cross-examination by Sol. Ghent	280
19	Redirect examination by Mr. Shealy	289
20	Recross examination by Sol. Ghent	291
21		
22		
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Motions	293
4	Closing by Mr. Shealy	301
5	Closing by Solicitor Mabbs	310
6	Charge by the Court	326
7	Question from the Jury	347
8	Verdict	350
9	Motions	351
10	Sentencing	360
11	Certificate	362
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>State's Exhibits</u>			
4				
5	S-1	Photographic Lineup		46, 170
6	S-2	Photograph	130	136
7	S-3	Photograph	130	136
8	S-4	Photograph	130	136
9	S-5	Photograph	130	136
10	S-6	Photograph	130	136
11	S-7	Photograph	130	136
12	S-8	Photograph	130	136
13	S-9	Photograph	208	215
14	S-10	Photograph	208	215
15	S-11	Photograph	208	215
16	S-12	Photograph	208	215
17	S-13	Photograph	208	215
18	S-14	Photograph	208	212
19	S-15	Photograph	208	212
20	S-16	Photograph	208	212
21	S-17	Photograph	208	212
22	S-18	Photograph	208	232
23	S-19	Photograph	208	232
24	S-20	Photograph	208	232
25	S-21	Photograph	208	232

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-22	Photograph	208	232
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Note from Jury		349
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

1

2

3 MR. SHEALY: If we may approach, judge?

4 THE COURT: We've got a little bit of a delay. Come on
5 up.

6 Yes, sir.

7 (WHEREUPON, a bench conference was held at this time.)

8 THE COURT: All right. I'll ask the State to call the
9 case against -- of the defendant, Mr. Johnson.

10 SOLICITOR MABBS: Thank you, Your Honor.

11 Before you is Timothy Wayne Johnson represented by Matt
12 Shealy. Your Honor, he is currently before you on two
13 indictments.14 Indictment 2015-GS-42-4776. That is for shoplifting
15 enhanced, Your Honor.16 Then Indictment 2015-GS-42-4777 and that is for
17 receiving stolen goods valued between two and ten thousand
18 dollars.19 THE COURT: All right. Now, Mr. Shealy, has your
20 client been arraigned on those two charges?21 MR. SHEALY: Your Honor, I believe he's been -- he was
22 arraigned on the warrants, then on the warrants, but not on
23 the indictments.24 THE COURT: Okay. Do you issue -- is he gonna waive
25 formal arraignment?

1 MR. SHEALY: He is, Your Honor.

2 THE COURT: Now, as to the shoplifting charge, how is
3 he pleading?

4 MR. SHEALY: Your Honor, he's going to plead guilty as
5 to the shoplifting charge.

6 THE COURT: All right. And as to the receiving -- the
7 stolen vehicle charge?

8 MR. SHEALY: Your Honor, it's a receiving stolen goods
9 at least is how I have it titled. He is going to plead not
10 guilty and request a trial by jury.

11 THE COURT: All right. Now, the State is asking that
12 we try both cases. We're in a position of going forward
13 with the jury selection. Your client has not yet pled on
14 the shoplifting case, Mr. Shealy.

15 What I would propose is we go forward with the jury
16 selection. After that has been completed I would accept
17 your client's plea on the shoplifting. If, for some reason,
18 he either fails or refuses, refuses to enter that plea,
19 would it be your agreement that this jury would have been
20 picked for both cases?

21 MR. SHEALY: Your Honor, that's, that's true. I would
22 prefer that you not call the shoplifting case or read the,
23 the shoplifting indictment to the jury.

24 THE COURT: Well, perhaps we should accept the plea---

25 MR. SHEALY: Yes, sir.

1 THE COURT: ---on the shoplifting before we select the
2 jury.

3 MR. SHEALY: Judge, that's, that's fine and I've gone
4 over his rights with him. He understands.

5 THE COURT: Okay.

6 MR. SHEALY: He understands his rights.

7 THE COURT: Well, let's bring him up for -- let's go
8 with the plea on the shoplifting.

9 MR. SHEALY: I don't know if we have a sentencing
10 sheet.

11 SOLICITOR MABBS: I do, Your Honor. I'm just filling
12 it out real quick.

13 THE COURT: Oh, she's, she's over there working
14 feverously.

15 MR. SHEALY: All right.

16 THE COURT: So I think maybe she does.

17 (Pause.)

18 THE COURT: Come on forward, Mr. Johnson.

19 (Parties comply.)

20 THE COURT: Pass that up please.

21 (Solicitor Mabbs complies.)

22 THE COURT: Thank you.

23 You have the indictment on the shoplifting?

24 SOLICITOR MABBS: I do, Your Honor.

25 THE COURT: Pass that up to me please.

1 (Solicitor Mabbs complies.)

2 THE COURT: Pam, you have what you need?

3 THE COURT REPORTER: Yes, sir.

4 THE COURT: The clerk has what she needs?

5 THE CLERK: Yes, sir.

6 THE COURT: Okay. Please, place Mr. Johnson under oath.

7 (WHEREUPON, the defendant was placed under oath at this
8 time.)

9 THE COURT: Sir, your name is Timothy Wayne Johnson?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Johnson, the case that's in front of me
12 at this time is Case Number 2015-4776. That charge is for
13 shoplifting. The State's making the allegation further that
14 it has been enhanced because you've been convicted of at
15 least two or more property crimes in the past. That means
16 this particular offense would carry a possible sentence of
17 anywhere from zero up to ten years in prison.

18 Are you aware that that's the charge that's before me
19 at this time?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: And you're aware that that's the possible
22 penalty that's involved with that charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Now, this case has gone to the
25 Grand Jury. The Grand Jury issued a true bill. It's

1 properly in front of this Court. The State's presenting it
2 to me at this time without any negotiations or
3 recommendations. That means you're pleading what we call
4 straight up on the charge. That means I have the option of
5 sentencing you anywhere from zero up to the full ten years.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, you're here today with
9 your attorney, Mr. Shealy.

10 Have you consulted with him about these charges -- this
11 charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And are you satisfied with his services
14 thus far?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need to speak or consult with him
17 any further about this charge?

18 THE DEFENDANT: I do not.

19 THE COURT: And is there anything else you want him to
20 do for you on this charge before we proceed with this plea?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. Now, Mr. Johnson, do you suffer from
23 or have any conditions, mental, physical, nervous, or
24 otherwise, that would affect your reasoning abilities or
25 abilities to handle this case today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you taken or used any drugs or
3 medicines or other substances that might have that same or
4 similar effect?

5 THE DEFENDANT: No, sir.

6 THE COURT: So do you know what you're doing?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you able to handle this plea today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Now, you have the right to
11 plead either guilty or not guilty to the charge. Your
12 attorney indicates that you wish to change your plea and
13 plead guilty.

14 Do you, in fact, plead guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Counselor, I'm sure you've discussed this
17 matter with your client.

18 Is that correct?

19 MR. SHEALY: It is, Your Honor.

20 THE COURT: Are you satisfied he understood your
21 discussion?

22 MR. SHEALY: I am, Your Honor.

23 THE COURT: He's telling me he's decided to enter a
24 guilty plea on the charge.

25 Based on what you know about the case, are you in

1 agreement with his decision?

2 MR. SHEALY: I am, Your Honor.

3 THE COURT: Now, has Mr. Johnson been able to assist
4 you in handling his case?

5 MR. SHEALY: He has, Your Honor.

6 THE COURT: Mr. Johnson, you are 33 years of age, age.
7 Is that true?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And how far did you go with your education,
10 sir?

11 THE DEFENDANT: Eleventh grade.

12 THE COURT: Did you ever get your GED?

13 THE DEFENDANT: I did not.

14 THE COURT: Are you married?

15 THE DEFENDANT: I'm engaged.

16 THE COURT: All right. Any children?

17 THE DEFENDANT: I have two.

18 THE COURT: What ages are they?

19 THE DEFENDANT: I have a little boy who's ten and my
20 little girl is 12.

21 THE COURT: All right. Do they live in your home?

22 THE DEFENDANT: They do not. They live with their
23 mother.

24 THE COURT: All right. Now, are you employed,
25 Mr. Johnson?

1 THE DEFENDANT: I am. Well, I was up until
2 incarceration time.

3 THE COURT: Okay. And tell me what you're doing up
4 till then.

5 THE DEFENDANT: I'm, I'm a heavy equipment operator. I
6 work at Clary Hood, Incorporated here in Spartanburg.

7 THE COURT: I see.

8 What kind of heavy equipment do you operate?

9 THE DEFENDANT: I been doing it since I was 15. Just
10 heavy equipment.

11 THE COURT: Okay. All right. Now, Mr. Johnson, has
12 anyone told you how to answer my questions today?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Now, are, are you doing this of
15 your own free will?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Anybody try to do anything to you to force
18 you to enter this plea?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you had sufficient time in which to
21 consider the decisions you've needed to make so far?

22 THE DEFENDANT: I have.

23 THE COURT: And did anyone offer you anything to get
24 you to plead?

25 THE DEFENDANT: No, sir.

1 THE COURT: No one's offered you anything of value or
2 any rewards or any advantages?

3 Is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, has anyone made a promise or guarantee
6 about the outcome of this plea?

7 THE DEFENDANT: No, sir.

8 THE COURT: So no one's promised or guaranteed you
9 anything about such matters as pardon, parole, probation,
10 early release, length of sentence, anything like that?

11 THE DEFENDANT: No, sir.

12 THE COURT: Now, if you plead guilty you give up your
13 Constitutional rights, Mr. Johnson. One of my jobs is to be
14 sure that you're informed of those rights before I accept
15 the plea so that you're aware or make a knowing plea knowing
16 what you're giving up.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So I'm going to go over your rights with
19 you now. If you have a question, feel free to ask me or you
20 can consult with your lawyer about any of these rights as I
21 go over them with you.

22 First of all, you have a right to have your case
23 considered by the Grand Jury. That's happened. They issued
24 a true bill.

25 You have a Constitutional right to a lawyer. You've

1 told me you're satisfied with your attorney.

2 You have a right to have your case tried by a jury. In
3 fact, the jury is present. We're ready to seat a jury if
4 that were necessary in the case. At the jury trial you'd be
5 presumed to be innocent and that presumption would continue
6 until the State proved your guilt and the State would have
7 to prove your guilt to that jury by proving all of the
8 elements of the crime to the jury by proof beyond a
9 reasonable doubt. You would not have to prove anything at
10 the trial. You're presumed innocent.

11 So you understand how a trial would be conducted?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, at the trial you'd have the right to
14 have the clerk issue subpoenas to any witnesses in your
15 favor to require they attend. You have the right to
16 question or confront anyone who, in fact, testified at your
17 trial. You would have the right, at your trial, to present
18 the defenses that you have to the charges and you'd be given
19 the opportunity to try to suppress any evidence the State
20 might have against you. That includes any statements you
21 might have previously made.

22 You, at all times, have the right to remain silent, and
23 if you chose to remain silent at your trial, the judge
24 handling your trial would instruct the jury that your
25 silence could not be used against you at all.

1 Now, Mr. Johnson, did you understand the rights that I
2 just went over?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about them?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you understand that, if you plead guilty
7 and I accept the plea, you've given up those rights as they
8 relate to this charge?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Does that fact cause you to want to change
11 your plea in anyway?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you pleading guilty because you are
14 guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Then I'm gonna ask the
17 solicitor to go over with me the facts in your case. When
18 she's finished I'm gonna ask you about what she said. So
19 listen.

20 Ms. Mabbs.

21 SOLICITOR MABBS: Thank you, Your Honor.

22 Before I go into the facts I did briefly want to put on
23 the record that the defendant was offered ten years
24 concurrent on his pending 11 charges to run consecutive to
25 his current probation revocation.

1 THE COURT: I see.

2 SOLICITOR MABBS: And that offer has been rejected.

3 THE COURT: Now, has his probation already been
4 revoked?

5 SOLICITOR MABBS: Yes, Your Honor. That's my
6 understanding.

7 THE COURT: Okay. So that's not an issue before us
8 right now --

9 MR. SHEALY: No.

10 SOLICITOR MABBS: No, Your Honor.

11 THE COURT: -- that's the reason I was asking.
12 Go ahead.

13 SOLICITOR MABBS: Thank you, Your Honor.

14 On May 23rd, 2015, Officer Welcher with Spartanburg
15 County, or, I'm sorry, Spartanburg Police Department
16 responded to the Burlington Coat Factory here in Spartanburg
17 County in reference to a shoplifting. He was able to speak
18 with two employees of the Burlington Coat Factory. The
19 first stated that a store alarm had gone off over by the
20 exit door. She followed a white male outside and attempted
21 to get his attention. She then saw him take clothing items
22 and put them in the back seat of the vehicle and leave the
23 scene.

24 The loss prevention officer also stated that he had
25 seen the male enter the store, wander around for

1 approximately an hour and a half, and did become suspicious
2 of him because he was looking for size 50 shorts, which
3 obviously did not fit the man asking for them. That lost
4 prevention officer was later shown a photo line-up and
5 immediately identified the defendant from that lineup.

6 THE COURT: I see.

7 Mr. Johnson, did you hear what she told me about the
8 facts?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Did you understand what she said?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is that true?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, have you been truthful with me today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Anyone tell you how to answer my questions?

17 THE DEFENDANT: No, sir.

18 THE COURT: So the answers that you've given to me have
19 been your own answers?

20 Is that right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Any part of what you and I discussed today
23 that you'd like to change anything you've told me so far?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Then I'm gonna accept the plea,

1 Mr. Johnson. It's my finding that you entered it freely,
2 voluntarily. You're aware of the charges, the penalties,
3 had the advice of counsel you're satisfied with and there's
4 a factual basis for the plea.

5 Now, what I'm gonna do, at this time, I've accepted
6 your guilty plea. I'm gonna defer sentencing until we
7 complete the trial that's before us and then I'll consider
8 sentencing of any and all matters that need to be sentenced
9 at that point in time.

10 So, Mr. Johnson, I'm going to have you remain in
11 custody until this trial's over on the other charge. Then
12 we'll consider sentencing at that time.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: But I've accepted the plea at this time.
15 Thank you very much.

16 SOLICITOR MABBS: Thank you, Your Honor.

17 THE COURT: All right. Now, the other charge, you want
18 to hand that indictment up to me?

19 SOLICITOR MABBS: Yes. I'm sorry, Your Honor.

20 THE COURT: Thank you.

21 All right. Is there anything that the State wishes me
22 to consider before we go through jury selection?

23 SOLICITOR MABBS: No, Your Honor.

24 THE COURT: Defense wish for me to consider anything?

25 MR. SHEALY: No, Your Honor. I believe I've handed up

1 the voir dire that we've requested.

2 THE COURT: I think I have that, yes, sir.

3 MR. SHEALY: We'll have some witnesses.

4 THE COURT: I will consider both party's submissions
5 and will ask the question. I have the State's voir dire. I
6 don't think I see yours.

7 MR. SHEALY: I'm sorry, judge. I'd handed it -- I
8 thought I handed it to the clerk.

9 THE COURT: It did not make it up to me. I've got
10 state's potential witnesses and state's potential evidence.
11 There we go. Thank you.

12 Now I have it, Mr. Shealy.

13 MR. SHEALY: Thank you, judge.

14 THE COURT: All right. Let's bring the jury panel
15 around please.

16 (WHEREUPON, the following takes place within the
17 presence of the entire jury panel.)

18 THE COURT: Thank you, gentlemen.

19 Good afternoon, ladies and gentlemen.

20 I want to thank you for your patience in regards to my
21 Court. We've had some matters that we've had to deal with.
22 We've completed those now and so we are about to begin the
23 trial of the case of the State of South Carolina versus
24 Timothy Wayne Johnson.

25 The first thing I'm going to do is to go over with you

1 MR. SHEALY: Yes, Your Honor.

2 (WHEREUPON, the jury selection process was completed at
3 this time.)

4 THE COURT: We're now selecting the alternate.

5 (WHEREUPON, the alternate juror was selected at this
6 time.)

7 THE COURT: Thank you, Madam Clerk.

8 Any objections to the jury selection process from the
9 State?

10 SOLICITOR MABBS: No, Your Honor.

11 THE COURT: Any from the defense?

12 MR. SHEALY: No, Your Honor.

13 THE COURT: All right.

14 (Pause.)

15 THE COURT: All right. Ladies and gentlemen, you've
16 been selected as jurors in this case and I do note it's
17 almost 4:30 this afternoon and I have some preliminary
18 matters that I have to take up with the attorneys before
19 your participation in the case will start, and rather than
20 have you hang around and hope we get it done by 5:00, I
21 don't think we will, I'm gonna go ahead and let you go home
22 for the evening at this point in time, and ask that you
23 return in the morning and report back in this case.

24 Now, before I ask you to step away from the courthouse,
25 there's some instructions that I would like to give you

1 before you leave. First of all, when you come back into the
2 courtroom you will be taking an oath concerning your duties
3 as jurors in this case. That oath is that you will decide
4 this case based upon the law and the evidence presented
5 during the trial.

6 Now, the only place you're going to hear evidence about
7 this case is in this courtroom during the trial from
8 witnesses who are sworn to tell the truth who will appear on
9 this witness stand and whatever documents or pieces of
10 evidence come into the record through the testimony of those
11 witnesses. So there is no evidence in this Court -- this
12 case outside of this courtroom. For that reason it would be
13 a violation of your oath as jurors for you to try to gather
14 information about this case from any source outside of this
15 courtroom.

16 I realize you can get on Google or Yahoo or someplace
17 like that and stick somebody's name in and get information
18 about -- just about anybody in the world if you choose to do
19 that but I'm going to instruct you not to do that. It would
20 be, again, a violation of your oath for you to try to gather
21 information on your own about this case from sources outside
22 of this courtroom.

23 Also, you'll have to decide the case based on the law
24 in this case, and you'll find, when I give you your
25 instructions, the only law you can consider in reaching a

1 verdict is the law that I instruct you on at the close of
2 the trial. So don't attempt to gather any information on
3 your own about this case while you're away from the
4 courthouse.

5 Also, you can tell, we've gone to a good bit of trouble
6 this afternoon to try to pick a jury that has an open mind
7 about this case, no knowledge of the people or the facts
8 involved. I want you to try to keep that open mind until
9 such time as you've heard all the arguments by the lawyers
10 and all the evidence has been presented and I've charged you
11 on your responsibilities and the law in this case. Only
12 then would I want you to discuss this case with anyone, even
13 among yourselves.

14 I hope you realize that, if you start talking to
15 somebody about what this case is about or the people
16 involved, that discussion might begin to color your decision
17 in this case and you haven't heard the first word of
18 testimony yet. You hadn't heard the first argument in this
19 case. I certainly have not told you about the law in this
20 case. So I'm going to ask you not to discuss what this case
21 is about, the people who are involved, or any of the issues
22 in the case until I ask you to begin your deliberations.

23 It's okay to tell your family or friends, look, I've
24 been selected to serve on a jury and I've got to show back
25 up in the morning for the case and that's the end of the

1 discussion. Talk about the weather. Talk about politics,
2 sports, whatever else you want to talk about but don't talk
3 about this case because, again, that might begin to cause
4 you to decide the case in some fashion and you're not in a
5 position to do that yet. So I want you to keep an open mind
6 about this case until I've asked you to begin your
7 discussions and that will be at the close of the trial.

8 One other thing I've already mentioned to you. It's
9 against the law in the State for a person to try to
10 influence a juror's decision. So, for some reason somebody
11 were to contact you about your service on this jury while
12 you're away from the courthouse, I want you to report that
13 to us as soon as possible because, again, I've told you
14 that's a crime. If that's reported to me, I'll see that the
15 appropriate investigations are begun concerning someone
16 trying to break the law in that fashion.

17 So please let me know if anybody tries to contact you
18 about your service on this jury panel. So if I were going
19 to put your instructions -- oh, one other thing. I don't
20 think this case is gonna be reported in the media but I
21 don't control the media. They report on whatever they want
22 to and that's as it should be.

23 So if you happen to see, hear, or listen to any report
24 and they start talking about this case involving Mr. Johnson
25 and the allegations of receiving stolen goods, don't listen

1 to it. Don't watch it. Don't read it. Again, keep that
2 open mind until you've heard all the evidence in the case
3 and I've charged you on the law. You've heard the arguments
4 by the lawyers.

5 So, in a nutshell, don't try to gather any information
6 on your own. Don't listen to, watch, or read media reports.
7 Don't discuss the case with anyone. Don't allow anyone to
8 discuss it with you. And should anyone try to contact you
9 about your service, let us know as soon as possible so that
10 we can see that's taken care of.

11 The bailiffs are going to show you the jury room that
12 we're gonna use for this trial. That's the room you come
13 back to in the morning. I'll ask that you be at that room
14 at nine o'clock in the morning. We should begin shortly
15 thereafter. Again, I want to thank you for your cooperation
16 today. The bailiffs will show you out and we'll see you in
17 the morning.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. We're gonna take about a five
21 minute break. I'll stay on the bench. If anyone needs to
22 step out, they can do that. So we'll start shortly.

23 I believe you do have a Neil v. Biggers issue?

24 Is that right, Mr. Shealy?

25 MR. SHEALY: I believe there is, yes, sir.

1 THE COURT: Is that right?

2 MR. SHEALY: I don't know if the State intends to
3 introduce it or not but I expect they do.

4 THE COURT: Well, let me ask them.

5 Do they intend -- was there an identification that
6 you're going to be using?

7 SOLICITOR MABBS: Yes, sir, Your Honor. It was, I
8 guess, originally, part of the shoplifting case but it would
9 still be used in this case.

10 THE COURT: Okay. We'll take a short break and then
11 we'll take it up.

12 Court's in recess for about five minutes.

13 (WHEREUPON, a short recess was taken at this time.)

14 THE COURT: All right. Let's come back to order
15 please.

16 All right. Mr. Shealy, if you would put your motion on
17 the record.

18 MR. SHEALY: Thank you, Your Honor.

19 I believe that the State intends on introducing a photo
20 array. I suppose it's a photo lineup. The way the city
21 does the lineup, I believe this one was done by Spartanburg
22 County or Spartanburg City Police. They do it -- again,
23 it's six pictures but they're not the six pack lineups which
24 I believe Your Honor will be familiar with.

25 Judge, it would be our position that it was -- that

1 lineup procedure was -- the six pictures were unduly
2 suggestive and should be excluded.

3 THE COURT: State's position.

4 SOLICITOR GHENT: Your Honor, I have copies of the
5 photos in this instance.

6 May I go ahead and ask that it be marked?

7 THE COURT: Well, why don't you show it to Mr. Shealy
8 and see if that is the one he has been provided with I
9 suppose.

10 SOLICITOR GHENT: Oh, excuse me. I believe I've got
11 the originals, Your Honor.

12 THE COURT: Oh, that's even better. That does comply
13 with the Best Evidence Rule.

14 MR. SHEALY: Yes, sir.

15 THE COURT: Are those the ones that you were provided,
16 Mr. Shealy?

17 MR. SHEALY: It is, Your Honor.

18 THE COURT: All right. You want to mark it for
19 purposes of this hearing?

20 SOLICITOR GHENT: Yes, sir.

21 THE COURT: Any objection?

22 MR. SHEALY: No, Your Honor.

23 THE COURT: All right. It will be marked for -- as
24 State's Exhibit for purposes of this hearing.

25 (WHEREUPON, the photographic lineup was marked as

1 state's Exhibit No. 1 and received into evidence at this
2 time for purposes of this hearing only.)

3 SOLICITOR GHENT: May I approach?

4 THE COURT: Yes. Thank you.

5 SOLICITOR GHENT: Could the record reflect that I've
6 handed the photographic lineup that was generated in this
7 case pursuant to the request---

8 THE COURT: Yes, sir.

9 SOLICITOR GHENT: ---of Officer John Walter and Officer
10 Kim Ritter presented it to the security officer and the
11 security officer has been subpoenaed but is in -- now living
12 in Anderson and will be here tomorrow. We were not able to
13 get him here today. However, under Rule 104, it would be in
14 conjunction with Rule 110(c)(1), excuse me, (d)(1). The
15 applicability of the Rules of Evidence, preliminary
16 questions of fact so that hearsay statement of the officer
17 as to the person identified and there's a signature on the
18 back by the person who identified the defendant that would
19 be admissible under that rule.

20 Your Honor, there is not a single procedure that is
21 required under Neil versus Biggers. What is required is
22 that it be a procedure that does not unduly suggest a
23 particular outcome, result, or subject.

24 Under the circumstances, I can offer the testimony of
25 two of the officers who were involved in terms of how that

1 is done but it comports basically with the procedure done in
2 all of these photo lineup cases now. They have a procedure
3 whereby photos are pulled and matched up as closely as
4 possible for comparison with the defendant for a particular
5 witness to observe, inspect, and see if they see a suspect
6 in those pictures.

7 Your Honor---

8 THE COURT: Let me just -- now, Mr. Ghent, you say you
9 don't have the security officer here at this time?

10 SOLICITOR GHENT: Not at this time, Your Honor.

11 THE COURT: When will he be here?

12 SOLICITOR GHENT: Tomorrow.

13 THE COURT: Okay.

14 MR. SHEALY: We -- judge, he would have to testify. I
15 mean there's some question as to whether the identification
16 would be reliable and he's got to testify to things like his
17 degree of attention, if he would of had an opportunity---

18 THE COURT: Well, I understand that.

19 So I'm gonna have to take up that testimony tomorrow?

20 SOLICITOR GHENT: Yes, sir.

21 THE COURT: Okay.

22 MR. SHEALY: I just want to---

23 SOLICITOR GHENT: Can I ask one question, Your Honor?

24 THE COURT: Yes, sir.

25 SOLICITOR GHENT: I'm confused because, in the guilty

1 plea, and we went into -- the attorney went into a great
2 extent how things might interplay with one another with the
3 guilty plea to the shoplifting being entered and you clearly
4 see that this defendant was picked out by the security
5 officer for the store and that was uncontested. You asked
6 if he agreed with the facts and circumstances and he said
7 yes. So it would seem to me that, during that, he waived
8 the question of suggestibility and that it was not a
9 suggestive lineup.

10 MR. SHEALY: No.

11 THE COURT: I'm not gonna make that ruling.

12 SOLICITOR GHENT: Yes, sir.

13 THE COURT: Do you want to offer any evidence on this
14 procedure today or do you want to wait till the gentleman is
15 here?

16 SOLICITOR GHENT: Do it all tomorrow is fine.

17 THE COURT: That's fine. We'll hear it in the morning.

18 SOLICITOR GHENT: Thank you.

19 MR. SHEALY: Yes, sir.

20 SOLICITOR GHENT: Thank you, Your Honor.

21 SOLICITOR MABBS: Thank you, Your Honor.

22 THE COURT: The defendant remains in custody at this
23 time.

24

25 (WHEREUPON, Court was in recess for the evening.)

John Walter - Direct examination
by Solicitor Mabbs

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Tuesday, March 15th, 2016

SOLICITOR GHENT: Your Honor, when Mr. Shealy gets back
may we approach?

THE COURT: Sure.

SOLICITOR GHENT: Thank you.

(Pause.)

THE COURT: Mr. Shealy, Mr. Ghent asked if he could
approach. I told him to wait till you got here. So come on
up.

(WHEREUPON, a bench conference was held at this time.)

THE COURT: All right. Let's see. I believe
Mr. Shealy had made a motion concerning the identification
of the defendant by the -- I believe the loss prevention
officer or something of that nature and I believe it's the
State's opportunity now to present evidence on that
identification.

SOLICITOR MABBS: Thank you, Your Honor.

First the State would like to call John Walter.

THE COURT: All right. Come forward, sir. Come over
here to my left and be sworn in please, sir.

JOHN WALTER, being first duly
sworn, testified as follows:

THE COURT: Sir, once you're seated, state your name
please.

John Walter - Direct examination
by Solicitor Mabbs

1 THE WITNESS: John David Walter, II.

2 THE COURT: Thank you very much.

3 Counselor, your witness.

4 SOLICITOR MABBS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR MABBS:

7 Q Officer Walter, where are you employed?

8 A Spartanburg Police Department.

9 Q And how long have you been employed there?

10 A Two and a half years.

11 Q Are you familiar with the case today?

12 A Yes, ma'am.

13 Q And what was your role in the case?

14 A I was the investigating officer. I was the first
15 officer on the scene.

16 Q And for which charge were you the first officer?

17 A Shoplifting.

18 Q Okay. And during the course of your investigation, did
19 you need to create any kind of photo lineup?

20 A Yes.

21 Q And how -- what information did you use to put into
22 that photo lineup?

23 A Name and date of birth.

24 Q And how---

25 A Excuse me.

John Walter - Direct examination
by Solicitor Mabbs

1 Q How did you get that name?

2 A We got -- excuse me. I apologize. We got that name
3 from the investigation as far as Mr. Warrick, who was a loss
4 prevention officer, received the name, researched the date
5 of birth, and turned -- created the photo lineup.

6 Q And what did you do once you received that name and
7 date of birth?

8 A Once I received that name and date of birth I give it
9 to our records department at City Hall. They use Spillman
10 to, in turn, pull pictures for six people. One being the
11 suspect. Five being five other individuals. They give me
12 the photo lineup. I, in turn, give it to a secondary
13 officer who goes out to the or to, excuse me, to the witness
14 who actually performs a photo lineup.

15 Q And what information, to your knowledge, is put into
16 Spillman once --?

17 A Arresting information, name, date of birth, last known
18 physical address, and the previous charges.

19 Q And were you able to review the photo lineup after
20 being created?

21 A I did look at the photo lineup before I gave it to the
22 next officer.

23 Q And if I showed it to you you'd recognize it?

24 A Yes.

25 SOLICITOR MABBS: Your Honor, permission to retrieve

John Walter - Direct examination
by Solicitor Mabbs

1 the photo---

2 THE COURT: Yes, ma'am.

3 SOLICITOR MABBS: I believe it's already been put in as
4 evidence.

5 THE COURT: As Exhibit No. 1 for purposes of this
6 hearing I believe.

7 SOLICITOR MABBS: Yes, Your Honor.

8 THE COURT: I believe it's the lineup and the
9 supporting documents.

10 SOLICITOR MABBS: Permission to approach, Your Honor?

11 (The Court nods affirmatively.)

12 Q Officer Walter, what did I just hand you?

13 A The photo lineup.

14 Q And does it appear to be altered in anyway since you've
15 seen it?

16 A No, ma'am.

17 Q When you first received it, were the photos on the
18 individual pieces of paper or --?

19 A They're on one big piece of paper. They're cut up into
20 six individual pieces to the photos themselves.

21 Q Are the photos in color or black and white?

22 A Color.

23 Q Excuse me.

24 And what is the -- the procedure that you used, is that
25 a regular procedure at the police department?

John Walter - Direct examination
by Solicitor Mabbs

1 A Yes, ma'am.

2 Q And who, once you received it back from records, who
3 did you give the lineup to, to---

4 A The lineup was given to a second officer, Officer
5 Bryant with the city. She, in turn, passed it onto Officer
6 Kim Ritter who, in turn, conducted the photo lineup.

7 Q And what information did you give either Officer Bryant
8 or Officer Ritter about---

9 A Just the form itself. Our policy form on the SLED
10 lineup or, excuse me, the photo lineup, give her that as
11 well as the pictures. The names that are attached to the
12 pictures, they do not go with the officers. I keep those
13 myself.

14 Q Do you give them the name of the person --

15 A No.

16 Q -- in the photo lineup who's suppose to be chosen?

17 A No, I do not.

18 Q What do they do once they get the results from
19 presenting it?

20 A Once they get the results from the witness, they, in
21 turn, put it into evidence at City Hall. They will -- I
22 ask, as a courtesy, let me know just the number of who the
23 witness chose, and if I need to go further with the
24 investigation, I go further with the investigation.

25 Q And, in this particular photo lineup, who was chosen?

John Walter - Direct examination
by Solicitor Mabbs

1 A The number was number five, which number five was
2 Timothy Wayne Johnson.

3 SOLICITOR MABBS: Nothing further at this time, Your
4 Honor?

5 THE COURT: Before he starts I have a question.

6 You indicated that you get the name and address and
7 other arrest information of the accused when you submit it
8 to the records department.

9 Is that right?

10 THE WITNESS: I just get the name and date of birth,
11 Your Honor---

12 THE COURT: All right.

13 THE WITNESS: ---and submit it.

14 THE COURT: Now, is -- then do they generate the other
15 photos by a computer search or do they physically search
16 the---

17 THE WITNESS: They physically search and match to the
18 best possible way they can similar to the---

19 THE COURT: And is that done in cases where you have
20 that individual already in your database and have a photo of
21 that person already?

22 THE WITNESS: That is done -- if, if their picture is
23 in the database, they let us know hey, we can do this photo
24 lineup. If not, then I, in turn, send it down to SLED to
25 see if they can further create a photo lineup.

John Walter - Cross-examination
by Mr. Shealy

1 THE COURT: Okay. So, in this case, the suspect was
2 already in your database?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. I just wanted to be sure I
5 understood how that one came about.

6 Mr. Shealy, your witness.

7 MR. SHEALY: Thank you, judge.

8 CROSS-EXAMINATION

9 BY MR. SHEALY:

10 Q Officer Walter, you said you've been working for
11 Spartanburg Police for two and a half years?

12 A Close to it, yes, sir.

13 Q Is that correct?

14 Okay. And you testified that Mr. Warrick gave you the
15 name and date of birth?

16 A That is, to my knowledge, the best that I can remember
17 that day is he has had previous encounters with Mr. Johnson
18 in the past and that's how I was able to get everything.

19 Q Okay. So you got that information from Mr. Warrick?

20 A Yes.

21 Q You think?

22 A I do believe so.

23 Q You believe.

24 Okay. Do you have an incident report in this case?

25 A I do.

John Walter - Cross-examination
by Mr. Shealy

1 Q You do?

2 A It is not documented in the incident report, no.

3 Q It's not documented.

4 Okay. All right. So then once you get this
5 information you say you give it to the records department?

6 A Yes.

7 Q And they, in turn, put it into Spillman?

8 A They use Spillman for the pictures.

9 Q Okay. So they have to go through Spillman --

10 A Yes.

11 Q -- and physically pick out this guy looks like this
12 other guy?

13 A Correct. They go through and match people up based off
14 height, weight, or, excuse me, not height, but weight, skin
15 color, hair color, eye color, everything.

16 Q Okay. So this isn't done by a computer program?

17 A No, this is done by individuals.

18 Q All right. And how many people do you think are in the
19 Spillman database?

20 A I wouldn't be able to tell you, sir.

21 Q Got any idea?

22 A No, sir.

23 Q Ballpark estimate?

24 A Not a clue, sir.

25 Q You can't -- a lot or a few?

John Walter - Cross-examination
by Mr. Shealy

1 A I assume there's a lot.

2 Q You assume a lot of people.

3 Okay. So the records department has to go through all
4 of those people and say this guy kind of looks like this
5 other guy?

6 A Yes.

7 Q All right. And now, just to clarify the procedure, you
8 get one big piece of paper back from records.

9 Is that right?

10 A Yes.

11 Q And when -- and they're all six on that piece of paper?

12 A Yes.

13 Q And then you have to cut it up?

14 A It is cut up, yes.

15 Q And then you give it -- you gave it to Officer Bryant.
16 Who is that?

17 A She's another officer with the City of Spartanburg.

18 Q Okay. Why did you give it to Officer Bryant?

19 Is that---

20 A Cause I'm not allowed to do the photo lineup. So a
21 separate officer has to do it.

22 Q Okay. So you asked Officer Bryant to do it and then
23 she handed it off to Officer Ritter or how did that---

24 A I, I gave it to Officer Bryant. Why she gave it to
25 Officer Ritter, I can't testify to what she did, but she did

John Walter - Cross-examination
by Mr. Shealy

1 give it to Officer Ritter.

2 Q Okay. Are you present when that photo lineup happens?

3 A No.

4 Q So when you testified that Mr. Johnson is the one who
5 was picked out --

6 A Yes.

7 Q -- you don't have personal knowledge to that?

8 A The way it works is they actually sign the back of the
9 picture they pick.

10 Q Okay.

11 A The officer who administered the photo lineup contacts
12 me once they put it into evidence with this is who they
13 picked, this is the number, and, in turn, look at the piece
14 of paper that has the six names on it attached to the
15 numbers and that's how it was -- I know it was Timothy
16 Johnson.

17 Q Okay. But you didn't see her---

18 A No.

19 Q ---pick or Mr. Warrick pick anybody out cause---

20 A No.

21 Q ---you weren't there?

22 A Correct.

23 Q All right. So you didn't, by any kind of investigation
24 on your own, get Mr. Johnson's name or from any
25 investigation from the Sheriff's Department?

John Walter - Cross-examination
by Mr. Shealy

1 A I did not get it, no.

2 Q All right. Thank you.

3 THE COURT: Redirect.

4 SOLICITOR MABBS: No, Your Honor.

5 THE COURT: You may step down, sir.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: And be sure to leave that exhibit. Thank
8 you.

9 State may call its next witness.

10 SOLICITOR MABBS: Thank you, Your Honor.

11 We would call Officer Kim Ritter.

12 THE COURT: Come forward, ma'am.

13 KIM RITTER, being first duly
14 sworn, testified as follows:

15 THE COURT: Once you're seated, state your name please.

16 THE WITNESS: Kimberly Ritter.

17 THE COURT: Thank you very much.

18 Ms. Mabbs, your witness.

19 SOLICITOR MABBS: Thank you.

20 DIRECT EXAMINATION

21 BY SOLICITOR MABBS:

22 Q Officer Ritter, where are you employed?

23 A Spartanburg City Police.

24 Q And how long have you been employed there?

25 A Coming up on four years in May.

Kim Ritter - Direct examination
by Solicitor Mabbs

- 1 Q Are you familiar with today's case?
- 2 A Yes.
- 3 Q And what was your role in the case?
- 4 A My role was to conduct the photo lineup to the loss
- 5 prevention officer.
- 6 Q And when you were given this photo lineup, did you have
- 7 any prior knowledge about the case?
- 8 A No.
- 9 Q Any prior knowledge about the defendant?
- 10 A No.
- 11 Q And where, where did you give the photo lineup?
- 12 A At City Hall. 145 West Broad Street.
- 13 Q And who was present during the presentation of the
- 14 lineup?
- 15 A I would have to look back at the---
- 16 Q Okay.
- 17 A ---at the lineup to see who I---
- 18 SOLICITOR MABBS: If I may---
- 19 THE COURT: You may approach the witness.
- 20 SOLICITOR MABBS: Thank you, Your Honor.
- 21 A Myself and Officer Bryant.
- 22 Q Was Officer Bryant present at the lineup?
- 23 A She's the one who provided me the lineup. I don't---
- 24 Q All right. Was she there when you showed it?
- 25 A I don't recall.

Kim Ritter - Direct examination
by Solicitor Mabbs

1 Q Okay. And before you presented the photographs, what
2 did you tell Mr. Warrick?

3 A I read off of the -- all I do is I read word-for-word
4 the first page of the photo lineup, present each of the
5 photos, and give them the instructions as the paper suggests
6 and place it into evidence.

7 Q And, and what are the instructions on the paper?

8 A You want me to read it?

9 Q Yes, please.

10 A Okay. So before showing the photo lineup the following
11 shall be read. In a moment I'm going to show you a series
12 of photographs. The person who committed the crime may or
13 may not be included. I do not know the identity of the
14 person being investigated. Even if you make -- even if you
15 identify someone during this procedure I will continue to
16 show you all the photographs in the series.

17 Keep in mind that things like hairstyles, beards, and
18 mustaches can be easily changed. Also complexion colors may
19 look slightly different in photographs. You should not feel
20 like you have to make an identification. It is important --
21 it is as important to exclude innocent persons as it is to
22 identify the perpetrator.

23 This procedure is important to the investigation
24 whether or not you identify someone and the investigation
25 will continue whether or not an identification -- whether or

Kim Ritter - Direct examination
by Solicitor Mabbs

1 not an identification is made.

2 The photographs will be shown to you one at a time and
3 are not in any particular order. Take as much time as you
4 need to look at each one. After viewing each, you'll be
5 asked is this the person you saw. Insert crime statement
6 here. Take your time answering the questions. Then respond
7 by stating either yes or no. If yes, time and date and sign
8 the back. If no, initial the back. This procedure will be
9 followed for each photograph.

10 Because you're involved in an ongoing investigation, in
11 order to prevent damaging the investigation, you should
12 avoid discussing this identification procedure or its
13 results.

14 Do you understand the way the lineup procedure will be
15 conducted and acknowledge receipt of these instructions I
16 have given you and he checked yes and printed and signed his
17 name and dated it for 18:04 hours.

18 Q Okay. And were the instructions that you just read,
19 were those followed throughout the procedure?

20 A Yes, I -- where it says insert crime, I didn't say
21 insert. I would fill that in with shopliftings. That's
22 about all I knew about the case was it was a shoplifting.

23 Q And how many photographs were presented to Mr. Warrick?

24 A Six.

25 Q And how did you present them?

Kim Ritter - Direct examination
by Solicitor Mabbs

1 Did you present them one-by-one or --?

2 A Yes, presented them one-by-one and each one he said no,
3 signed it, initialed the back. No until he got to I believe
4 it's number five and he stated that yes, that's, that's him
5 right there. But he recognized him from I think the few
6 times he had been in the store shoplifting and that he was
7 wearing the same shirt.

8 Q And did you show any of the photographs to Mr. Warrick
9 before you began the photo lineup procedure?

10 A No.

11 Q And I believe you just mentioned that he said something
12 about the shirt being the same in the photograph?

13 A Yes.

14 Q Were you aware at all that the shirt was the same?

15 A No.

16 Q And did you make note of that in --?

17 A I believe I did, on the second page. I wrote in the
18 administrator notes witness identified subject number five
19 and stated that he was wearing the same shirt as the one in
20 the photo.

21 Q And do you recall about how long it took the witness to
22 make the identification?

23 A As soon as he looked at it pretty much.

24 SOLICITOR MABBS: Nothing further at this time, Your
25 Honor.

Kim Ritter - Cross-examination
by Mr. Shealy

1 THE COURT: Mr. Shealy, your witness.

2 MR. SHEALY: Thank you, judge.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. SHEALY:

6 Q You said he picked number five immediately?

7 A Yes.

8 Q Upon seeing it?

9 A Yes.

10 Q So did he look at number six?

11 A Yes, I -- you still continue to show all the photos.

12 Q Okay. But -- so you showed him number six but he had
13 already told you that number five was the one?

14 A Yes.

15 Q Is that my understanding?

16 A Yes.

17 Q Okay. Do you have any idea as to why Officer Bryant
18 gave you the lineup?

19 A I do not recall.

20 MR. SHEALY: Okay. That's all I have for this witness,
21 judge.

22 THE COURT: Any redirect?

23 SOLICITOR MABBS: No, Your Honor.

24 THE COURT: You may step down, ma'am.

25 State may call its next witness.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Thank you, Your Honor.

2 We would call Sean Warrick.

3 THE COURT: Come forward please. Sir, if you'll step
4 to my left and be sworn.

5 SEAN WARRICK, being first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat please, sir.

8 THE WITNESS: Yes, sir.

9 THE COURT: State your name.

10 THE WITNESS: Thomas Sean Warrick.

11 THE COURT: Thank you.

12 Your witness.

13 SOLICITOR MABBS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR MABBS:

16 Q Mr. Warrick, where were you working back in May of
17 2015?

18 A Burlington Coat Factory on W.O. Ezell Boulevard.

19 Q And what was your role at Burlington?

20 A I was loss prevention supervisor.

21 Q Now, have you ever had to testify in court before?

22 A Yes, ma'am.

23 Q And have you ever been a witness or a victim of a crime
24 before this?

25 A Yes, ma'am.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 Q Was largely that part of your role during your time as
2 loss prevention?

3 A Yes, ma'am.

4 Q And are you familiar with today's case?

5 A Very much so, yes.

6 Q Now, what were you doing before the incident occurred?

7 A Before the incident occurred I was outside taking a
8 smoke break.

9 Q And can you generally describe the location where you
10 saw the defendant?

11 A As far as the shoplifting goes, ma'am?

12 Q Yes, sir.

13 A Okay. I was following another subject and I got a
14 radio call. I came back to the front of the store. This
15 gentleman had run out the store. One of my associates, Ms.
16 Esopa, she was out in the parking lot where he had run and
17 hit the curb with a buggy, grabbed some of the articles,
18 merchandise, thrown them in his vehicle, turned over the
19 buggy.

20 Q And what was the, I guess, weather conditions that day?

21 A Pardon me?

22 Q What were the kind of weather conditions that day?

23 A They were clear.

24 Q And what time of day was it?

25 A It was in the afternoon about 4:00 or so.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 Q So it's bright outside?

2 A Yes, ma'am.

3 Q And were you already familiar with this person you saw?

4 A Yes, ma'am, cause he approached me outside when I was
5 on my smoke break and asked me if we sold this outrageous
6 size of shorts and which kind of caught me offguard, and I
7 told him, cause I was plain clothes that day, and I told him
8 he needed to ask the associates inside cause I was just
9 waiting on my wife.

10 Q Okay. And about how long did you have an opportunity
11 to see him both when you spoke with him and then I guess
12 when you saw him in the parking lot?

13 A It was a good two minutes, ma'am, cause he walked right
14 up on me.

15 Q And about how far away from you was he standing when he
16 was---

17 A I'd say maybe a foot, foot and a half.

18 Q And did you notice any -- anything particular about him
19 physically?

20 A Yes, ma'am, I noticed his teeth were crooked. I
21 noticed also he had a goatee, slender build, black hair. He
22 was also wearing a blue and yellow striped shirt like a,
23 like a little Izod type shirt.

24 Q And were you familiar with his name or anything at that
25 point?

Sean Warrick - Direct examination
by Solicitor Mabbs

1 A No, ma'am, never saw the individual before till that
2 day.

3 Q Okay. And, Mr. Warrick, do you, do you wear glasses or
4 contacts or --?

5 A No, ma'am.

6 Q So your eyesight is fine?

7 A For now.

8 Q And when did you first, excuse me, report the
9 shoplifting?

10 A It was right after the subject had left.

11 Q Okay. And how did you, I guess, report that?

12 A I called the city non-emergency line.

13 Q And, at some point after this investigation or after
14 this initial reporting, were you shown a photo lineup?

15 A Yes, ma'am, I was.

16 Q And do you remember about how long after the incident
17 that happened?

18 A It was probably about 35 minutes to 40 minutes after
19 the second incident.

20 Q Okay. Can you explain the second incident?

21 A Yes, ma'am. This happened -- the initial happened on a
22 Saturday. This officer right here responded and so I went
23 by City Hall cause I was opening the store Sunday morning.
24 When I -- when I returned back from, excuse me, City Hall,
25 and I was filing my paperwork, I got a call to the front by

Sean Warrick - Direct examination
by Solicitor Mabbs

1 the manager, Ms. Esopa, and just so happened she was pulling
2 up to come to work and the defendant was sitting on the hood
3 of his car with a Burlington bag and so he noticed her
4 getting out of her car. And when he noticed that he took
5 off.

6 And so I made another phone call and I said, you know,
7 later on a female returned and in a different vehicle and he
8 was parked around besides Gold's Gym and she tried to return
9 merchandise and I was on the radio talking to my general
10 manager and the clerk at the time. Told them to delay, the
11 city done been called cause I did that and by the time the
12 city got there he was, he was pulling around. She jumped in
13 the car and they took off.

14 Q Okay. And so -- I'm sorry.

15 You said that the photo lineup was shown to you after
16 this second incident?

17 A Yes, ma'am, it was preceding that.

18 Q Okay. And if you saw this photo lineup you'd recognize
19 it?

20 A Absolutely.

21 SOLICITOR MABBS: Permission to approach, Your Honor?

22 THE COURT: You may.

23 Q Mr. Warrick, was that the photo lineup that was
24 presented to you?

25 A Just a second. Yes, ma'am, it was.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 Q Okay. And were you able to select anyone out of that
2 photo lineup?

3 A Yes, ma'am, I was. I was able to select the defendant.

4 Q Okay. And what number was he on the photo lineup?

5 A Number five, ma'am.

6 Q And what about him did you recognize?

7 A Well, first off, I recognized his face and then I
8 recognized he was wearing the same shirt that he was wearing
9 when he tried to run out with the buggy. So he didn't even
10 change clothes when he came back.

11 Q And who was -- do you recall who was present when you
12 were shown that photo lineup?

13 A Yes, ma'am, the female officer in the courtroom.

14 Q Okay. Anyone else?

15 A Well, a couple officers were in the department but they
16 were, you know, busy.

17 Q So she was the only one I guess presenting the lineup?

18 A Yes, ma'am.

19 SOLICITOR MABBS: Nothing further at this time, Your
20 Honor.

21 THE COURT: Mr. Shealy, your witness.

22 MR. SHEALY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHEALY:

25 Q All right, Mr. Warrick. So how long had you been

Sean Warrick - Cross-examination
by Mr. Shealy

1 working for Burlington Coat Factory at this point?

2 A At that point I'd been working there probably about
3 six, seven months.

4 Q Okay. And you now work in Anderson?

5 A I work for United Security Associates, Incorporated.

6 Q Okay.

7 A Loss prevention as well.

8 Q All right. And so what are you doing now I guess is my
9 question?

10 A Well, I work loss prevention for various Publix in the
11 area, Spartanburg. Well, excuse me, Greenville, Anderson,
12 Easley.

13 Q Okay.

14 A Yes, sir.

15 Q So were you working for Burlington through United
16 Security Associates?

17 Is that how you got assigned to there or---

18 A No, sir, actually Burlington was in-house as far as
19 bringing in loss prevention.

20 Q Okay. Do they give you some kind of training there
21 or---

22 A Yes, sir, I had extensive training.

23 Q All right. What kind of training is it?

24 A Okay. My LPS, loss prevention supervisor, he came down
25 or, excuse me, came up from Columbia and we spent well over

Sean Warrick - Cross-examination
by Mr. Shealy

1 three months training.

2 Q Okay.

3 A So we train on CCTV, surveillance techniques,
4 apprehension, paperwork, computer work.

5 Q Okay. And when you say paperwork, what do you mean by
6 paperwork?

7 A Well, anytime you stop someone, sir, you have to fill
8 out a report, incident report just like law enforcement.
9 You do that so you cover yourself, cover the company.

10 Q Okay.

11 A And it has to be very extensive, very detailed---

12 Q Do you turn---

13 A ---facts on it.

14 Q Do you turn that over to the police?

15 A When I have -- when I call someone I file -- actually I
16 will file a report with the law enforcement --

17 Q Okay. Thank you.

18 A -- as opposed to turn over something I keep in-house.

19 Q So you do -- the police have their way of doing things,
20 you have your ways of doing things, and you don't
21 necessarily share your reports with the police or the
22 solicitor's office or anything like that?

23 A Well, sir, if they ask for it I do---

24 Q Okay.

25 A ---which I have on multiple occasions.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Sure.

2 A Correct.

3 Q I mean if you're not asked you can't turn it over. I
4 understand. But, in this case, they didn't ask.

5 A Well, I conversed with Officer Bryant multiple times on
6 this situation.

7 Q Okay. But they didn't ask for your report?

8 A I wrote a report for them, sir.

9 Q I understand that you---

10 A But they did not ask specifically for my paperwork, no.

11 Q Okay. And you did not give that to them?

12 A Correct, sir.

13 Q Okay. And you've testified now, and some of it I was a
14 little confused about because it sounded like you would --
15 conflated some things that Ms. Esopa told you. So I just
16 want you to testify as to what you saw.

17 Okay. You, you testified that on the Saturday you were
18 outside on a smoke break.

19 Is that correct?

20 A Early Saturday.

21 Q Early Saturday.

22 Like what time?

23 A Maybe two, three o'clock.

24 Q Two, three o'clock in the afternoon?

25 A Yes, sir.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Okay. And you -- so you were outside smoking and you
2 were approached by a subject?

3 A By the defendant I was.

4 Q Okay. And you spoke with him for how long now?

5 A Maybe a minute and a half.

6 Q Okay. And you said you gave a description of teeth
7 crooked, he had a goatee, blue and yellow striped shirt?

8 A Correct, sir. Horizontal.

9 Q All right. And what kind of build?
10 Did you say what kind of build he was?

11 A Slender.

12 Q And this was your first time ever having seen him?

13 A Correct, sir.

14 Q Okay. So you'd never seen him before?

15 A No, sir.

16 Q Did he come up to you and introduce himself?

17 A No, sir, he was asking a question about products inside
18 the store.

19 Q Okay. He didn't give you his date of birth or anything
20 like that?

21 A No, sir, he did not.

22 Q All right. Once you finish your smoke break, what
23 happened?

24 A I go back inside and I start watching everyone in the
25 store cause that's my job --

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Sure.

2 A -- and I noticed he was in there a fairly long time.
3 Normal than most.

4 Q What's a fairly long time?

5 A In there like an hour in various departments, not
6 really looking for anything, just piddling around, and his
7 body language was also showing signs of what we would, what
8 we would say is a shoplifter.

9 Q Okay. And that's based on that three months of
10 training with the LP supervisor?

11 A Well, that's based on me being a former law enforcement
12 officer as well.

13 Q Oh, okay. So where were you a law enforcement officer?

14 A Spindale Police Department, North Carolina.

15 Q Oh, okay. How long were you there?

16 A I was there for two years, sir.

17 Q Did -- why did you leave?

18 A I got sick of politics.

19 Q Okay. So he was in there for an hour.

20 Were you following him around at that point or---

21 A I made note of him. I kept an eye on him, but what
22 happens, there was another individual who put a hat on his
23 head with tags still on it. He headed toward the back of
24 the store toward the corner. So I followed him.

25 Q All right. So you were following a different---

Sean Warrick - Cross-examination
by Mr. Shealy

1 A And he waited, sir, till I left the front of the store,
2 and then once I left the front of the store is when he made
3 his way out the door.

4 Q Who is he?

5 A Your defendant, sir.

6 Q Okay. And so you were towards the back of the store at
7 this point?

8 A No, sir, I was at the front of the store but I moved --
9 I started watching the other subject.

10 Q Right. And you were moving to follow that other
11 subject.

12 Is that correct?

13 A Correct, sir, but I was mainly keeping him -- mainly
14 keeping him in my visual, you know, watching him.

15 Q Okay. And how far away did you get down following that
16 other individual before you got a call to come back to the
17 front of the store?

18 A Probably to the -- I'd say maybe 20, 30 feet.

19 Q Okay. And how big is Burlington Coat Factory just for
20 the record sake?

21 A With dimensions -- honestly I could not tell.

22 Q Is it pretty big, small, medium sized?

23 It's a department store?

24 A It's not as large as the Greenville store. Honestly I
25 could not tell you.

Sean Warrick - Cross-examination
by Mr. Shealy

- 1 Q Okay. So you get a, a call from Ms. Esopa, who I get,
2 and then you start coming back to the front of the store?
3 Is that---
- 4 A Correct, sir.
- 5 Q ---what I understand?
6 All right. And Ms. Esopa was in the parking lot at
7 that point?
- 8 A Correct, sir.
- 9 Q All right.
- 10 A She was coming back in the front door at the time.
- 11 Q Oh, so she was returning from outside?
- 12 A Correct, sir.
- 13 Q All right. And when you got out -- did you go outside?
- 14 A I did, sir.
- 15 Q You did go outside and did you see anybody getting into
16 a car?
- 17 A No, sir, the subject had already left the parking lot
18 but merchandise was still left on the curbside. The buggy
19 was turned over and a pair of boots were still laying in the
20 parking lot --
- 21 Q All right.
- 22 A -- that we take photos of.
- 23 Q Okay. So you didn't see what car he got into?
- 24 A Not at that time, no, sir.
- 25 Q Not at that time.

Sean Warrick - Cross-examination
by Mr. Shealy

1 And, at that point, you called the police?

2 A Correct, sir.

3 Q And you spoke with Officer Walter at that point?

4 Is that correct?

5 A Well, he responded and my fellow associate and I both
6 spoke with him --

7 Q Okay.

8 A -- upon arrival. But as far as initial speaking, it
9 was a dispatcher and I didn't get a name.

10 Q All right. And then you've testified about a second
11 incident I guess the next day?

12 A Yes, sir.

13 Q All right.

14 A It was about 9:30 in the morning or so.

15 Q Okay. So this other thing -- the first incident
16 happened somewhere between -- I guess he would of left
17 somewhere between 3:00 and 4:00 based on your testimony that
18 he was in the store for an hour, you first encountered him
19 outside at around 2:00 or 3:00?

20 So an hour will be 3:00 or 4:00?

21 A I have my notes with me but that's what I can---

22 Q Okay.

23 A ---estimate.

24 Q I mean that's what you each testified to?

25 A Yes, but what I'm saying is that I can't give you a

Sean Warrick - Cross-examination
by Mr. Shealy

1 correct -- I mean I can't give you a correct time or when
2 that occurred because I don't have my notes with me.

3 Q Okay. All right. And now this second incident --

4 A Yes, sir.

5 Q -- tell me about where you were in the store at that
6 point or -- well, start where you come back from City Hall.

7 A Yes, sir, I was -- I took the paperwork back to the
8 office and I was filing the paperwork out at the time.

9 Q Okay. And you were---

10 A That was the back of the store, sir.

11 Q Okay.

12 A The office is.

13 Q So you came back from City Hall. You went to the back
14 of the store at that point.

15 A Correct.

16 Q And you got a phone call from Ms. Esopa?

17 A They contacted me over my headset, sir.

18 Q Okay. And so you start coming back to the front of the
19 store?

20 A That's correct, sir, as fast as I could cause that's
21 what I was told to do.

22 Q Sure.

23 And once you get you -- do you leave the store?

24 A No, sir, they were -- actually the manager, Keith
25 Carter, and Justina Esopa, they were actually trying to hide

Sean Warrick - Cross-examination
by Mr. Shealy

1 behind jewelry and keeping a lookout cause he had already
2 seen her and so I walked up and, by that time, he had
3 already left.

4 Q He'd already left by the time you got to the front of
5 the store?

6 A Correct, sir.

7 Q So you didn't see him get into that car?

8 A I didn't see him get into the SUV that he was driving
9 at the time.

10 Q Okay.

11 A But I did see him in that stolen vehicle, sir, that
12 he---

13 Q which stolen vehicle?

14 A The vehicle he drove, drove back on the second incident
15 that day.

16 Q How did you find out that it was a stolen vehicle?

17 A The tag was run by Officer Bryant.

18 Q Okay. So Officer Bryant told you that?

19 A Yes, sir.

20 Q When did you meet with Officer Bryant?

21 A I met with Officer Bryant several times cause, when I
22 called about the other, the second incident, she responded,
23 her and another officer, and then upon them getting in the
24 vehicle the second time that was hidden behind Gold's Gym,
25 she responded.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Okay. All right. I think we might be getting ahead of
2 ourselves.

3 A Well, okay. When, when, when the female subject came
4 in and tried to return stolen clothes that second time, I'd
5 already contacted law enforcement---

6 Q Okay.

7 A ---and they were on their way in.

8 Q Well, let's---

9 A Ms. Bryant was the one that responded.

10 Q Let's go back---

11 A Yes, sir.

12 Q ---cause I think we're, we're losing -- I'm trying to
13 make sure that we, we get what you saw and when you saw it.

14 A Yes, sir.

15 Q Okay. So that morning at -- I think you testified
16 somewhere early in the morning, 9:00, 9:30---

17 A It was prior to the store opening at 9:30.

18 Q Okay. You did not see any -- you didn't see anybody
19 get into a car and drive away?

20 That was Ms. Esopa and Mr. Carter?

21 A And, and the manager, yes, sir.

22 Q Right.

23 A Keith Carter, yes, sir.

24 Q Okay. So they were already gone?

25 A Correct, sir.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Now tell me about, I guess, what we'll call the third
2 incident that you're telling me about.

3 when did that happen?

4 A That happened later on in the day. I can't give you
5 the exact time on that. But a female subject came into the
6 store. Several associates did recognize her as the female
7 that was with him and trying to return the same clothing.
8 And so, based upon that, is when I called the city and they
9 dispatched Officer Bryant and another officer.

10 Q All right. And about when is this?

11 A This was later on in the afternoon. Maybe -- I don't
12 want to guess but I would say possibly around 3:00, maybe
13 4:00 cause, like I said, I don't have my notes with me.

14 Q 3:00, maybe 4:00?

15 A Perhaps.

16 Q Okay. And where were you when that happened in the
17 store?

18 A I was actually up front at the time --

19 Q Okay.

20 A -- at that time.

21 Q So you're up front and---

22 A And I---

23 Q ---this female comes in?

24 A Yes, sir, and I, and I saw her and she was in the store
25 for quite a while trying to return the products cause I was

Sean Warrick - Cross-examination
by Mr. Shealy

1 on the radio talking to the clerk and the manager cause
2 Keith Carter was there again that day and I was telling them
3 delay, delay, you know, I've already called law enforcement.

4 Q Okay.

5 A And so I had a very good chance of getting a great
6 description of her.

7 Q So you got a pretty good view of her?

8 A Yes, sir, and of -- also of the vehicle when it pulled
9 out.

10 Q All right. But you did not -- did Mr. -- the, the
11 fellow you identified, did he come into the store with
12 her---

13 A No, sir.

14 Q -- on that---

15 A No, sir, he did not come in at that point.

16 Q And did he get out of his car?

17 A No, sir, because he was parked behind Gold's Gym.

18 Q So he's parked behind Gold's Gym and where's Gold's Gym
19 compared to you?

20 A Gold's Gym is actually the same building. It's just on
21 the right-hand side of Burlington Coat Factory.

22 Q Okay. And when you say behind, do you mean completely
23 behind---

24 A To the side.

25 Q ---or on the side of it?

Sean Warrick - Cross-examination
by Mr. Shealy

1 A To the side.

2 Q Okay. And so then Mr., or this female I guess, did she
3 give up or what, what happens to stop her from returning
4 those goods?

5 A She, she did get fed up and she -- Keith Carter was
6 talking to her only cause she came outside as he's walking
7 outside with her and so when she started walking towards
8 Gold's Gym is when I saw the Mercury pulling out.

9 Q Okay. And so the Mercury -- and did you leave the
10 store at that point?

11 A I stood, I stood outside the store---

12 Q Stood -- okay.

13 A ---just to get a description---

14 Q So you were---

15 A ---and possible tag number.

16 Q So you were outside on the front step or on the---

17 A Right at the door.

18 Q Front sidewalk?

19 A Yes, sir, right at the, right at the door.

20 Q Okay. And at that point did you see -- I mean you've,
21 you've testified you saw the Mercury and you got a tag
22 number?

23 A Yes, sir, I did---

24 Q All right.

25 A ---and I reported that to Officer Bryant.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q okay. Did you see anything else?

2 A Pardon me?

3 Q Did you see anything else?

4 A I'm sorry. I still didn't hear you.

5 Q Did you see anything else?

6 A I saw your defendant driving the vehicle.

7 Q Okay. And he was driving past you at that point?

8 A He pulled up like he was coming towards Burlington like

9 the front doors. Then he kind of stopped almost at a

10 diagonal angle and then he started to back out. She hopped

11 in the car, passenger side front, and that's when he took

12 off.

13 Q Okay.

14 A And right as they were pulling off Officer Bryant

15 pulled in with her partner---

16 Q Okay. I understand.

17 So how long did you have to see the vehicle?

18 I'm to---

19 A Okay. I understand.

20 Q ---visualize it.

21 A It was a good, good two, three minutes easy.

22 Q It took two or three minutes for him to pick up this

23 female?

24 A Because he literally stopped in the middle of the main

25 thoroughfare right in front of the store where they're

Sean Warrick - Cross-examination
by Mr. Shealy

1 vehicles coming. It's heavy traffic right there.

2 Q Okay.

3 A So he had to basically do a three point turn. So I
4 got, I got to see him very well.

5 Q Okay.

6 A Yes, sir.

7 Q He presumably did not introduce himself at that point?

8 A Oh, no, sir.

9 Q I didn't think so.

10 Just one more just recordkeeping. We've been talking
11 about this -- the first incident.

12 A Yes, sir.

13 Q I'm sorry to repeat that.

14 A Uh-huh. (Affirmative).

15 Q Would it surprise you if, in officer Walter's report,
16 that he says that the shoplifting occurred somewhere around
17 7:02 in the evening?

18 A Like I said, it's been a long time and I, and I don't
19 have my notes with me.

20 Q Okay.

21 A I just knew it's in the afternoon.

22 Q So that wouldn't surprise you though?

23 It could of been that late?

24 A Of course it was during the summer months, you know.

25 Q Sure.

Sean Warrick - Cross-examination
by Mr. Shealy

1 A It's lighter outside. So --.

2 Q Well, I'm, I'm just trying to get the facts.

3 A No, and I'm just giving you my facts.

4 Q Okay. But I'm just trying to get -- so this could of
5 happened at seven o'clock as opposed to at four o'clock,
6 which is what I think we were placing it?

7 A Without my notes, sir, and depending on officer's
8 notes, which I know are accurate, I would say yes.

9 Q Okay. Did you know you were coming today?

10 A I knew yesterday, sir.

11 Q You knew yesterday?

12 A I was at work, sir.

13 Q Okay. You didn't have a chance to get your notes?

14 A No, sir, I did not.

15 Q Okay.

16 A I made an attempt to do so.

17 Q Uh-huh. (Affirmative).

18 All right. So the extent of your contact with this
19 person was the two minutes for the smoke break or when you
20 were on your smoke break on Saturday and you saw him, I
21 think you estimated, two or three minutes or shorter?

22 A Well, that was, that was the initial contact, sir.

23 Q Right. And then---

24 A But throughout the store I saw him plenty of other
25 times.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Okay. And then you saw him---

2 A Shoe department, mens department, et cetera.

3 Q And then you saw him the next day in a car for two or
4 three minutes.

5 Is that---

6 A Correct, sir.

7 Q ---my understanding?

8 A He was driving that same vehicle.

9 MR. SHEALY: All right. Bear with me just one second.

10 (Pause.)

11 MR. SHEALY: That's all I've got for this witness.

12 THE COURT: Redirect?

13 SOLICITOR MABBS: No, Your Honor.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: State wish to call any other witnesses?

17 SOLICITOR MABBS: No, Your Honor.

18 THE COURT: Defense wish to call any witnesses?

19 MR. SHEALY: No, Your Honor.

20 THE COURT: All right. Your motion.

21 MR. SHEALY: It is, Your Honor, and we'd move to
22 suppress the identification for several reasons.

23 Judge, to begin, it would be our position that the
24 State has failed to show why they've gotten or how they've
25 gotten his name. Officer Walter testified that Mr. Warrick

1 gave it to him. I asked him, him specifically how did you
2 get this name and this date of birth. He said well, Mr.
3 Warrick gave it to me and that that was the best he could
4 recollect. It wasn't documented in his incident report but
5 that, the best he can recollect, he got it from Mr. Warrick.

6 Mr. Warrick was equally clear in that no, he doesn't
7 know or he didn't know at the time who this was, that my
8 client never, at any point, introduced himself or the person
9 that he identified never introduced himself. At no point
10 did -- Mr. Warrick, prior to this day, had never, in fact,
11 seen my client. So there wouldn't of been -- they had no
12 prior interaction with both Officer Ritter and Officer
13 Warrick or Officer Walter testified that Mr. Warrick knew
14 about him from other prior interactions, shoplifting
15 interactions, which is simply incorrect, again, based on
16 Officer Warrick or Mr. Warrick's testimony.

17 Judge, that alone I think causes this to be problematic
18 particularly when you add that to the fact that they found a
19 picture of a man wearing a yellow striped polo shirt. We
20 went over how you get these people, these photos, and he
21 says well, we go or we have the records department go
22 through and get them.

23 THE COURT: Can you hand me Exhibit No. 1 please?

24 MR. SHEALY: I can, judge, if I may approach.

25 THE COURT: Thank you. Oh, it's over here.

1 This is it.

2 (Pause.)

3 THE COURT: Thank you.

4 Okay. You may proceed.

5 MR. SHEALY: Thank you, judge.

6 So my client's picture matches the description that was
7 given all the way down to the clothing. So, judge, and I
8 would also point out, judge, that I don't believe that any
9 of the other photos have simply a goatee. They have facial
10 hair but they do not have just a goatee.

11 So what appears to have happened is they have gotten
12 this lineup and basically tailored it to pick out
13 Mr. Johnson and I don't know why they would do that but that
14 appears to be what happened because, again, there's no
15 explanation as to how they got Mr. Johnson's name. Only
16 that there was a description, which seems, quite frankly, to
17 be suggestive to me.

18 Judge, we would further argue -- I think that that
19 might -- so that would be our showing.

20 THE COURT: All right. I'll hear from the State.

21 SOLICITOR MABBS: Thank you, Your Honor.

22 First of all, Your Honor, you heard today about the
23 procedures that the police department uses to create these
24 photo lineups. Basically it's a double blind if you will.

25 Officer Walter testified basically the only thing he

1 tells them is the name and date of birth. That's it. They
2 don't get any further information about what kind of case it
3 was, what shirt he may or may not have been wearing,
4 anything like that.

5 Officer Ritter testified that she knew nothing about
6 the case. Knew nothing about the defendant. Didn't know
7 his facial hair, his shirt color, anything like that, Your
8 Honor, and then, finally, Mr. Warrick testified that he
9 identified him based off his face, not off of his shirt. He
10 just happened to mention that the shirt was the same and
11 Officer Ritter, I think, properly identified that on the
12 form.

13 Your Honor, there's nothing -- and the only bigger
14 statement, we need to know where the name came from, how the
15 place identified the witness. The issue here is the photo
16 lineup itself, which, Your Honor, I believe is not
17 suggestive.

18 There are various pictures there with different facial
19 hair but, you know, there is facial hair. There's similar
20 hair, similar face shape, things of that nature, and so,
21 Your Honor, I do not see how this---

22 THE COURT: As I recall, the instructions you had her
23 read asked the witness to disregard facial hair since that
24 was changeable.

25 SOLICITOR MABBS: Exactly, Your Honor, and, you know,

1 they, they do put some facial hair on there just so it's not
2 one man with facial hair but, as the instructions do state,
3 facial hair changes and so, again, that would lead this to
4 not be---

5 THE COURT: So it just so happened that the mug shot
6 you had in your file had the same shirt or a---

7 SOLICITOR MABBS: Yes, Your Honor.

8 THE COURT: ---similar shirt?

9 SOLICITOR MABBS: And nobody was aware of that until
10 Mr. Warrick pointed that out.

11 THE COURT: Interesting.

12 MR. SHEALY: Your Honor, if I may?

13 THE COURT: Yes, sir.

14 MR. SHEALY: Again, it wasn't exactly double blind
15 because often -- Mr. Warrick testified that he had spoken
16 with Officer Bryant, who is the person who received that
17 lineup. In fact -- and Mr. Warrick had given a description
18 to Officer Walter. Officer Walter testified he got the
19 photo lineup. It's then cut into pieces.

20 So I, I can't see how he didn't notice that it, that
21 the shirt in the lineup, mug shot, was the same as what he
22 had been told the subject was wearing. I mean---

23 THE COURT: Well, the -- what was the description of
24 the shirt in the --?

25 MR. SHEALY: Your Honor, Mr. Warrick testified that it

1 was a -- I believe it's a yellow striped Polo shirt. Well,
2 it's yellow striped shirt in his -- I've got blue and yellow
3 striped shirt in my notes, judge.

4 THE COURT: Well, I'm talking about though in the notes
5 of -- the, the police officer's report, what did it say as
6 far as description of the subject?

7 SOLICITOR MABBS: Your Honor, from the photo lineup or
8 from the actual incident report?

9 THE COURT: Well, whatever description that the officer
10 would of had at the time he was preparing this lineup.

11 SOLICITOR MABBS: Yes, sir. Your Honor, I---

12 THE COURT: I don't know how detailed the shirt
13 description was is what I'm trying to get to.

14 SOLICITOR MABBS: Yes, Your Honor. The witness
15 statement that Mr. Warrick presented states a blue and white
16 striped Polo style shirt.

17 THE COURT: It was what?

18 SOLICITOR MABBS: A blue and white or I'm sorry. A
19 blue and yellow striped Polo shirt.

20 THE COURT: Okay. All right.

21 MR. SHEALY: And, judge, I would also point out that he
22 did, while Officer, Mr. Warrick did say that he first
23 noticed the face, he did also rely on the fact that that was
24 the same shirt. He mentioned that and said that he had
25 relied on that I believe in the --.

1 THE COURT: Well, I -- it's in the exhibit --

2 MR. SHEALY: In the affidavit I believe it mentions --.

3 THE COURT: -- where it says administrator's note.

4 This is the person who was administering the lineup, Ms.
5 Ritter. She says witness identified subject and stated he
6 was wearing the same shirt as the one in the photo.

7 MR. SHEALY: Yes, Your Honor. So, again, we would
8 argue that this identification is, quite frankly,
9 irreparably tainted.

10 Thank you, Your Honor.

11 THE COURT: Well, what we're, what we're suppose to do,
12 in Neil versus Biggers, is determine the reliability of the,
13 the identification testimony. Where there is a suggestive
14 nature of the -- of a lineup, we're suppose to weigh that
15 against the following factors:

16 The witness' opportunity to view the criminal at the
17 time of the crime, the witness' degree of attention, the
18 accuracy of the witness' prior description of the criminal,
19 the witness' level of certainty at the confrontation, and
20 the time that has occurred between the crime and the lineup
21 or the confrontation.

22 So those are the factors that I'm suppose to weigh any
23 suggestive nature in the, in the lineup against.

24 As far as the facial hair is concerned, number six
25 appears to have a goatee but a line under his chin. Number

1 two appears to have a goatee. Number four is kind of a
2 beard but it's not a full beard. It's a shaved beard. Two
3 of them are clean shaven but that's got to be weighed
4 against the instructions given by the administrator for the
5 witness to disregard any facial hair on them and look at the
6 faces of the individuals.

7 In this case the witness had an opportunity to view the
8 criminal at the time of the crime. In fact, there were a
9 couple of instances where he viewed the, the defendant in
10 this case and actually viewed him driving a car as he left,
11 viewed him face-to-face before he entered the store, viewed
12 him at several times within the store. So there's been an
13 ample opportunity for him to view the defendant in this case
14 or the person he was attempting to identify as well.

15 The witness' degree of attention, he's a loss
16 prevention officer. He's trained in this particular field.
17 He, he apparently gave a fairly good description of the
18 individual that he was seeking including the clothing that
19 he was wearing as well as the, the size, weight, and race,
20 things of that nature. The accuracy of the prior
21 descriptions then was fairly accurate that was given prior
22 to the lineup being viewed.

23 The witness' level of certainty at the lineup, he
24 indicated he was certain. In fact, picked him out before he
25 saw all the, all of the pictures. I think there was one

1 left to be picked, looked at, but he did look at that and
2 did not pick that individual, and then there was not a great
3 deal of time between the events that occurred and the
4 confrontation that took place. So all of those factors, all
5 five of those factors, weigh in favor of the accuracy of the
6 identification.

7 Reliability is the lynchpin in determining the
8 identification testimony and I'm not gonna find -- I find
9 probably the most suggestive factor is the shirt itself.
10 However, I'm not sure how the, the police would of been
11 aware, from the description I've heard, that the shirt worn
12 in the lineup is the shirt that was seen at the scene. I'd
13 actually describe that as a yellow shirt with blue stripes.
14 It's described differently by -- in the, in the report but,
15 nevertheless, I -- it was apparently a picture, from the
16 testimony taken from the records of the police department,
17 that happened to have the same shirt on it. I don't see
18 that there was effort to find a picture with that shirt. I
19 heard no testimony that they eliminated other pictures of
20 the defendant that didn't have that shirt. So they used the
21 picture, I would say from the testimony I heard, that was in
22 their database.

23 So, given all of those factors, I'm going to find that
24 there is sufficient reliability, in the court's opinion, to
25 allow the identification to go forward. I will not not

1 exclude it.

2 All right. Any other matters that we need to take up
3 pretrial?

4 MR. SHEALY: Judge, I have one other we need to at
5 least put on the record about we had a bench conference
6 yesterday regarding---

7 THE COURT: Yes, sir.

8 MR. SHEALY: ---my client has pled guilty to
9 shoplifting. He is admitted to that---

10 THE COURT: He has.

11 MR. SHEALY: ---shoplifting.

12 THE COURT: Yes, sir.

13 MR. SHEALY: We would ask to suppress any mention of
14 the stuff that happened on May the 23rd. That's the
15 incident regarding the shoplifting.

16 I understand that Officer Warrick or Mr. Warrick, I
17 keep calling him officer, I'm sorry, can identify a little
18 bit his identification will come in --

19 THE COURT: Right.

20 MR. SHEALY: -- of my client in the vehicle on the
21 24th but it would be our position that any mention of the
22 events on the 23rd are irrelevant. In other words, it goes
23 to prove nothing as to whether---

24 THE COURT: Well, what I indicated at the bench
25 conference was that I would allow the witness to testify

1 that he was observing this individual or individuals as a
2 result of an ongoing investigation into criminal activity.

3 MR. SHEALY: Yes, sir.

4 THE COURT: I think that's the way I put it, that it
5 would be allowed.

6 SOLICITOR MABBS: Yes, Your Honor, and I believe there
7 was some conversation as well to whether or not we call it
8 an ongoing criminal investigation versus something---

9 THE COURT: Well, and I think, after hearing what I've
10 heard this morning, I would have to allow the State to ask
11 him what he was doing. He's not a police officer.

12 MR. SHEALY: Yes, sir.

13 THE COURT: He is a private loss control officer. I
14 think they're gonna have the opportunity or the right to
15 bring that out because that's one of the factors in the
16 reliability of the identification that they have a right to
17 present to the jury because the question of the accuracy of
18 the identification will be given to the jury. They'll have
19 to also make that determination.

20 MR. SHEALY: Yes, sir.

21 THE COURT: So I'm not sure how we avoid the fact that
22 we have a, a loss prevention officer working for Burlington
23 Coat Factory Store observing an individual in a stolen
24 vehicle as part of an ongoing criminal investigation. I
25 will exclude using the word shoplifting but I would think

1 that they'll probably surmise that that's what was going on.

2 MR. SHEALY: Yes, sir.

3 THE COURT: But I will, I will not let you use the word
4 that he has been convicted of or pled guilty to shoplifting.
5 That is not evidence that he was in possession of or driving
6 a stolen vehicle. So I will, to that extent, grant your
7 motion but I am -- I will inform the State that I'll allow
8 you to go through the elements of reliability in the
9 identification. The fact that he's had training in
10 identifying people is a factor that I considered in reaching
11 my conclusion. It's one of the factors that I think Neil
12 versus Biggers says we have to consider. So I'll let you
13 bring out the reliability of his identification.

14 SOLICITOR MABBS: Thank you, Your Honor.

15 THE COURT: But let's not use the phrase that he's been
16 convicted of shoplifting.

17 SOLICITOR MABBS: Yes, sir.

18 THE COURT: That it was part of an ongoing criminal
19 investigation.

20 MR. SHEALY: Thank you, judge.

21 THE COURT: To that extent I'll grant your motion.

22 All right. Any other matters that we need to take up
23 pretrial from the State's prospective?

24 SOLICITOR MABBS: No, Your Honor. I believe just the
25 voir dire that we had mentioned earlier about---

1 THE COURT: All right.

2 SOLICITOR MABBS: ---the juror.

3 THE COURT: Okay. And---

4 MR. SHEALY: No.

5 THE COURT: All right. I'm gonna ask you, the juror
6 who was having some problems this morning, a lady, do you
7 know who she is---

8 THE BAILIFF: Yes, sir.

9 THE COURT: ---which one that is?

10 THE BAILIFF: Yes, sir.

11 THE COURT: I'm gonna ask you that you bring her into
12 the courtroom at this time.

13 Let me give you back this exhibit.

14 Doug, pass that down.

15 (WHEREUPON, the following takes place within the
16 presence of Juror Rice only at this time.)

17 THE COURT: Ma'am, if you'll have a seat there in the
18 first seat for me.

19 (Juror complies.)

20 THE COURT: Thank you.

21 State your name please.

22 THE JUROR: Charlotte Rice.

23 THE COURT: All right, ma'am. First of all, I want you
24 to understand I'm not trying to pick on you or anything this
25 morning. I'm not allowed to communicate with jurors unless

1 it's on the record. I have to be in the presence of the
2 court reporter before I can talk with you about anything.

3 You understand that?

4 THE JUROR: Yes, sir.

5 THE COURT: And, ma'am, I'm gonna remind you that
6 you're still under oath when you talk with me about things.

7 You understand that, don't you?

8 THE JUROR: Yes, sir.

9 THE COURT: All right. I got a communication this
10 morning from the jury coordinator that you were having some
11 problems with going forward with your jury service.

12 Is that correct?

13 THE JUROR: Yes, sir.

14 THE COURT: And she had indicated to me that you had
15 had a medical problem last week maybe involving a
16 miscarriage.

17 Is that also correct?

18 THE JUROR: Yes, sir.

19 THE COURT: At that time I told her to give you some
20 information and I want to be sure it was correctly conveyed
21 to you, and that was that if you did have that problem, that
22 I would be more than happy to excuse you if you wanted me to
23 do that. However, by doing that, I would have to then move
24 your service to another week when you were over your medical
25 issues and so we would continue with your service and I

1 would need to get a statement from a doctor to put into the
2 record of the case. Now -- and I told her, however, if you
3 were willing to stay and finish this trial, then, at that
4 point in time, we would consider releasing you for the rest
5 of the week.

6 Did she correctly relate to you what I had said?

7 THE JUROR: Yes, sir.

8 THE COURT: Okay. So you're aware of the choices that
9 you had in this matter.

10 Is that correct?

11 THE JUROR: Yes, sir.

12 THE COURT: And I told her to leave it entirely up to
13 you as to how you wish to proceed. If you did not wish to
14 proceed, then I would excuse you, but then we would bring
15 you back at a later time to finish your service or that you
16 could stay and complete the trial if you thought that you
17 could do that reasonably.

18 So did she tell you that you had that choice?

19 THE JUROR: Yes, sir.

20 THE COURT: All right. And have you thought about it?

21 THE JUROR: Yes, sir, I took some of my medicine a
22 minute ago and it's helping a little.

23 THE COURT: Okay. So you're taking some medication?

24 THE JUROR: Yes, sir.

25 THE COURT: Now, ma'am, would that medication prevent

1 you from -- would it affect your ability to reason or to
2 make good decisions today?

3 THE JUROR: No, sir.

4 THE COURT: Okay. So you understand what we're doing
5 here?

6 THE JUROR: Yes, sir.

7 THE COURT: Are you able to make good decisions today?

8 THE JUROR: Yes, sir.

9 THE COURT: Okay. So that medication won't stop you
10 from doing that?

11 THE JUROR: No, sir.

12 THE COURT: And so do you wish to proceed at this time?

13 THE JUROR: Yes, sir.

14 THE COURT: Now, I'm gonna caution you, if at anytime
15 during the trial you feel that there's some problem, you
16 need to take a break, something of that nature, I'd ask that
17 you -- the bailiff will be seated -- probably you ought to
18 sit in that last seat on the end. I think that's where you
19 were yesterday.

20 THE JUROR: Yes, sir.

21 THE COURT: And the bailiff will be right behind you.
22 If you can get his attention or get my attention, we'll be
23 glad to take breaks if you need to do that.

24 THE JUROR: Okay.

25 THE COURT: Do you understand?

1 THE JUROR: Yes, sir.

2 THE COURT: Okay. Anything you want to tell me about
3 it other than that?

4 THE JUROR: No, sir.

5 THE COURT: All right. Now I have to give the
6 attorneys the opportunity to ask -- propose any questions.

7 State wish to ask any questions of the juror?

8 SOLICITOR MABBS: No, Your Honor.

9 THE COURT: Defense wish to ask any questions of the
10 juror?

11 MR. SHEALY: No, Your Honor.

12 THE COURT: All right. I'll find that you're
13 capable -- you're able to proceed. I'm gonna ask you to
14 step back into the jury room. We'll be bringing you back
15 shortly.

16 THE JUROR: Okay.

17 THE COURT: Thank you, ma'am.

18 THE JUROR: Thank you.

19 (WHEREUPON, the following takes place outside the
20 presence of the juror.)

21 THE COURT: All right. State ready to proceed with the
22 trial?

23 SOLICITOR GHENT: Yes, sir.

24 SOLICITOR MABBS: Yes, Your Honor.

25 THE COURT: Defense ready to proceed?

1 MR. SHEALY: Yes, sir.

2 THE COURT: I'm gonna find that the juror is capable of
3 proceeding and that she has made the decision to do so of
4 her own free will. She appears to me to be able to
5 appropriately answer my questions. So I find that she is
6 capable of completing her jury duty in this particular case.

7 All right. We're gonna take just a short break, about
8 five minutes. That will give everybody a chance to stretch
9 their legs and then we'll be starting the trial of the case.

10 So Court's in recess for about five minutes and I'm
11 gonna stay on the bench.

12 (WHEREUPON, a short recess was taken at this time.)

13 THE COURT: State ready to proceed?

14 SOLICITOR GHENT: State's ready, Your Honor.

15 THE COURT: Defense ready to proceed?

16 MR. SHEALY: Yes, Your Honor.

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

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect that
21 the jury has returned to the courtroom.

22 During our, our absence from the courtroom, I believe
23 one of our jurors had -- came down with the flu and has a
24 doctor's excuse. So I have removed that juror from the
25 panel.

1 Did you get that number?

2 THE CLERK: No, sir.

3 THE COURT: Do you have the number of the one that was
4 excused, sir?

5 THE BAILIFF: Number 13.

6 THE COURT: Number 13. Thank you very much.

7 Now, that means that Mrs. Clowney, Number 28, you're
8 now on the jury panel as a member of the jury. So you're no
9 longer the alternate.

10 THE JUROR: Okay.

11 THE COURT: So do you understand that, ma'am?

12 THE JUROR: Yes, sir.

13 THE COURT: Okay. Thank you.

14 Now, overnight I gave you some instructions concerning
15 how you were to behave in this case.

16 Has anyone had any difficulty in complying with the
17 instructions that I gave you before you left yesterday, if
18 that's true, please stand.

19 (No response.)

20 THE COURT: All right. It appears that all of you have
21 been able to follow my instructions thus far, and I told
22 you, upon your return to the courtroom, you would be taking
23 an oath concerning your responsibilities in this case.

24 So, at this time, I'm going to ask the clerk to place
25 you under that oath.

1 Madam Clerk.

2 (WHEREUPON, the jury panel was placed under oath at
3 this time.)

4 THE COURT: Now, if any of you failed or refused to
5 take the oath just administered by the clerk, I'd ask that
6 you please stand.

7 (No response.)

8 THE COURT: It appears that all of you have now taken
9 the oath concerning your responsibilities, and before we
10 begin the trial of the case I want to go over some matters
11 with you. I do that because it's my belief that, for most
12 of you, this is the first experience that you've had in
13 actually serving on a jury in the trial of a criminal case.
14 Some of you may of been in this position before but I
15 suspect that most of you have not been in this position
16 before.

17 So I want to go over some basic things about juries,
18 how they function, what our duties and responsibilities are
19 here so you'll understand how we're going to proceed in the
20 trial of the case.

21 If you've never been on a jury before in a trial of a
22 case, I would think that most of what you might know or
23 believe about what juries do you would of gathered from
24 television shows you've watched or movies you've seen, maybe
25 books you've read, news reports, things of that nature. And

1 while all of those sources of information are interesting,
2 in the case of television and movies, I hope you realize
3 that those sources of information are intended for your
4 entertainment. For that reason, they take license, quite
5 often, with what goes on in a courtroom. In other words,
6 they change it so it fits the storyline that they're trying
7 to tell you.

8 You know, it's always amazing to me, on television, you
9 can have a crime committed, the case completely tried and
10 finished in the space of an hour and they can still stop
11 about five times for commercials during that period of time.

12 Now that might tell you something about those stories,
13 that they are made up, they're intended to entertain you.
14 They -- they're designed to keep you watching so you'll
15 watch the commercials. You know, that's how the TV folks
16 get paid, by the number of people that watch the
17 commercials. So I hope you realize those things are
18 intended to entertain you.

19 I'm telling you that because I want you to understand
20 that what we're doing here today is intended for anything
21 but your entertainment. What we're engaged in is a
22 fundamental part of our democracy. You know, if you went
23 around the world today and you looked at most of the
24 countries in this world, and you looked at their judicial
25 systems, how they go about trying people for the commission

1 of crimes, you would find that, in most countries in this
2 world, they do not allow citizens to participate in those
3 decisions. Citizens are not called upon to be involved in
4 that process.

5 Generally those trials are handed by, handled by
6 government officials or bureaucrats, people of that nature,
7 and even in some countries the military handles the trials.
8 We're different in our country. We guarantee every citizen
9 the right, if you're accused of a crime, to be tried by a
10 jury of your fellow citizens. That right goes back to a
11 document known as the Magna Carta. It was signed in England
12 in the Year 1215. So that means, last year, that document,
13 that right to a trial by jury, had it's 800th anniversary.

14 So we must believe in that system. It's been going on
15 a long long time. It's one of the longest standing
16 institutions in the world at this point in time.

17 Now, this courtroom is a place of honor and it's
18 dedicated to the preservation of citizen's rights under the
19 Constitution of this State and of the United States, and
20 what we're engaged in here today, again, is not to entertain
21 you but it's an effort to find out what the truth is in this
22 case.

23 Now, if I told you that we were gonna be searching for
24 the truth today and I had asked you how would you expect
25 that to, to go about, I would think that you would tell me

1 that well, if I'm trying to determine out, determine what is
2 true about a situation, then I'd probably want to go slow.
3 I want to gather as much information as I can. Sometimes I
4 might want to go over that information two or three times to
5 be sure we've got it right because; when I'm searching for
6 the truth, I want to be sure that we get the truth accurate
7 and correct.

8 So that's what we're involved in here. We're involved
9 in a search for the truth. This is an effort to see that
10 justice is done between the parties that are in this trial.

11 Now, the parties that are in this trial are the State
12 of South Carolina. That's the prosecution. They have
13 brought a charge against a citizen, the defendant in this
14 case. So those are the parties that are before this Court.

15 Now, those parties are represented by lawyers. The
16 lawyers are here to present their clients' cases to you in
17 that regard and they will -- and I'm sure they'll do an
18 excellent job in doing that but something that citizens
19 generally don't understand about lawyers is that lawyers,
20 first and foremost, are officers of the Court in which they
21 appear.

22 What that means is that, at some point in time, they
23 have come before this Court or some other Court in this
24 State and they were required to take an oath. That oath --
25 part of that oath is that they will assist you in this trial

1 with your search for the truth.

2 For that reason, you can anticipate that they're going
3 to act in a professional, a reasonable, and a reasonable
4 manner in handling their client's cases. I'm gonna remind
5 you too that you just came in front of this Court. You
6 stood up and took an oath. Your oath is to decide this case
7 based upon the law and the evidence presented in the trial.
8 You're expected now to act in a reasonable, a professional,
9 and an ethical manner in the discharge of your duties as
10 jurors in this case.

11 Again, I want to thank you for your willingness to
12 accept that responsibility. I've told you already I think
13 it's the second highest service that any citizen can render
14 to one's government and our system couldn't function if it
15 weren't for people like yourself who are willing to come
16 forward and serve in this capacity. So thank you very much
17 for your presence and your willingness to serve.

18 Now, what I'm telling you now is not intended to be a
19 charge on the law in this case. At the close of the case I
20 will charge you on the law. Again, I'm going to try to
21 explain to you what our jobs are, what the procedures are
22 that we'll follow so you can anticipate some of the things
23 that are going to happen during this trial and be prepared
24 for it, understand why we're doing the things that we're
25 doing.

1 Yesterday I went over with you the indictment in this
2 case. The indictment was the document that informs us of
3 the charge that's before this court. I told you yesterday
4 and I will repeat today the indictment is simply an
5 informational document. It informs us of the charge and the
6 charge in this case is, let me be sure I got that one right,
7 receiving stolen goods valued between 2,000 and \$10,000.
8 I'll go over that indictment with you in more detail later
9 on and you'll be allowed to take it back into the jury room
10 with you and look at it when you do your deliberations.

11 Now, to that indictment, this defendant has pled not
12 guilty, and, under our system of justice, that plea places
13 the burden of proof in this trial solely upon the State.
14 It's the State's obligation now to prove the allegations
15 made in the indictment by proof to you beyond a reasonable
16 doubt.

17 So, at the close of the trial it's going to be your
18 responsibility to make a determination as to whether or not
19 the State has met its burden of proof in this case. Under
20 our system of justice the defendant is presumed to be
21 innocent of that charge. I'll explain that to you in more
22 detail later on at the close of the trial, and, for that
23 reason, the defendant is not required to make -- offer any
24 proof in this case. So the burden of proof in the case is
25 solely upon the State as I've indicated.

1 Now, your purpose, as jurors, is to find and determine
2 the facts in this matter and many times our Courts have said
3 that juries are the sole judges of the facts. So, to that
4 degree, you're considered by the law to be a judge
5 concerning the facts in this matter. So it's your
6 responsibility, at the close of the trial, to find and
7 determine what the facts were in this case. You are to
8 determine those facts from the testimony that you hear from
9 the witness stand, from witnesses sworn to tell the truth
10 who will testify during the trial, and whatever comes into
11 the record of the case through the testimony of those
12 witnesses or whatever comes into the record through
13 agreements by the lawyers that have been made.

14 It's especially important for you to do your duty of
15 determining the facts diligently and conscientiously. I'll
16 tell you that, under our system of justice, ordinarily
17 there's not a means by which an erroneous determination of
18 facts made by a jury can ever be changed. So you need to do
19 your job conscientiously and diligently.

20 The same law that makes you the sole judge of the facts
21 makes me the sole judge of the law. So the law that I give
22 to you at the close of the trial is the only law that you
23 should use in reaching a verdict in the case. It will be
24 your responsibility to take the law exactly as I state it to
25 you and apply that law to the facts as you've decided the

1 facts to be. That should put you in a position to render a
2 fair, a just, and a true verdict between the parties that
3 are before this Court.

4 So if you came into the courtroom with an idea or
5 notion as to what the law is or you have a belief as to what
6 the law ought to be, you should leave those notions outside
7 of the jury room. Again, under your oath, it's your job to
8 take the law as I give it to you and then apply it to the
9 facts as you determine those facts to be.

10 Now, in determining what the facts are in any case, it
11 will be necessary for you to determine the truth or the
12 credibility of the witnesses that you hear. That's what
13 credibility means. It means -- it also means believability.
14 I'll ask you to use your good common sense in deciding what
15 testimony is believable or credible and what testimony is
16 not believable and not credible.

17 I will tell you that every single day of your life you
18 make common sense decisions as to what you choose to believe
19 and what you choose not to believe. Serving on a jury, in
20 that regard, is no different than any other day in your
21 life. You'll be called upon to make common sense decisions
22 as to the credibility and the believability of what you
23 hear.

24 As the sole judges of the facts, you have the right to
25 believe all of, part of, or none of what any witness might

1 testify to. You can believe one witness against all the
2 others. You have the right, as the sole judges of the
3 facts, to believe all the others against one. So you're the
4 sole judges of the credibility, believability, the effect,
5 and the weight that you give to the testimony you hear.

6 Excuse me just a second.

7 (Pause.)

8 THE COURT: For that reason I'm going to ask you to pay
9 close attention to what's being said. Try not to let your
10 thoughts wonder. Be in a position, at the close of the
11 trial, to talk over with your fellow jurors the testimony
12 that you've heard and what you believe and what you don't
13 believe and the reasons why you feel that way.

14 So try, again, to not let your thoughts wonder. Pay
15 attention to what's being said. Be in a position to have
16 those discussions with your fellow jurors once the case is
17 presented to you for your decision. Again, I think it's
18 important you keep an open mind until such time as you've
19 heard all the arguments, all the evidence, and I've charged
20 you on the law.

21 So I'm going to tell you, every time you walk out that
22 door, not to discuss the case at all among yourselves until
23 such time as I've asked you to begin your deliberations, and
24 should you believe any of your fellow jurors violate that
25 instruction, please let me know. I'll be glad to take care

1 of that situation if I need to but I hope I don't have to do
2 that. So please don't talk about the case until I ask you
3 to begin to do that at the close of the trial.

4 Now, the attorneys are going to be allowed to talk to
5 you twice during the trial. Once, at the beginning of the
6 trial, they can talk directly to you in their opening
7 statements. They'll tell you what the case is about,
8 perhaps what they intend to prove, and then, at the close of
9 the trial, once all the evidence has been presented,
10 they'll, again, have an opportunity to speak directly to you
11 and they'll sum up the case or give their closing arguments.

12 At that time they'll urge you to draw certain
13 inferences from the testimony you've heard. They'll urge
14 you to make certain decisions about the believability or the
15 credibility of the testimony you've heard. But I will tell
16 you now that statements made by lawyers, at anytime during a
17 trial, those statements are not evidence in the case and
18 you're to decide the case based on the evidence in the case.
19 The only evidence in any case is the testimony of the
20 witnesses who've been sworn to tell the truth who testify
21 during the trial. So you can, of course, use the lawyer's
22 statements to consider that evidence but the case must be
23 decided solely upon the evidence and the law presented
24 during the case.

25 Also, from time to time, there may be a disagreement

1 between the attorneys, and perhaps even with the Court, as
2 to whether or not certain evidence is admissible or not
3 admissible or whether or not they have the right to ask a
4 certain question and the way that they ask it. I'll tell
5 you that all of those things are governed by rules in our
6 Court system that have grown up over hundreds of years.

7 So if there becomes a situation where there's a
8 discussion about certain evidence or whether it's admissible
9 or not, and it's my belief that that discussion is going to
10 go into a discussion about something that's not admissible
11 and should not be put before you according to those rules,
12 I'll ask you to step outside the courtroom while I discuss
13 that with the lawyers. Don't think that because I've asked
14 you to do that that I'm trying to influence your decision on
15 the facts. You see, it's my job, I'm considered the
16 gatekeeper concerning evidence that comes in and does not
17 come in. So it's just me doing my job to see to it that you
18 decide the case based on proper evidence that's been
19 properly admitted under the rules that govern the admission
20 of that evidence.

21 So while you're outside we'll have that discussion.
22 I'll call you back into the courtroom. At that time I'll
23 announce my decision and we'll proceed with the trial of the
24 case.

25 While I'm talking about that, please don't take from

1 anything that I should say or do in the discharge of my
2 duties as the presiding officer of the trial to indicate to
3 you, in any manner whatsoever, that I have an opinion, one
4 way or the other, as to how you should determine the facts
5 in this case. The law does not allow a judge an opinion
6 concerning the facts. I have no opinion as to how you
7 should determine the facts in this case. That job is yours
8 alone and you are the sole judges of the facts.

9 So, again, I'm gonna make some rulings. I'm going to
10 be instructing you on the law but don't take from what I say
11 to indicate, in anyway, that I have an opinion as to how you
12 determine the facts in this case. That's your job and your
13 job alone.

14 Now, I do not appoint a foreperson of the jury until I
15 charge you on the law. That's at the end of the trial. I
16 know, on television, they have a foreperson at the beginning
17 of the trial. I do that for a reason. It gives me a chance
18 to emphasize something to you.

19 That is that, at the close of the trial, your verdict
20 will have to be unanimous. The jury can't act until all 12
21 of you agree on what the verdict ought to be and that means
22 that there's no one juror on the jury more important than
23 any other juror. I don't want you to think that, because
24 I've picked somebody to be the foreperson, that I think that
25 person's the smartest or the brightest or the best juror

1 from your group, and what you'll do is just not pay
2 attention and I'll go along with whatever the foreperson
3 says. I want each of you to have the belief, and you should
4 have the belief, that I may pick you as the foreperson.

5 As the foreperson, it would be your job to lead the
6 discussions concerning the case with your fellow jurors. So
7 I want you to prepare as if you're going to be the
8 foreperson in this case and one of you is but I'll make that
9 selection at the close of the trial and appoint that person
10 at that time.

11 Now, in the mean time, if you have any problems or
12 issues with your jury service, let the bailiffs know.
13 They'll report that directly to me and I'll handle that
14 directly with you. You don't have to go through a
15 foreperson to report such a problem. We can deal with that
16 directly if you have any problems in the mean time.

17 But don't think I've forgotten that fact. I'll appoint
18 that person when the time comes, as far as I'm concerned,
19 and that's at the close of the trial.

20 I want to be sure I haven't violated anyone's rights in
21 what I've told you thus far.

22 Does the State have an objection to my opening
23 comments?

24 SOLICITOR GHENT: None from the State, Your Honor.

25 THE COURT: Any from the defense?

1 MR. SHEALY: No, Your Honor.

2 THE COURT: All right. Now, ladies and gentlemen, I
3 told you that the State has the only burden of proof in the
4 trial. For that reason they get to go first in the opening
5 statements followed by the defense. Then the State gets to
6 go first in presenting its witnesses followed by any
7 witnesses the defense chooses to call.

8 Once all of evidence is in, all the witnesses have
9 testified, then the lawyers will be given that chance to,
10 again, argue to you, sum up the case, and then after that's
11 completed I'll charge you on the law. Once I've charged you
12 on the law I will turn the case over to you for your
13 deliberations and your verdict.

14 So those are the steps we're going to go through as we
15 proceed through the trial. So we're gonna begin with
16 opening statements. The State will be going first.

17 You may proceed.

18 SOLICITOR GHENT: May it please the Court?

19 THE COURT: Yes, sir, Mr. Ghent.

20 SOLICITOR GHENT: Mr. Shealy.

21 Ladies and gentlemen of the jury, again, my name is
22 Russell Ghent and along with Allison Mabbs we will be the
23 prosecutors in this case that you will decide.

24 Two words as we begin. Thank you. Thank you for doing
25 your duty in coming here however voluntary or involuntary

1 that may of felt in coming here to serve.

2 The simple fact is that you are critical. You are
3 essential to what we ask that this system produce. Thank
4 you for honoring your duty by answering questions, which I'm
5 sure, at times, felt intrusive. It's, again, part of the
6 system to find 12 people who can work together and, finally,
7 thank you for now being sworn to duly and fairly try this
8 case. Again, that is a part of your duty to which you have
9 now sworn that you will fulfill it.

10 First of all, I apologize if my energy level's a little
11 bit low. I, like so many people, are getting over one of
12 these things that's been going around. Also, I was in an
13 accident years ago and I wobble. So excuse that.

14 I would like to begin by pointing out to you that today
15 it seems that so many people, particularly lately, have had
16 so much to say about our government and it's not positive.
17 It's negative. A lot of people have asked what is it with
18 our government.

19 why can't the government get it right?

20 why can't the government do its job?

21 why can't people in the government listen to one
22 another, work together, and just get things done.

23 Well, ladies and gentlemen, welcome to the government
24 because you have now taken an oath, you've been
25 elected/selected to serve, and you are now sworn to serve as

1 judges of the facts.

2 what does that mean?

3 You have taken an oath to determine what happened in
4 this case. That's what we mean when we say that you are
5 asked to well and truly try the case.

6 The judge, Judge Couch, has already clarified they're
7 two kinds of judges in a case. There's a judge of the law,
8 Judge Couch. He has been a lawyer for years. He has been
9 to Law School. He is knowledgeable in the law. He gives
10 you the law. You take the law from him and you apply the
11 law to the facts.

12 You, ladies and gentlemen, as judges of the facts,
13 basically you may ask well, what does that mean?

14 It means that you determine what happened. You listen
15 to the witnesses. Judge Couch has already explained you can
16 listen to them and determine that all of what they say is
17 true. You can determine whether some of what they say is
18 true or you can determine whether none of what they say is
19 true. That is the task given to you.

20 You might ask well, what sort of special talents do I
21 have?

22 You have the talents of common sense, your life
23 experiences, 12 sets of eyes and ears, 12 good minds who can
24 work together, show the mutual respect that it seems so
25 often is lacking when people in government do their job, and

1 through the respect for one another, go over the evidence
2 presented to you in this courtroom, no where else, in this
3 courtroom, and apply it to the law that Judge Couch will
4 explain to you.

5 Now, it is your decision to make but the judge is
6 already said it has to be unanimous. You came here as 12
7 separate individuals but when you render a decision it has
8 to be as one. You have to do your duty together as one to
9 make a decision as to guilt or innocence and you do that by
10 going over the evidence presented and making your decision
11 as to whether or not the State has proven guilt to you
12 beyond a reasonable doubt.

13 Let me, let me say this right now so that there can be
14 no misunderstanding. The State has the burden of proof to
15 prove guilt beyond a reasonable doubt, beyond a doubt for
16 which a person seeking the truth can basically find a doubt
17 in the evidence based on what has been in this courtroom,
18 what you have heard from witnesses, from testimony, but it
19 is the State's burden alone and, rest assured, we are
20 confident we will prove the defendant's guilt beyond a
21 reasonable doubt.

22 When we address Judge Couch we address him as Your
23 Honor and he has already told you that this courtroom is a
24 place of honor and what you do is a thing of great honor.
25 It is a service that is extremely important to all of us in

1 this country and, today, in this courtroom.

2 I don't think this is gonna be a trial that's gonna
3 take too very long. I don't think it's gonna test your
4 concentration. I think what we will present will persuade
5 you, beyond any reasonable doubt, that this defendant is
6 guilty of receiving and possessing stolen goods as he is
7 charged.

8 I would tell you that, when we address Judge Couch, we
9 address him as Your Honor. That is not pandering or sucking
10 up to the judge. As he said, this is a place of honor and
11 it is our hope, our belief, our wish, our prayer that the
12 man who gives us the law is basically someone who is, in
13 doing so, synonymous with the concept of honor.

14 Whenever it comes to speaking of attorneys, Judge Couch
15 is an attorney too, but he is now the judge, something
16 special. The attorneys are addressed as counsel or
17 attorneys or whatever. They don't have a special title in
18 here.

19 You may feel that you don't have a special title
20 because we address you as jurors, and as His Honor has
21 pointed out, this is the only chance we will get to talk to
22 you. But while you don't have a special title, what you do
23 indeed has a special name, verdict. It comes from the Latin
24 veredicto, which means to speak the truth, and that should
25 be something that is very important to you in this

1 courtroom.

2 People can make mistakes. People can have minor
3 inaccuracies here and there. But when it comes down to it,
4 you know the truth. You can tell the truth based on what
5 you hear in this courtroom today.

6 I will simply tell you that, in this case, the issue
7 before you is for the State to prove, beyond a reasonable
8 doubt, that, on the date in question, this defendant
9 possessed a stolen vehicle, knowing that it was stolen and I
10 will tell you that the facts and circumstances surrounding
11 this defendant's behavior will establish, beyond any
12 question, that he is guilty as he is charged.

13 I ask for your attention and your time and that's all
14 we can ask for.

15 Thank you.

16 THE COURT: Mr. Shealy, for the defendant.

17 MR. SHEALY: Thank you, judge.

18 Thank you, Mr. Ghent.

19 THE COURT: You may proceed.

20 MR. SHEALY: May it please the Court?

21 THE COURT: Yes, sir.

22 MR. SHEALY: Let me join Mr. Ghent in welcoming you to
23 the government. When y'all get your mileage check you'll
24 see you're really working for the government.

25 What the State has to prove in this case is not simply

1 that he -- that my client, and they got to prove it's my
2 client, was in possession of stolen goods. They have to
3 prove that those stolen goods, he should have known or did
4 know that those goods were stolen because, in the United
5 States, we don't hold people to be guilty. We don't convict
6 them over things if they have no idea. We have a, a theory
7 in the law called bona fide purchaser for values. If you
8 just have something, you didn't know it was stolen, you
9 can't be held accountable for that.

10 So, for instance, that's why pawn shops, owners of pawn
11 shops aren't always getting arrested because there's a lot
12 of obtaining property by false pretenses where people go in
13 there, sell things that are stolen, but you can't hold that
14 pawn shop owner to be guilty of that. Even though he had
15 possession of it, he didn't do -- he didn't commit a crime.
16 He didn't know it was stolen. So you can't hold him to be
17 guilty of receiving stolen goods in that case. At the end
18 of this trial, quite frankly, I don't see how you could
19 possibly find that my client is guilty.

20 Now, we don't have any burdens. The defense, we have
21 no burden. We -- I could go and just lay my head down and
22 go to sleep, do absolutely nothing, and the State would
23 still have to prove beyond a reasonable doubt. So you could
24 still find my client not guilty if I were to do that. I'm
25 not going to do that, but you might prefer I did, but I'm

1 not, and even with the State's witnesses, they just can't
2 prove it.

3 The way that I define or the way that it seems to be
4 defined in the law, a reasonable doubt is the doubt which
5 would cause a reasonable person to hesitate to act.

6 Okay. That is not beyond any doubt at all.

7 Now, Mr. Ghent said that they could prove it without
8 question but they don't have to prove it to that standard.
9 They have to prove it to the point or beyond the point where
10 a reasonable person would hesitate to act.

11 Okay. So even if they prove it to you and you think
12 yeah, he probably did it, if you hesitate there, you got to
13 find him not guilty. It's just like in baseball. Tie goes
14 to the runner.

15 Okay. Same thing.

16 So a reasonable doubt, again, is that doubt that would
17 cause a reasonable person, and we assume y'all are
18 reasonable people, to hesitate to act. Not simply to act.

19 The example I've stolen from my father, and we'll go
20 over this again, he was a criminal defense attorney for a
21 very long time, is whenever you go to Food Lion, if you've
22 ever gone to the meat counter at Food Lion and you see the
23 meat that is kind of off to one side, and it's got reduced
24 for quick sale label on it, and basically you look, you look
25 at it, you realize that that probably means it's a little

1 bit past its sell by date or it's right at its sell by date
2 and you look at it and you think it doesn't look great but
3 it's a really good price.

4 That's a hesitation to act. You might put it in your
5 buggy, you might not. So you may buy it. You may act. You
6 might take it and take it to the front and purchase it but
7 you still had a reasonable doubt.

8 Okay. So, again, even if you buy the State's case, if
9 you hesitate to buy the State's case, you got to find my
10 client not guilty. Quite frankly, I think there's going to
11 be a lot of hesitation. I don't think that they can prove
12 it quite frankly.

13 Now, you're gonna hear, again, a lot of testimony from
14 the State's witnesses. We would ask that you look at that,
15 any reasons that they have to shade. Okay. Everybody has
16 reasons to shade things.

17 Police officers who make arrests, they would like to
18 get convictions. That's why they make arrests.

19 People who are the alleged victims in crimes want to
20 see somebody punished. We've all seen that.

21 Okay. So they have reason to shade towards a person
22 who is real, a person they can put their hands on. In this
23 case, in every case when we're in Court, the person they put
24 their hands on is my client. So be aware of that as you
25 listen to testimony.

1 Finally, I will tell you that these -- this is a
2 receiving stolen goods case. Okay. So you're not gonna
3 hear about any really terrible terrible things. So I want
4 you to relax and listen to the evidence. I'm not saying
5 this isn't important but I don't want y'all to be concerned
6 that you're gonna see any blood or hear any words you don't
7 want to hear about unless this testimony goes way off where
8 I don't know where it's going. Just relax and listen to --
9 with the testimony with an open mind.

10 Thank you.

11 THE COURT: State may call its first witness.

12 SOLICITOR MABBS: Thank you, Your Honor.

13 The State would call Michael Brewton.

14 THE COURT: Come forward and be sworn please, sir.

15 SOLICITOR MABBS: And, Your Honor, before I begin my
16 questioning may I just have some exhibits premarked.

17 THE COURT: All right. You may do so.

18 Sir, come on around and be sworn please right here.
19 She'll take care of you.

20 MICHAEL BREWTON, being first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please, sir.

23 (Witness complies.)

24 (WHEREUPON, seven photographs were marked as State's
25 Exhibit Nos. 2 through 8 for identification purposes only at

Michael Brewton - Direct examination
by Solicitor Mabbs

1 this time.)

2 DIRECT EXAMINATION

3 BY SOLICITOR MABBS:

4 Q Mr. Brewton, can you please introduce yourself to the
5 jury?

6 A My name is, my name is Michael Brewton.

7 Q And where do you live, Mr. Brewton?

8 A I was staying up in Wellford at the time.

9 Q At the time you---

10 A Of the incident, yes, ma'am.

11 Q At the time -- okay. And do you remember when that
12 was?

13 A Maybe three, six months ago. About three -- about six
14 months ago.

15 Q About May last year?

16 A Yes.

17 Q And where do you work?

18 A International Wire. IGW in Inman.

19 Q And what do you do there?

20 A I program robots and machines to produce wire that go
21 in airplanes and cockpits of airplanes and everything else.

22 Q Okay. Do you remember the incident that happened on
23 May 23rd of last year?

24 A Yes, I do.

25 Q And just to start off, where were you when the incident

Michael Brewton - Direct examination
by Solicitor Mabbs

1 occurred?

2 A I was going to Li'L Cricket to pick up some items.

3 Q Which Li'L Cricket?

4 A On Nazareth Church Road. I think that's the name of
5 it.

6 Q Is that here---

7 A Cause it's two Nazareths. It's on Wellford, Wellford
8 area.

9 Q Okay. In Spartanburg County?

10 A Yes, ma'am.

11 Q About what time were you there?

12 A The time, it was dark. I wasn't sure what time it was
13 but I do know it was dark.

14 Q Dark in the morning or in the evening?

15 A Evening.

16 Q And why were you at Li'L Cricket?

17 A I was running to get some items for the house. You
18 know, I normally stop at the store most -- almost every
19 other day, you know, cause it's close by the house where I
20 stay at.

21 Q Okay. About how long would you say you were at the
22 Li'L Cricket?

23 A Maybe three, four minutes --

24 Q And---

25 A -- at the time.

Michael Brewton - Direct examination
by Solicitor Mabbs

1 Q -- what happened while you were there?

2 A I went into the store and purchased some items, and as
3 I came to the counter, and I was so close cause I parked my
4 car directly in front of the front door cause I always do,
5 and I noticed someone jumping in my car. So I run out the
6 store. I pushed the door open. I'm like man, somebody
7 getting in my car. So I'm looking at them like I'm this
8 close to this lady here. I'm this closes to the guy jumping
9 in my car.

10 So I could see him automatically. So I start running
11 at my car. So, you know, you can put my car in drive or
12 reverse and the doors automatically lock. So he had it in
13 reverse. So he had to back up cause I was parked in front
14 of the store and he just spun out and didn't care who he hit
15 or no life or nothing. Just spun out.

16 Q All right. And when you say he took the car, did he
17 have permission to use that car?

18 A No. No, ma'am, he didn't.

19 Q And what kind of car was it?

20 A A Grand Marquis, 2001.

21 Q Do you know what color?

22 A More like a grayish green like color.

23 Q When did you purchase the car?

24 A Purchased the car maybe nine years ago.

25 Q Okay.

Michael Brewton - Direct examination
by Solicitor Mabbs

1 A Nine years ago.

2 Q And do you remember how much you paid for it at the
3 time?

4 A I think it was around about 10,000.

5 Q Okay. And what happened after this person drove away
6 in your car?

7 A Well, he drove off. He was just looking at me like he
8 was scared like I was gonna get in the car and he just spun
9 out. So what I did, the woman, the clerk of the store, she
10 say you can call the cops on the phone. I had my cell
11 phone. I was trying to call my wife, call my wife. So they
12 end up calling the cops in the store for me cause they
13 actually seen it too.

14 Q Okay.

15 A So called the cops and everything.

16 Q And so, when the police arrived, did you follow -- file
17 a report?

18 A My wife actually did.

19 Q And when was the next time you saw your car?

20 A Next time I seen my car I think it was Sunday.

21 Q Okay.

22 A That, that Sunday morning I was on my way to take my
23 moms out to eat at the time on that Sunday.

24 Q And where did you happen to see the car then?

25 A I seen it -- actually my wife spotted it. She was in

Michael Brewton - Direct examination
by Solicitor Mabbs

1 the car with me and she say your car right there behind the
2 house right there and I stopped and I backed up. I say
3 yeah, that is my car. I say well, let me check the tag
4 first. So I remember my tag start ICU and I walked up on
5 the car and I say that's my car right there.

6 Q And---

7 A So, my wife, we called the cops then.

8 Q Okay. And where, where was this house located?

9 A On the main road. I think that's Nazareth Church, the
10 same road the Li'L Cricket on. Maybe it's houses down the
11 road.

12 Q Okay. About how far mileage wise would you estimate?

13 A I'd say maybe a half a mile, a quarter mile or a half a
14 mile. Not even far from the store.

15 Q Where---

16 A From where the incident happened.

17 Q And where, in relation to -- was it a house or a
18 trailer?

19 A It was a house.

20 Q Okay. And where, in relation to the house, was the car
21 parked when y'all saw it?

22 A The car was parked in the backyard but the, the tail of
23 the car was sticking out so you can see it from the road as
24 you was driving, you know.

25 SOLICITOR MABBS: Okay. Your Honor, if I may, I'm

Michael Brewton - Direct examination
by Solicitor Mabbs

1 showing opposing counsel what's been premarked as Exhibits 2
2 through 8.

3 (Pause.)

4 SOLICITOR MABBS: Permission to approach, Your Honor?

5 MR. SHEALY: I've got no objection.

6 THE COURT: All right. You wish to have those
7 introduced?

8 SOLICITOR MABBS: Yes, I do, Your Honor.

9 THE COURT: All right. Without objection then we'll go
10 ahead and declare -- what exhibit numbers are they?

11 SOLICITOR MABBS: Exhibits 2 through 8, Your Honor.

12 THE COURT: All right. They'll be admitted into the
13 record as Exhibits 2 through 8.

14 SOLICITOR MABBS: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit Nos. 2 through 8 were
16 received into evidence at this time.)

17 THE COURT: You may proceed.

18 Q Mr. Brewton, do you recognize what I've just handed
19 you?

20 A Yes, ma'am.

21 Q What are those photographs of?

22 A Pictures of my car.

23 Q All right. And where were those photographs taken?

24 A Right behind the house where the car was located.

25 Q Okay. And when, when y'all pulled in the driveway and

Michael Brewton - Direct examination
by Solicitor Mabbs

1 saw that it was your car, what did you do at that point?

2 A I went to knock on the door.

3 Q And who did you see?

4 A A female came to the door.

5 Q Okay. And what, what happened at that point?

6 A I asked her the question. I say who car that is. You
7 know, I was playing asking her who car that was. She said I
8 don't know who car that is. So another female stepped right
9 behind her and she say yeah, we don't know who car that is.
10 I say you sure you don't know who car that is cause I said
11 that's my car right there. So I walked around the house
12 make sure ain't nobody run out.

13 So I seen somebody peeping through the blinds. So I
14 was like somebody else in that house. I said that's that
15 guy in there. So we called the cops. We didn't let nobody
16 come out. We watched the house and the cops pulled up.
17 They went in the house and got him out of the attic.

18 MR. SHEALY: Objection, Your Honor. I don't think he
19 has personal knowledge of what happened inside the trailer.

20 THE COURT: Well, I'll, I'll ask you to lay a
21 foundation for his knowledge as to what might of gone on --

22 SOLICITOR MABBS: Of course, Your Honor.

23 THE COURT: -- inside the residence.

24 SOLICITOR MABBS: Yes.

25 THE COURT: So I'll stop that answer and you can ask

Michael Brewton - Direct examination
by Solicitor Mabbs

1 another question.

2 SOLICITOR MABBS: Yes.

3 Mr. Brewton, just to break it up a little bit, first
4 you, you mentioned that you saw someone, besides the two
5 women, you saw somebody else inside the house?

6 A Yes.

7 Q Were you able to see -- what could you see about that
8 other person?

9 A I couldn't actually see. I just seen eyes --

10 Q Okay.

11 A -- you know, through blinds.

12 Q And after you called the police, what happened at that
13 point?

14 A I sitting there and waited till them to come -- to the
15 cops come and they pulled up.

16 Q Okay. Were you still present at the house when the
17 police arrived?

18 A Yes. Yes, ma'am, I was.

19 Q And were you -- at what point were you able to see who
20 the other occupant in the house was?

21 A When the cops got there.

22 Q Okay. And were you -- where were you when the cops, I
23 guess, went inside the house?

24 A I was standing like where the front door where I can
25 see, you know.

Michael Brewton - Direct examination
by Solicitor Mabbs

1 Q Okay. And who did the cops eventually bring out of the
2 house while you were still present?

3 A They brought a female out and a -- the guy there, they
4 brought him out in handcuffs.

5 Q All right. And when you gestured, who are you
6 gesturing?

7 A Timothy.

8 Q Okay. The defendant?

9 A Yes, ma'am.

10 Q Okay. And after the police brought them out of the
11 house, what happened with you and your vehicle?

12 A They told me not to touch my car while they was gonna
13 dust it for fingerprints and stuff and they start pulling
14 items out of the car.

15 Q Okay.

16 A You know, items that I know no knowledge of, you know.

17 Q Okay. And while you were at the scene, when you left,
18 did they give you your vehicle back?

19 A I got it towed because they wouldn't give me the keys
20 back to my car. So I had to end up, you know, getting some
21 more keys made for the car. So, you know had my door key
22 and everything on it. So --.

23 Q Okay. And, Mr. Brewton, did you ever give Mr. Johnson
24 permission to use your vehicle?

25 A Oh, no, ma'am, I didn't.

Michael Brewton - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Okay. All right. Beg the Court's
2 indulgence, Your Honor.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 Q And, Mr. Brewton, I believe you stated earlier that the
6 Li'L Cricket was in Spartanburg County.

7 The residence where your vehicle was recovered, was
8 that also in Spartanburg County?

9 A Yes, ma'am.

10 SOLICITOR MABBS: Beg the Court's indulgence one moment
11 once more, Your Honor.

12 (Pause.)

13 SOLICITOR MABBS: Nothing further at this time, Your
14 Honor.

15 THE COURT: You may cross-examine, Mr. Shealy.

16 MR. SHEALY: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. SHEALY:

20 Q Okay. Mr. Brewton, did you -- you left your car
21 running at the Li'L Cricket?

22 Is that what you testified to?

23 A Yes. Yes.

24 Q Okay. So the keys would of been in the vehicle
25 whenever it was taken?

Michael Brewton - Cross-examination
by Mr. Shealy

1 A Correct. In and out. In and out.

2 Q Okay. And you said you bought this vehicle in 2006,
3 somewhere around there?

4 A Yeah, somewhere around there.

5 Q All right. And you -- what -- I guess your car got
6 taken in May of 2015, right?

7 A Yes.

8 Q So you had this vehicle since from 2006 to 2015?

9 A Pretty around that much time, yeah. Correct.

10 Q Okay. What do you reckon it was worth in 2016 or 2015?

11 A When I bought the car it had 34,000 miles on it and I
12 actually took the car back and forth to work, you know.

13 Q Sure.

14 A That's all I pretty much did in the car. So it didn't
15 really have no wear and tear on it. Nothing like that. So
16 --.

17 MR. SHEALY: Okay. If I may approach and borrow
18 those---

19 THE COURT: You may.

20 MR. SHEALY: ---pictures.

21 Q That's the one I'm looking for. I'm gonna show you
22 state's Exhibit No. 5.

23 What's going on with that front headlight?

24 A It was busted out.

25 MR. SHEALY: Okay. Okay. That's all I have of this

Michael Brewton - Redirect examination
by Solicitor Mabbs

1 witness.

2 THE COURT: Redirect from the State.

3 REDIRECT EXAMINATION

4 BY SOLICITOR MABBS:

5 Q Mr. Brewton, I believe you still have Exhibit 5 up
6 there with you about the headlight.

7 A (Witness nods affirmatively.)

8 Q When you were able to recover your car, was there any
9 additional damage besides that headlight?

10 A Yeah, it was a lot of stuff. Even the car like wasn't
11 even driving the same, you know. It was pretty much a lot
12 that was wrong with the car that, you know, I could tell.
13 As far as I had music in the car and the fuses was switched
14 over and all type of stuff. It was totally different from
15 when I had it, you know.

16 Q So those changes that you mentioned about the music and
17 the fuses---

18 A Headlight.

19 Q ---that occurred---

20 A Pretty much---

21 Q ---after the car had been stolen?

22 A Yeah, door scratches, the panels, everything. The
23 interior was like oh, messed up.

24 Q Okay. And you purchased the car for \$10,000 in 2006.
25 What would you approximate the value back in, I guess,

Michael Brewton - Redirect examination
by Solicitor Mabbs

1 in---

2 A To now?

3 Q Well, when it was stolen.

4 A Can't really put a price on something that you paid
5 for, worked hard for. So I wouldn't put a price on that.
6 Something like pictures, you can't put a price on that.

7 Q And as far as the damage to the car, did you have to
8 file any insurance claims?

9 A Oh, yes, ma'am, I did.

10 Q And what did the insurance company do with the car?

11 A They end up total lossing the car because it was so
12 much damage to the car to it was totaled.

13 Q And how much did the insurance company pay you, pay
14 off?

15 A I think maybe around 35 -- 3,500, around in that range.

16 SOLICITOR MABBS: No further questions, Your Honor.

17 Oh, Your Honor, permission to publish the exhibits to
18 the jury.

19 THE COURT: Any objection?

20 MR. SHEALY: I've got no objection to that and I don't
21 have any further questions.

22 THE COURT: All right. It will be made part of the
23 record.

24 You may -- when -- I'm gonna allow her to push -- pass
25 that around among you. We're gonna continue with witnesses.

1 so as you look at those, try not to let it keep you from
2 paying attention to what's being said on the witness stand.

3 Sir, you can step down.

4 THE WITNESS: All right.

5 THE COURT: Thank you very much.

6 Do you wish to excuse this witness?

7 SOLICITOR MABBS: Yes, Your Honor.

8 THE COURT: Any objection?

9 MR. SHEALY: No, Your Honor.

10 THE COURT: Sir, you're free to go at this time if
11 you'd like. You're also free to stay. It will be your
12 choice.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you, sir.

16 THE COURT: You may call your next witness.

17 SOLICITOR MABBS: Thank you, Your Honor.

18 The State would call Tiffany Brewton.

19 THE COURT: Come forward, ma'am.

20 TIFFANY BREWTON, being first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please, ma'am. Once you're
23 seated, state your name for me.

24 THE WITNESS: Tiffany Brewton.

25 THE COURT: Thank you.

Tiffany Brewton - Direct examination
by Solicitor Mabbs

1 Ms. Mabbs, your witness.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY SOLICITOR MABBS:

5 Q Mrs. Brewton, where were you living at the time of --
6 back in May?

7 A We was living at 14 Ford Drive. It's a Brookside
8 village community.

9 Q And where, where were you working?

10 A I was working at Spartanburg Regional then.

11 Q Are you still there?

12 A No.

13 Q Where are you working now?

14 A I currently work at Greenville Memorial.

15 Q Okay. And what do you do at Greenville?

16 A I am a patient account representative.

17 Q Mrs. Brewton, do you remember the incidents that
18 happened back in May of last year?

19 A I do.

20 Q And what -- how, how did you find out about the
21 incident?

22 A My husband called frantically on the phone. He called
23 me.

24 Q And what, what had happened?

25 A He just basically told me---

Tiffany Brewton - Direct examination
by Solicitor Mabbs

1 MR. SHEALY: Objection, Your Honor. That's hearsay.

2 THE COURT: I'm gonna ask you to lay a foundation for
3 her personal knowledge of that.

4 SOLICITOR MABBS: Yes, Your Honor.

5 Q Mrs. Brewton, are you aware of where your husband was
6 that night?

7 A I do.

8 Q And where was he?

9 A At the Li'L Cricket.

10 Q And how was he able to get home from Li'L Cricket?

11 A I had to go get him.

12 Q And why did you have to go get him?

13 A Someone had stolen his car.

14 Q And what did you do when you found out that the car had
15 been taken?

16 A I called the police.

17 Q And what were you able to tell the police officers?

18 A That he was at the Li'L Cricket and someone stolen his
19 car.

20 Q Okay. And were you with your husband, Mr. Brewton,
21 the -- I guess that Sunday?

22 A I was.

23 Q And can you tell us what, what you saw on that Sunday?

24 A We were driving by. I was looking to the right and I
25 noticed that a car was sticking out behind the house.

Tiffany Brewton - Direct examination
by Solicitor Mabbs

1 Q And, and just to back -- when you say you were driving,
2 where were you?

3 A We was driving on Nazareth Church Road.

4 Q Okay. And continue please.

5 A We was driving by and I noticed that a car was sticking
6 out the back and I told my husband that looked like your car
7 behind the -- this house. So we turned around and we went
8 in the driveway and looked at his tag number and, you know,
9 we noticed that it was his car.

10 Q Okay. And what did y'all do once you realized that it
11 was the car that had been stolen?

12 A I immediately just called the police again.

13 Q Okay. And what did your husband do while you were
14 calling the police?

15 A He went to the door and knocked on the door and
16 questioned the people that was there.

17 Q Were you still there when the police arrived?

18 A I was.

19 Q And how -- about how long were you there?

20 A It took the police officers probably about ten minutes
21 to get there.

22 Q And once they arrived, how, how much longer were you at
23 the house after that?

24 A We was there probably about 40 minutes in total.

25 Q And when your husband approached the door, who did you

Tiffany Brewton - Direct examination
by Solicitor Mabbs

1 see I guess come to the door at that point?

2 A Two females came to the door at that time.

3 Q And while you were there with the police, did you
4 happen to see who came out of the house?

5 A Yes.

6 Q And who was that?

7 A The police officers brought the two women out and the
8 defendant.

9 Q Did they bring anybody else outside the house?

10 A No, ma'am.

11 Q And did you happen to see anyone in the window when you
12 arrived at the house?

13 A I personally did see the people in the window when we
14 came to the house.

15 Q And when you say the people, who are you referring to?

16 A I actually seen the two women and the guy look out the
17 window of the house when we pulled in the driveway.

18 Q And when you say the guy, who are you referring to?

19 A The defendant.

20 Q Do you see the defendant in the courtroom?

21 A Yes.

22 Q Can you please point him out to the jury?

23 A Right there.

24 Q State an article of clothing that he's wearing.

25 A A blue shirt.

Tiffany Brewton - Direct examination
by Solicitor Mabbs

1 Q And after the police brought the people out the
2 house -- were you ever able to recover the keys to the
3 vehicle?

4 A No, ma'am.

5 Q So what, at that point, did y'all do with the vehicle?

6 A We had it towed home.

7 SOLICITOR MABBS: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 Q And before this incident, Mrs. Brewton, did you know
12 any of the women that you saw at that house?

13 A No.

14 Q Did you know the defendant?

15 A Not at all.

16 Q Did y'all give them any, any of them permission to use
17 that vehicle?

18 A No.

19 SOLICITOR MABBS: Your Honor, no further questions at
20 this time.

21 THE COURT: Mr. Shealy, your witness.

22 MR. SHEALY: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. SHEALY: Please the Court.

25 CROSS-EXAMINATION

Tiffany Brewton - Cross-examination
by Mr. Shealy

1 BY MR. SHEALY:

2 Q Mrs. Brewton, you've testified that you didn't get the
3 keys back.

4 Did the police recover keys to your knowledge?

5 A They did not.

6 Q They did not recover keys.

7 Okay. And you were at the Li'L Cricket, correct?

8 A I was not.

9 Q Okay. So you don't have any personal knowledge as to
10 what the person who stole the car looked like or anything
11 like that, right?

12 A Not at that time.

13 Q Okay. Now, did y'all go that evening -- and some of
14 the reports are a little confused for me. So that's why I'm
15 asking.

16 Did y'all go that evening to look for the car or did
17 y'all not go that evening to look for the car?

18 A Actually we was going to dinner with---

19 Q Right. I know that morning you were but I'm saying
20 the, the evening that you went to the Li'L Cricket and
21 picked your husband up --

22 A Oh, okay.

23 Q -- did y'all look for the car after that?

24 A No.

25 Q No.

Tiffany Brewton - Cross-examination
by Mr. Shealy

1 Okay. So y'all did not go up and down Nazareth Church
2 Road looking for that vehicle?

3 A I did not.

4 Q You did not.

5 All right. Now -- and, again, I'm just not familiar
6 with this area.

7 Where is the Li'L Cricket?

8 I guess it's a -- where's the Li'L Cricket in relation
9 to your house?

10 A The Li'L, the Li'L Cricket sits on the corner of Howe]]
11 Road and our residence was maybe not even a half a mile
12 from -- to the Li'L Cricket in the community.

13 Q Okay. And do you have to get on Nazareth Church Road
14 to go to the Li'L Cricket or not?

15 A You do.

16 Q You do.

17 A Uh-huh. (Affirmative).

18 Q How far up Nazareth Church Road do you have to get to
19 go to get to it from your house?

20 A It's actually walking distance. So maybe, in
21 timeframe, I would probably say five minutes.

22 Q Okay. So do you go past this house that you found the
23 car at?

24 A No.

25 Q Okay. And this -- the car was taken from the Li'L

Tiffany Brewton - Cross-examination
by Mr. Shealy

1 Cricket on May 23rd that evening, right?

2 A Uh-huh. (Affirmative).

3 Q And y'all saw it at Nazareth on the 12, whatever the
4 address was on Nazareth Church Road at what time in the
5 morning?

6 A It actually was not in the morning. It was in the
7 evening when we was going to dinner.

8 Q Oh, okay. I'm sorry. What time?

9 A It probably---

10 Q Roughly.

11 A It probably was like 4:30.

12 Q Okay. So it had gotten dark yet or---

13 A No.

14 Q ---not?

15 A It was nowhere near dark.

16 MR. SHEALY: That's all I have for this witness.

17 THE COURT: Redirect.

18 SOLICITOR MABBS: No redirect, Your Honor.

19 THE COURT: You may step down, ma'am.

20 You wish to excuse the witness?

21 SOLICITOR MABBS: Yes, Your Honor.

22 THE COURT: Any objections?

23 MR. SHEALY: No.

24 THE COURT: Ma'am, you're free to go if you'd like to
25 go. You're free to stay if you'd like as well.

Justina Esopa - Direct examination
by Solicitor Mabbs

1 THE WITNESS: All right.

2 THE COURT: Thank you very much.

3 State may call its next witness.

4 SOLICITOR MABBS: Thank you, Your Honor.

5 The State would call Justina Esopa.

6 THE COURT: Come forward please, ma'am.

7 JUSTINA ESOPA, being first duly
8 sworn, testified as follows:

9 THE COURT: Ma'am, please state your name.

10 THE WITNESS: Hello. I'm Justina Esopa.

11 THE COURT: Thank you.

12 Your witness, Ms. Mabbs.

13 SOLICITOR MABBS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR MABBS:

16 Q Ms. Esopa, where do you work?

17 A I work at Burlington Coat Factory in Spartanburg.

18 Q And what's your job title there?

19 A Cashier.

20 Q And how long have you been working for Burlington?

21 A Two and a half years.

22 Q Are -- is Burlington the only thing that you're doing
23 right now?

24 A Yeah, I'm also in school.

25 Q What are you in school for?

Justina Esopa - Direct examination
by Solicitor Mabbs

1 A Criminal justice.

2 Q Ms. Esopa, were you working at Burlington in May of
3 last year?

4 A Yes, ma'am.

5 Q Do you recall an incident occurring on May 23rd?

6 A Yes.

7 Q And was the defendant involved in that incident?

8 A Yes, sir, I mean --

9 Q And, after that incident, can you briefly describe what
10 you -- when you had occasion to see the defendant on that
11 day?

12 A I was walking towards the front of the store because
13 the cashier stations is at the front kind of at a diagonal
14 angle about to go like -- cause it's shaped like a horseshoe
15 kind of like this. So like coming around this -- trying to
16 come around this corner to come into my register and I'm not
17 looking at the front doors and then all I hear is the alarms
18 go off. So in my head I'm like oh, cashier forgot to take
19 off a sensor. Let me go grab them before, you know, he gets
20 to his car.

21 I was like sir, we forgot to take a sensor off, sir,
22 and as the defendant continues to walk, he turns around at
23 one point, looks at me, and continues to walk away and I
24 said oh, I see what's happening. So he begins to -- he's
25 pushing a buggy full of clothing. He takes the clothing out

Justina Esopa - Direct examination
by Solicitor Mabbs

1 of the buggy, places it in the back seat of a SUV type car.
2 It was a black Durango at the time.

3 There is a man driving. There's also a woman in the
4 back seat in the same seat he's putting clothes in. He hops
5 in the car, drops a pair of shoes, knocks the buggy over,
6 and they back out and turn away. I'm on my head saying --
7 headset trying to call the license plate number to the loss
8 prevention at the time, Sean, and my manager and whoever
9 else actually really can hear me.

10 Q Do you remember about what time of day that occurred?

11 A Late afternoon. I can't give a time. I think---

12 Q Was it still light outside?

13 A Yes.

14 Q And do you recall what the defendant was wearing that
15 day?

16 A It was a yellow and blue striped shirt and I -- that's
17 all I can remember was the shirt just cause the yellow, I
18 guess, stood out.

19 Q Did you ever have an occasion to see the defendant
20 after the 23rd?

21 A I did. I saw him the next day, the next morning. I
22 was getting dropped off in the parking lot to go to work.
23 It was around 9:30, ten o'clock. I know I wasn't the
24 opening cashier. So it was like, you know, twenty minutes
25 after. My ride pulls into a parking spot as I get all my

Justina Esopa - Direct examination
by Solicitor Mabbs

1 things together and I look up in front of me and there is a
2 like light colored car with two people, one being a woman
3 and the second person being the defendant, standing outside
4 of the car. The defendant was sitting on the hood holding a
5 few items of clothing. It was just like, you know, like a
6 button up shirt or something.

7 As I look up and get out of the car, they look at me
8 and I start, you know, heading to the door, you know, trying
9 to get my manager, someone's attention, and as I looked back
10 they are getting in the car quickly and begin to pull off.

11 Q Do you remember what the defendant was wearing I guess
12 this second day?

13 A On the second day the defendant was wearing the same
14 outfit cause that's kind of how I pointed him out.

15 Q And in regards to the car, was it the same car as the,
16 as the first incident or a different car?

17 A No, it's a different car.

18 Q And can you describe the second, the second car?

19 A The second car was just like a smaller car, four door,
20 lighter color, squarier (sic) cause I could tell it's kind
21 of like olderish (sic) but not old.

22 Q And if you saw a picture of that car would you be able
23 to recognize it?

24 A Yes, ma'am.

25 SOLICITOR MABBS: Your Honor, permission to retrieve

Justina Esopa - Direct examination
by Solicitor Mabbs

1 exhibits from the jury?

2 THE COURT: They're over here on the alternate's seat.

3 SOLICITOR MABBS: Your Honor, I'm handing Exhibits 2
4 through 8 to the---

5 THE COURT: All right.

6 SOLICITOR MABBS: ---witness.

7 Q Ms. Esopa, do you recognize that car?

8 A Oh yeah.

9 Q And how do you recognize it?

10 A This was the car that the woman and the defendant were
11 sitting on top of and pulled out of the parking lot that
12 second day.

13 Q Ms. Esopa, do you see the defendant in the courtroom
14 today?

15 A I do.

16 Q Can you point him out?

17 A Sitting over here.

18 SOLICITOR MABBS: Bet the Court's indulgence, Your
19 Honor.

20 THE COURT: All right.

21 (Pause.)

22 SOLICITOR MABBS: Nothing further at this time, Your
23 Honor.

24 THE COURT: And the record will reflect the witness
25 pointed towards the defendant.

Justina Esopa - Cross-examination
by Mr. Shealy

1 You may proceed.

2 MR. SHEALY: Thank you, judge.

3 CROSS-EXAMINATION

4 BY MR. SHEALY:

5 Q Ms. Esopa, did you call the police or did you speak
6 with the police?

7 A I spoke to them the first day as they asked for an
8 incident report after the initial incident.

9 Q Okay. So you spoke to them only one time and that was
10 May the 23rd?

11 A Yes, sir.

12 Q You didn't speak to them on the 24th --

13 A Hu huh. (Negative).

14 Q -- when the second incident occurred --

15 A Hu huh. (Negative).

16 Q -- or whenever you saw the defendant y'all didn't call
17 the police at that point and say oh, by the way?

18 A I didn't personally but the loss prevention at the time
19 did.

20 Q Okay. But the police officers didn't want to speak to
21 you?

22 A Not that I can recall.

23 Q Okay. And at any point were you presented a photo
24 lineup?

25 A No, sir.

Justina Esopa - Cross-examination
by Mr. Shealy

1 Q So they never -- so the first time you're identifying
2 the client, my client, is right now?

3 A I suppose, yes.

4 Q So in Court?

5 A Uh-huh. (Affirmative).

6 Q When he's all by himself -- well, not all by himself.
7 He's sitting next to me.

8 A Uh-huh. (Affirmative).

9 Q But other than that, this is the first time that you
10 have identified him for---

11 A Well, the first---

12 Q ---for the police?

13 A ---and the second day. So the first initial day and
14 the second day I just saw him sitting outside.

15 Q Right.

16 But they didn't present you with a photo lineup?

17 A No.

18 Q Okay. And how long ago was this?

19 A With the initial thing?

20 Q Yeah.

21 The -- when did this incident occur?

22 A Oh, May.

23 Q Okay.

24 A Months.

25 Q Of 2015?

Justina Esopa - Cross-examination
by Mr. Shealy

- 1 A Yes.
- 2 Q Okay. So we're looking at eight, nine months ago, more
3 than that maybe?
- 4 A Uh-huh. (Affirmative).
- 5 Q Okay. And at what time of day did you say this was?
- 6 A From what I can recall, it was a late afternoon time.
7 I can't give you an exact time. Wish I could but --.
- 8 Q That was the May 23rd incident?
- 9 A Oh yes.
- 10 Q Okay. And then the May 24th when say you saw him in
11 the---
- 12 A It was early in the morning. I could probably give
13 like a 9:30, ten o'clock time because I was coming into
14 work. We open at 9:00.
- 15 Q Okay. And when you talked to or well I guess you
16 didn't talk to the police a second time.
- 17 When you talked to them the first time, do you recall
18 giving statements?
- 19 A Yes, I gave a written statement.
- 20 Q Okay. And did they ask you to make that statement
21 complete?
- 22 A They said as detailed as possible.
- 23 Q Okay. Cause they wanted to -- you wanted -- and you
24 wanted it to be as detailed as possible presumably to help
25 them arrest somebody?

Justina Esopa - Cross-examination
by Mr. Shealy

1 A Yes.

2 Q All right. So you wanted to give as much information
3 as well?

4 A Uh-huh. (Affirmative).

5 Q All that you saw?

6 A Yes.

7 MR. SHEALY: If I may approach the witness?

8 THE COURT: Yes, sir, you may.

9 Q I'm gonna hand you, Ms. Esopa, your witness interview
10 form. I'm gonna ask that you look that over.

11 A (Witness complies.)

12 Q Can you tell me where in there you say it's a blue, a
13 yellow and blue striped shirt?

14 A I do not.

15 Q You didn't think that would be important for them?

16 A I wasn't really familiar with things like this at the
17 time.

18 Q But I mean they asked you to be as detailed as
19 possible?

20 A Yeah.

21 Q That would be a pretty important detail?

22 A Maybe.

23 Q Go arrest the guy in a blue and yellow shirt, right?

24 A Yeah.

25 Q Okay. Did you put any details about what his facial

Justina Esopa - Cross-examination
by Mr. Shealy

1 hair looked like?

2 A Hu huh. (Negative).

3 No.

4 Q Did you put any description of his build?

5 A No.

6 Q So you don't have any description, so far as I can tell
7 and correct me if I'm wrong, in that written statement?

8 A Not in the written statement, no.

9 Q And, again, we've already established you wanted that
10 statement to be helpful?

11 A I tried.

12 Q Okay. And you wanted it to be detailed and they asked
13 for it to be detailed?

14 A Yeah.

15 Q Have you had occasion to talk with the Solicitor's
16 Office at all or the police officers at all in getting ready
17 for this case?

18 A Just that I needed to be here at 9:00AM.

19 Q Okay.

20 A Today.

21 Q Have you had any conversations with your loss
22 prevention person?

23 A Just, I guess, today coming in.

24 MR. SHEALY: Okay. All right. If I -- can I approach
25 to get that back from you?

Justina Esopa - Cross-examination
by Mr. Shealy

1 THE COURT: Yes, sir, you may.

2 MR. SHEALY: And if y'all will bear me with me.

3 (Pause.)

4 MR. SHEALY: Let me -- that's all I have for this
5 witness.

6 THE COURT: Redirect.

7 SOLICITOR MABBS: No redirect, Your Honor.

8 THE COURT: All right, ma'am. You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: State may call its next witness.

11 SOLICITOR MABBS: Thank you, Your Honor.

12 May she be excused from her subpoena?

13 THE COURT: Any objection to this witness being
14 excused?

15 MR. SHEALY: No, Your Honor.

16 THE COURT: All right, ma'am. You're free to go if
17 you'd like. Thank you very much.

18 SOLICITOR MABBS: Your Honor, the State would call John
19 Walter.

20 THE COURT: Come forward, sir. Be sworn to my left.

21 JOHN WALTER, being first duly
22 sworn, testified as follows:

23 THE COURT: Once you're seated state your name please.

24 THE WITNESS: John David Walter, II.

25 THE COURT: Thank you.

John Walter - Direct examination
by Solicitor Mabbs

1 Your witness, Ms. Mabbs.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY SOLICITOR MABBS:

5 Q Officer Walter, where do you work?

6 A Spartanburg Police Department.

7 Q How long have you worked there?

8 A About two and a half years.

9 Q And what's your role at the police department?

10 A I'm a patrol officer. I answer calls for service,
11 self-initiated activity, but primarily calls for service.

12 Q And were you involved with an incident at Burlington
13 Coat Factory?

14 A Yes, I was.

15 Q What was your role in that incident?

16 A I was first one on scene that was called to investigate
17 criminal activity that had occurred.

18 Q What was your role in the investigation as far as---

19 A I was the primary officer, the one that took the
20 report, any further investigation as well.

21 Q And as part of your investigation were you able to
22 obtain statements or information from any witnesses?

23 A Yes, ma'am.

24 Q What, what was some of that information you received?

25 A Some of the information, one witness, Ms. Esopa, that

John Walter - Direct examination
by Solicitor Mabbs

1 just sat here, she did say that a male had came in. She had
2 heard the buzzer.

3 MR. SHEALY: Objection, Your Honor. That's all
4 hearsay.

5 THE COURT: I'll ask that he testify concerning his
6 personal knowledge.

7 SOLICITOR MABBS: Yes, Your Honor.

8 Q Officer Walter, as part of your investigation did you
9 ever create any photo lineups?

10 A Yes, ma'am, I did.

11 Q And can you explain to us, first of all, what a photo
12 lineup is?

13 A Yes, ma'am, a photo lineup is just a simple -- a
14 description is given, possibly a name, a date of birth,
15 whatever identifying factors can be found. We, in turn, we
16 ask somebody, a different person, to assemble a photo lineup
17 of six individual pictures. Once those pictures are
18 assembled they're given to myself. I, in turn, give them to
19 a secondary officer who will go to the witness, present the
20 photo lineup, and that witness will either say yes or they
21 can identify any of the subjects that are in the photo
22 lineup. Then it is placed into evidence.

23 Q When you first created the photo lineup in this case --
24 I believe you've stated they're many different factors that
25 can go into creating it.

John Walter - Direct examination
by Solicitor Mabbs

1 what factors did you use to give to the records
2 department to create this particular photo lineup?

3 A A name.

4 Q And what name was that?

5 A It was Timothy Wayne Johnson.

6 Q What, if any other information, did you give to the
7 records department at that time about this photo lineup?

8 A The only thing that I did tell them, I had been told by
9 the loss prevention a few of the attributes of the male and
10 I did tell them that.

11 Q Okay. Do you recall if you told them what he might of
12 been wearing that day?

13 A No, ma'am, I don't remember him -- any particulars that
14 he was actually wearing as far as clothing.

15 Q And about how long does it take the records department
16 to create these photo lineups?

17 A Depending on how busy they are, of course, I can
18 generally get it within 15, 20, 30 minutes.

19 Q And, with this case, what did you do once you received
20 that back from the records department?

21 A Once I received the photo lineup back, I, in turn, give
22 it to a separate officer, Officer Bryant with the City of
23 Spartanburg, to administer the photo lineup.

24 Q And why does -- I mean why would you give it to
25 somebody else?

John Walter - Direct examination
by Solicitor Mabbs

1 why not just do it yourself?

2 A It's to someone that has no knowledge of the case.
3 There's no bias in it. I can't -- she can't influence the
4 witness on who it is. She has no recollection of the case.
5 She has no -- any -- anything to do with the actual case
6 itself.

7 Q And how would that assist in the identification
8 procedure?

9 A She's a neutral party. She can't, she can not
10 influence the witness one way or another on who it is. She
11 has no clue.

12 Q And what various, I guess, pieces of paper would you
13 hand off to whoever the person presenting this photo lineup
14 would be?

15 A The few pieces of paper, the first one is the
16 instructions page. That simply has the name of the officer
17 who is the case officer, which is myself. Same thing with
18 the officer who was actually performing the photo lineup.
19 It has the instructions on exactly how to do it. Then it
20 has a piece of paper that has six individual or, excuse me,
21 a paper that has six pictures on it. These pictures are
22 then cut up to where it's in an individual picture itself.
23 That way one picture at a time can be shown to a witness.
24 Then it actually has a back piece of paper where the witness
25 will sign saying they can or can not, either way, that they

John Walter - Direct examination
by Solicitor Mabbs

1 can identify or not identify the subject.

2 Q And how would, either the person performing the photo
3 lineup or the person viewing the photo lineup, how would
4 they know any of the individual's names of the people on the
5 photos?

6 A They do not. All they have is a number. I have a
7 paper for myself that actually has the names associated with
8 each number on the picture. I do not give that to the
9 officer that is performing the photo lineup nor does the
10 witness have that piece of paper there.

11 Q What happens with the results if a witness ends up
12 picking somebody out of the photo lineup?

13 A Whether they can pick someone out or not, it's still
14 placed into evidence. All I ask the officer to do is simply
15 call me and tell me the number that they picked, if it is --
16 if it matches my suspect information and name, then I'll go
17 forward with the case. If not, we'll take a different
18 approach to it.

19 SOLICITOR MABBS: Your Honor, at this time, permission
20 to retrieve Exhibit 1?

21 THE COURT: You may do so.

22 SOLICITOR MABBS: Permission to approach, Your Honor?

23 THE COURT: You may approach.

24 Q Officer Walter, do you recognize what I just handed
25 you?

John Walter - Direct examination
by Solicitor Mabbs

1 MR. SHEALY: Your Honor, I should say this is all
2 subject to my prior objections.

3 THE COURT: Yes, sir, it's noted that it's being
4 presented subject to your prior objections.

5 MR. SHEALY: Thank you.

6 THE COURT: I would make the same ruling.

7 You may proceed.

8 SOLICITOR MABBS: Thank you, Your Honor.

9 Q Officer, do you recognize this?

10 A It's the photo lineup form.

11 Q From which case?

12 A The case in -- the case for us was 671 from last May
13 involving some criminal activity at Burlington Coat Factory.

14 Q And who was the, the defendant in that case?

15 A Timothy Wayne Johnson.

16 Q And what was the result of that photo lineup?

17 A The -- he was identified through the photo lineup. I,
18 in turn, once I found out who he was -- that he was
19 identified, I spoke to a judge in reference to the matter
20 and went forward.

21 SOLICITOR MABBS: Your Honor, at this time the State
22 would move Exhibit 1 into evidence.

23 THE COURT: Any objection?

24 Subject to your priors---

25 MR. SHEALY: Again, just subject to my prior

John Walter - Direct examination
by Solicitor Mabbs

1 objections.

2 THE COURT: All right. They're noted. I'll allow it
3 into evidence.

4 (WHEREUPON, State's Exhibit No. 1 was received into
5 evidence at this time.)

6 THE COURT: You may proceed.

7 SOLICITOR MABBS: Thank you, Your Honor.

8 Q And, Officer Walter, who -- what number was picked out
9 of this lineup?

10 A It was number five.

11 Q And whose name is associated with that?

12 A It's Timothy Wayne Johnson.

13 SOLICITOR MABBS: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 SOLICITOR MABBS: No further questions at this time,
18 Your Honor.

19 THE COURT: Your witness, Mr. Shealy.

20 MR. SHEALY: Thank you, Your Honor.

21 May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SHEALY:

25 Q Officer Walter, you testified you've been at the City

John Walter - Cross-examination
by Mr. Shealy

1 for two years, going on two years?

2 A A little over two years, yes, sir.

3 Q A little over two years?

4 A Yes, sir.

5 Q What did you do before that?

6 A I was in the Marine Corp for nine years.

7 Q Okay. Thank you for your service.

8 A Thank you.

9 Q All right. Now, when did this lineup get prepared?

10 A Got prepared on the 23rd, the day of the incident.

11 Q Okay. And you've said that you had a name on the 23rd.

12 Is that correct?

13 A As far as I -- I don't know. Excuse me. Can't testify
14 that I had the name but I know that I had a description.

15 Excuse me. I apologize. Was not performed on the 23rd. It
16 was actually the 24th when I came into work the next day. I
17 apologize. I had to read it in my report again.

18 Q Okay. Well, feel, feel free -- we want to get it
19 right.

20 A Okay. Yes, sir.

21 Q Feel free to refresh your memory and all that.

22 All right. So you prepared the photo lineup on the
23 24th?

24 A Negative. I did not prepare the report --

25 Q I mean---

John Walter - Cross-examination
by Mr. Shealy

1 A -- the photo lineup. A separate entity did.

2 Q But when you gave -- and I apologize. Thank you for
3 correcting me.

4 when did you get the photo lineup I suppose?

5 A It would of been on the 24th.

6 Q All right. And when did you ask records to prepare it?

7 A Been on the 24th.

8 Q That too on the 24th.

9 okay. And you had a description.

10 Can you tell me what that description was?

11 A It's a slender white male. I didn't know -- I can't
12 recall what the shirt he was wearing or pants or anything of
13 that nature.

14 Q Okay. Did you get any -- take any written statements?

15 A I did.

16 Q On the 23rd?

17 A I did.

18 Q Did you read those?

19 A I've read through them, yes.

20 Q I mean did you read them prior to getting the photo
21 lineup?

22 A Of course.

23 Q Yeah, you did.

24 okay. So you had your descriptions from your
25 interviews of these people --

John Walter - Cross-examination
by Mr. Shealy

1 A Yes, sir.

2 Q -- as well as the written statements of these people?

3 All right. And one of those people that you spoke to
4 was a Thomas Sean Warrick, correct?

5 A Yes.

6 Q All right. I am going to ask you, not out loud, but
7 I'm gonna ask you to look at this written statement.

8 You've testified that you didn't have a clothing
9 description?

10 A I testified that I could not remember the clothing
11 description.

12 Q You couldn't remember it.

13 Okay. So you may have. You just can't remember what
14 it was---

15 A Yes, sir.

16 Q ---right now?

17 A Correct.

18 Q Okay. I'm gonna ask you to again refresh your memory
19 cause you've said you read this prior to---

20 A Yes, I've read through it, yes, sir.

21 Q I'm gonna ask you to read this sentence again to
22 yourself. The same.

23 A I read it.

24 Q Okay. So in this case, prior to you preparing or
25 having prepared the photo lineup, did you have a clothing

John Walter - Cross-examination
by Mr. Shealy

1 description or not?

2 A On this I did.

3 Q You did.

4 Okay. And that was based on, again, your investigation
5 of this case?

6 A Based on the statement, yes, sir.

7 Q All right. Anywhere in that statement does it give you
8 the name of Timothy Johnson though?

9 A No, sir.

10 Q No.

11 So we're not really sure where you got that name from?

12 You just went---

13 A Yes, sir, that's why the photo lineup was done the
14 second day, on the 24th.

15 Q Okay. But in your investigation, who gave you the name
16 Timothy Johnson?

17 A It was given to me by -- I originally thought it had
18 been Sean Warrick but after reading the report it was
19 actually a separate officer that had gave me the name.

20 Q Separate officer gave you that name?

21 A Yes.

22 Q Okay. If I may approach and get that back from you.

23 All right. Now, whenever you got the report or the
24 photo lineup back from records --

25 A Yes.

John Walter - Cross-examination
by Mr. Shealy

1 Q -- who does the cutting up?

2 Do you cut that up?

3 A Generally speaking I do. Now, on this case, I can't
4 say for a fact --

5 Q All right.

6 A -- that I cut up the single page into six individual
7 pictures. But generally speaking, as a courtesy, we do cut
8 it up for the officer to expedite their process a little
9 bit.

10 Q Sure.

11 And who in records prepares these things?

12 A The records clerk.

13 Q Okay. So just whoever is working that day, whatever
14 clerk is working that day?

15 A Whoever's on shift, yes, sir.

16 Q All right. And how do they put these things together?

17 A Through Spillman.

18 Q And do they---

19 A Through a system on the computer.

20 Q And does the system on the computer do it automatically
21 or do they have to do it hand by hand?

22 A Yes, sir, I understand what you're asking. Originally
23 I was under the impression that individually. It's actually
24 a automatic thing. Once it's automatically done, the
25 pictures, if they need to be removed, they can be removed by

John Walter - Cross-examination
by Mr. Shealy

1 the person but it is an automatic thing from the computer
2 system.

3 Q okay. So there's a computer program---

4 A Yes.

5 Q ---that, in the computer program's mind, matches them
6 up to six similar looking people?

7 A Yes, sir.

8 Q And a person, a records clerk, can, if he wants to,
9 override a particular picture?

10 A If it's not -- as far as I'm understanding, I've never
11 done the process myself nor am I qualified because I don't
12 know how to do it personally that system. Therefore I can't
13 tell you how to override it or if they can override it. I
14 just understand that that's what I've been told. They can
15 do it if it doesn't match.

16 Q Okay. You're not entirely sure how that computer
17 program works?

18 A No, sir.

19 Q They just give it back to you?

20 A Yes, sir.

21 Q Fair enough and you've said that you gave it to Officer
22 Bryant.

23 Is that correct?

24 A Yes.

25 Q why did you give it to Officer Bryant?

John Walter - Cross-examination
by Mr. Shealy

1 Is that---

2 A She's another officer that works for our city, somebody
3 that has no knowledge of the case --

4 Q I understand.

5 A -- and that was free at the moment to be able to handle
6 this.

7 Q But she's not the one who ultimately administered the
8 lineup?

9 A No.

10 Q All right. Do you have any idea as to why that is?

11 A No, sir, I don't.

12 Q Okay. And you weren't there when number five was
13 picked out of the lineup or anything like that?

14 A No, sir, we're not allowed to be there.

15 Q So you, you just don't have any personal knowledge as
16 to any of that except that---

17 A No.

18 Q Okay.

19 A No, sir.

20 MR. SHEALY: Bear with me.

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. SHEALY: That's all I've got for this witness.

24 THE COURT: Redirect.

25 SOLICITOR MABBS: Briefly.

John Walter - Redirect examination
by Solicitor Mabbs

1 REDIRECT EXAMINATION

2 BY SOLICITOR MABBS:

3 Q Officer Walter, when you receive the photo lineup back
4 after its been presented to someone, how is it indicated
5 that someone has either made a selection or not?

6 A The witness will actually -- the way to do it, if they
7 say no, this is not the person, they just say initial it.
8 If they actually identify the person as the suspect, they
9 sign it, date it, and put the time that they identified, and
10 then it, in turn, is placed into an evidence envelope and
11 placed into our evidence. I am notified whether it be
12 either pulled out of evidence or the officer does give me a
13 courtesy call and let me know the number.

14 Q Is that what happened in this case?

15 A Yes.

16 SOLICITOR MABBS: Thank you, Your Honor. No more
17 questions.

18 THE COURT: Any followup?

19 MR. SHEALY: No, sir.

20 THE COURT: All right, sir. You may step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 All right. Ladies and gentlemen of the jury, we have
24 reached noon. I'm going to stop at this time and allow you
25 to go to lunch.

1 During your absence from the court house, I'll give you
2 the same instructions I gave you earlier. Don't attempt to
3 gather any information on your own. Don't listen to, watch,
4 or read media reports. Don't discuss the case with anyone.
5 Don't allow anyone to discuss it with you and should anyone
6 contact you about your service on this jury, please report
7 that upon your return.

8 We'll resume at 1:15. Be back in the jury room at that
9 time. Thank you very much. Hope you have a good lunch.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. We're in recess until 1:15.
13 Thank you very much.

14 SOLICITOR GHENT: Thank you, Your Honor.

15 SOLICITOR MABBS: And, Your Honor, may Officer Walter
16 be excused from his subpoena?

17 THE COURT: Any objection?

18 MR. SHEALY: No, Your Honor.

19 THE COURT: All right. He's free to go. Thank you.

20 SOLICITOR MABBS: Thank you, Your Honor.

21 (WHEREUPON, Court was in recess for the lunch hour.)

22 THE COURT: All right. Is the State ready to proceed?

23 SOLICITOR MABBS: Yes. Yes.

24 THE COURT: Is the State ready?

25 SOLICITOR MABBS: Yes, Your Honor. One brief matter.

1 They're not here yet but I do have two deputies who will be
2 testifying this afternoon who were not present this morning
3 when Your Honor made the rule about not mentioning the
4 shoplifting---

5 THE COURT: Uh-huh. (Affirmative).

6 SOLICITOR MABBS: ---before---

7 THE COURT: Well, if you need to take a break before we
8 call them, let me know and I'll be glad---

9 SOLICITOR MABBS: Just to make sure that they know not
10 to---

11 THE COURT: So they'll be aware of what my ruling was
12 on that matter.

13 SOLICITOR MABBS: Okay. Great. Just wanted to make
14 sure we had time to do that, Your Honor.

15 THE COURT: Defense ready?

16 MR. SHEALY: Yes, Your Honor.

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

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect the
21 jury has returned to the courtroom and I hope everyone had a
22 good lunch. It's a most beautiful day outside today. So I
23 appreciate you coming back in.

24 Now, if any of you had any trouble in following my
25 instructions while you're away from the courthouse, please

1 stand.

2 (No response.)

3 THE COURT: It appears that all jurors have continued
4 to follow my instructions thus far.

5 When we broke earlier the State was in the process of
6 calling its witnesses.

7 Ms. Mabbs or Mr. Ghent, you may call your next witness.

8 SOLICITOR MABBS: Thank you, Your Honor.

9 The State would call Kim Ritter.

10 THE COURT: All right. Come forward please, ma'am.

11 KIM RITTER, being first duly
12 sworn, testified as follows:

13 THE COURT: All right. Have a seat, and once you're
14 seated, state your name please.

15 THE WITNESS: Kimberly Ritter.

16 THE COURT: Thank you very much.

17 Ms. Mabbs, your witness.

18 SOLICITOR MABBS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR MABBS:

21 Q Officer Ritter, where do you work?

22 A I work at the Spartanburg City Police.

23 Q And how long have you worked there?

24 A It will be four years in May.

25 Q And what was your role in today's case?

Kim Ritter - Direct examination
by Solicitor Mabbs

1 A Conducting the photo lineup.

2 Q And before you conducted that photo lineup, what
3 knowledge did you have about this case?

4 A None.

5 Q What knowledge did you have about the defendant?

6 A None. I've never met him. Never seen him.

7 Q When you presented this photo lineup, who did you
8 present it to?

9 A To the loss prevention associate, Mr. Thomas Warrick.

10 Q Where did you show him that?

11 A At City Hall.

12 Q Is that normal procedure?

13 A Yes.

14 Q And who was present when you showed him these photos?

15 A I believe just me and him in the room paying attention.

16 SOLICITOR MABBS: Your Honor, permission to retrieve
17 what's been previously entered as Exhibit 1.

18 THE COURT: Yes, ma'am, you may do so.

19 SOLICITOR MABBS: Permission to approach?

20 THE COURT: You may.

21 Q Officer Ritter, do you recognize what I just handed
22 you?

23 A Yes, this is the lineup form I showed to Mr. Warrick.

24 Q And how many photos were included in that lineup?

25 A Six.

Kim Ritter - Direct examination
by Solicitor Mabbs

1 Q How were they presented, together or individually?

2 A They're presented one at a time.

3 Q And what's the nature of the photographs?

4 Are they black and white, color?

5 A They're in color.

6 Q Before you began the photo lineup did you show him any
7 of the photogs before you began?

8 A No, I read the instructions first.

9 Q And why did you read the instructions first?

10 A So that he knew how to properly do the procedure.

11 Q How do you know what the instructions are?

12 A Because it's on the form. I just read it.

13 Q Could you just read it?

14 A I just read it.

15 Q Okay. Could you read the instructions to the jury
16 please?

17 A Sure. Well, at the top it has the independent
18 administrator, which was me, the case number, the case
19 officer, and the location presented, which was 145 west
20 Broad Street.

21 It says before showing the photographic lineup the
22 following shall be read:

23 In a moment I'm going to show you a series of
24 photographs. The person who committed the crime may or may
25 not be included. I do not know the identity of the person

Kim Ritter - Direct examination
by Solicitor Mabbs

1 being investigated. Even if you identify someone during
2 this procedure, I will continue to show you all photographs
3 in the series.

4 Keep in mind that things like hairstyles, beards, and
5 mustaches can be easily changed. Also complexion colors may
6 look slightly different in photographs. You should not feel
7 like you have to make an identification. It is, it is as
8 important to exclude innocent persons as it is to identify
9 the perpetrator. This procedure is important to the
10 investigation whether or not you identify someone and the
11 investigation will continue whether or not an identification
12 is made.

13 The photographs will be shown to you one at a time and
14 they're not in any particular order. Take as much time as
15 you need to look at each one. After reviewing each you will
16 be asked is this the person you saw in certain crimes stated
17 here. Take your time in answering the question. Then
18 respond by stating either yes or no. If yes, time, date,
19 and sign the back. If no, initial the back. This procedure
20 will be followed for each photograph.

21 Because you are involved in an ongoing investigation,
22 in order to prevent damaging the investigation you should
23 avoid discussing this identification procedure or its
24 results.

25 Do you understand the way the lineup procedure will be

Kim Ritter - Direct examination
by Solicitor Mabbs

1 conducted and acknowledge receipt of these instructions I
2 have given you and he checked yes and printed Thomas Sean
3 warrick, signed his name, dated it July 24th, 2015, and the
4 time is 18:04 hours.

5 Q And, Officer Ritter, did you follow those instructions
6 when you presented this photo lineup?

7 A Yes, I showed him each picture one-by-one. Once he got
8 to number five, he was pretty -- as soon as he seen the
9 picture, seen his face, he say yes, that's the guy I seen
10 coming that committed the crime in Walgreen's -- Burlington
11 and I continued to show him number six and he pretty quickly
12 said no, that's not him. It's definitely the guy in number
13 five.

14 Q Did he make any other notations about number five?

15 A He did note that the -- he was wearing the same shirt
16 on the day that he committed that crime that he had on in
17 the mug shot.

18 Q And did you reflect that---

19 A I did. I wrote, wrote that on the second page where it
20 gives you chances to write administrative notes. I wrote
21 witness identified subject number five and stated that he
22 was wearing the same shirt as the one in the photo.

23 Q And about how long, once he saw the photograph, was Mr.
24 warrick able to identify number five?

25 A Seconds pretty much once he saw it.

Kim Ritter - Direct examination
by Solicitor Mabbs

1 Q At the time did you know who number five was?

2 A No.

3 Q Do you know who it is now?

4 A Yes.

5 Q Who was it in number five?

6 A The defendant.

7 SOLICITOR MABBS: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 SOLICITOR MABBS: Nothing further at this time, Your
12 Honor.

13 THE COURT: Your witness, Mr. Shealy.

14 MR. SHEALY: Thank you, judge. Just a couple --

15 THE COURT: Yes, sir.

16 MR. SHEALY: -- of questions.

17 CROSS-EXAMINATION

18 BY MR. SHEALY:

19 Q Officer Ritter, you said you've been with the
20 Spartanburg Police Department for four years?

21 A It will soon be four years.

22 Q Soon be four years?

23 A Yes.

24 Q What did you do before that?

25 A I was a student at Upstate.

Kim Ritter - Cross-examination
by Mr. Shealy

1 Q Okay. Did you major in criminal justice I assume?

2 A I did.

3 Q Okay. Congratulations.

4 Now, who did you get the lineup from?

5 A Officer Bryant --

6 Q Okay.

7 A -- from what my supplemental says.

8 Q All right. Any particular reason you didn't get it
9 from Officer---

10 A I don't---

11 Q ---Walter?

12 A I don't recall.

13 Q Okay. So you have no idea why Officer Bryant handed
14 that off to you?

15 A No.

16 MR. SHEALY: Okay. That's all I have for this witness.

17 THE COURT: Redirect.

18 SOLICITOR MABBS: No, Your Honor.

19 THE COURT: Ma'am, you may step down at this time.

20 SOLICITOR MABBS: May she be excused, Your Honor?

21 THE COURT: Any objections?

22 MR. SHEALY: No objection.

23 THE COURT: Ma'am, you're free to go at this time.

24 Thank you for coming.

25 THE WITNESS: Thank you.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 THE COURT: State may call its next witness.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 The State would call Thomas Sean Warrick.

4 THE COURT: Come forward, sir, and be sworn.

5 THOMAS SEAN WARRICK, being first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat, sir. Once you're seated,
8 state your name please.

9 THE WITNESS: Yes, sir. My name is Thomas Sean
10 Warrick.

11 THE COURT: Thank you.

12 Ms. Mabbs, your witness.

13 SOLICITOR MABBS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR MABBS:

16 Q Mr. Warrick, where do you work?

17 A Right now I work for U.S. Security Associates,
18 Incorporated.

19 Q What do you do for them?

20 A Loss prevention.

21 Q What were you doing back in May of last year?

22 A I was working for Burlington Coat Factory loss
23 prevention supervisor.

24 Q And how long were you working at Burlington?

25 A I been working there about seven months.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 Q Have you ever had to testify before?

2 A Yes, ma'am.

3 Q And have you ever had to witness a crime?

4 A Yes, ma'am.

5 Q Now, Mr. Warrick, do you recall the events on May 23rd?

6 A Yes, ma'am.

7 Q Can you briefly tell us what happened?

8 A Yes, ma'am, I was taking a smoke break outside
9 Burlington right at the door and the defendant walked up to
10 me about a foot or maybe two feet away and asked me if we
11 had a large size shorts. Of course, I was plain clothes at
12 the time and I played it off and I told him well, you needed
13 to ask an associate in there cause I don't have no idea.
14 I'm out here waiting for my wife.

15 So he went on in and I proceeded into the store after
16 him and kept a close a eye on him. But nothing, you know,
17 really keyed me in on him immediately. And I noticed he
18 stayed in the store for quite a while. And so I saw him in
19 various departments. His body language was telling me, you
20 know, signaling me that he might be up to something and --
21 but then I saw someone else place a hat on their head and
22 proceed toward the back of the store, which is where they
23 usually go to -- when they want to steal something.

24 So I started to follow this gentleman, and no sooner
25 had I left the front door then I get a call from one of the

Sean Warrick - Direct examination
by Solicitor Mabbs

1 other associates telling me to get up to the front. So when
2 I turned around to go back, she was standing outside and
3 told me that---

4 MR. SHEALY: Objection, Your Honor. Hearsay.

5 THE COURT: Well, he hasn't quoted her yet. I'll ask
6 him to testify from his own knowledge and not to quote what
7 someone else has told him.

8 You may proceed.

9 A I was told that someone had left the store with some of
10 our merchandise and then I proceeded outside and I found a
11 buggy overturned and a pair of Fila boots on the ground and
12 then subject -- the subject -- she gave me the information
13 on the vehicle, a Dodge Durango.

14 MR. SHEALY: Objection, Your Honor. Again, that calls
15 for what she told him. It's all hearsay.

16 THE COURT: Again, I'm not going to let him testify to
17 hearsay. He can testify to what -- he investigated it and
18 what he, what he learned as a result of his investigation.

19 SOLICITOR MABBS: Yes, Your Honor.

20 THE COURT: But not -- he can't quote other people.
21 There's a rule against quoting other people. It's a hearsay
22 rule.

23 SOLICITOR MABBS: Yes, Your Honor.

24 THE COURT: So, I'll sustain the objection.

25 You may proceed.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Thank you.

2 Mr. Warrick, backing up a little bit to when you first
3 saw the defendant, do you recall what he was wearing?

4 A Yes, ma'am. He was wearing a Polo shirt which
5 consisted of yellow and blue stripes horizontal.

6 Q And when you saw him, you said he was standing close to
7 you.

8 What was the lighting like at that time?

9 A It was not -- it was decent lighting. It was -- the
10 skies were clear that day.

11 Q Do you recall about what time of day this happened?

12 A Around 6:30, seven o'clock.

13 Q Was that the last occasion you had an opportunity to
14 see the defendant?

15 A No, ma'am, I did see him, like I said, within the store
16 several times.

17 Q No, I mean after that day.

18 Do you---

19 A Oh, after that date.

20 Q Yes, sir.

21 A I saw him the very next morning. He---

22 Q Where did you see him?

23 A He had showed up and he was sitting on the hood of his
24 car.

25 Q And where was this?

Sean Warrick - Direct examination
by Solicitor Mabbs

1 A This was in the parking lot of Burlington Coat Factory
2 and -- cause I'd been to City Hall to pick up the report
3 from the previous day and I was in the back and I got a call
4 over the radio to tell me to get up to the front. So I
5 proceeded to the front as fast as I could cause I was told
6 to get up there ASAP and the subject was leaving and we
7 managed to get a contact number and I called the police and
8 I got -- law enforcement responded but I was thinking I
9 wouldn't see him again. Well---

10 Q When you said the subject, who are you referring to?

11 A The defendant, ma'am.

12 Q And I believe you stated that he was on foot.

13 Where was he when you saw him that second day?

14 A The second day he was on the hood of a, of a Dodge
15 Durango.

16 Q The, the first day or the second day?

17 A The second day -- excuse me, ma'am. Let me -- strike
18 that. He was on the hood of another vehicle.

19 Q Did you have any opportunity to see him inside the
20 vehicle?

21 A I did, ma'am. It was later on that day.

22 SOLICITOR MABBS: Okay. Your Honor, permission to
23 approach and retrieve Exhibits 2---

24 THE COURT: You may do so. Sure.

25 SOLICITOR MABBS: ---through 8.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 THE COURT: Sure.

2 SOLICITOR MABBS: Permission to approach?

3 (The Court nods affirmatively.)

4 Q Mr. Warrick, do you recognize that vehicle?

5 A Yes, ma'am, this is the same Mercury that was driven by
6 the defendant to pick up the lady who was trying to return
7 merchandise which was taken from our store the previous day
8 without a receipt.

9 Q Okay. And the license plate shown in those
10 photographs, was that the number that you were able to give
11 to law enforcement?

12 A Yes, ma'am, that's the same South Carolina plate and
13 it's recorded in my notes also.

14 Q And I believe I cut you off a moment ago.
15 You said that you saw him twice the second day?

16 A Yes, ma'am.

17 Q And what, what happened the second time you saw him?

18 A The second time I saw him, the female subject had
19 entered the store trying to return merchandise, like I said,
20 without a receipt. Based upon that, because I was told by
21 several associates it's the same female that was with him
22 earlier, excuse me, the defendant, and so I, I was talking
23 on my headset to the other associates and the manager, Keith
24 Carter. Told them to delay, do what you can, I don't care
25 if you have to, you know, lie, spit, chew, whatever, just

Sean Warrick - Direct examination
by Solicitor Mabbs

1 let's make sure that we keep this gentleman in there, excuse
2 me, this lady in there.

3 So I was waiting on law enforcement to get there and
4 she ended up getting disgusted cause she wouldn't -- we
5 would not allow her to return the merchandise. So she walks
6 out of the store and she started walking toward Gold's Gym,
7 which is the far right of Burlington cause it's the same
8 building. Just Burlington's here and then you've got Gold's
9 Gym right next to it.

10 And upon her walking in that direction, this same
11 vehicle comes around the side of Burlington, or excuse me,
12 Gold's Gym and he pulls in at a diagonal angle in front of
13 the store with the main thoroughfare cause there's traffic
14 going in front of that store constantly and he did a
15 three-point turn. I saw him in the driver's side driving
16 the vehicle. She gets in the passenger side, front
17 passenger side, and they take off. As soon as they're
18 hitting about 29, here comes law enforcement. Just missed
19 them.

20 Q So when you saw him in the vehicle between the time he
21 has pulled around the side and did that three-point turn,
22 about how long would you say that event took place?

23 A It was a good two minutes because, you know, like I
24 said, he was having to wait for traffic and whatnot and wait
25 for her to get in.

Sean Warrick - Direct examination
by Solicitor Mabbs

1 Q And the first time earlier in the day when you saw him
2 with the vehicle, about how long did you see him then?

3 A It's maybe a -- maybe 45 seconds. It wasn't as long as
4 it was the second time.

5 Q Now, after these incidents, did you have an opportunity
6 to review a photo lineup?

7 A Yes, ma'am, I did.

8 SOLICITOR MABBS: Your Honor, permission to approach
9 and retrieve at this point---

10 THE COURT: You may do so.

11 SOLICITOR MABBS: Permission to approach the witness?

12 (The Court nods affirmatively.)

13 Q Mr. Warrick, do you recognize what I handed you?

14 A Yes, ma'am.

15 Q And what is that?

16 A These are the photos that I reviewed at City Hall.

17 Q Is that your signature on the documents?

18 A Yes, ma'am, it is.

19 Q Before you were shown that photo lineup did -- who,
20 who -- do you recall who showed you the lineup or who it
21 was?

22 A Yes, an officer who is in the courtroom right now.

23 Q Officer Ritter?

24 A Yes, ma'am.

25 Q Did she go through that information or instruction

Sean Warrick - Direct examination
by Solicitor Mabbs

1 sheet, sheet?

2 A Sure. Word for word. Verbatim.

3 Q And you understood all the instructions?

4 A Yes, ma'am.

5 Q And when you were shown photographs, who did you
6 identify?

7 A I identified the defendant, number five, in the lineup.

8 Q When you identified him, did you identify him based on
9 his facial features or off of the shirt that he was wearing?

10 A I based it off facial features cause I had a very good
11 look at him when he walked -- first approached me that first
12 day.

13 Q And, and the man that you identified, you -- do you see
14 him the courtroom today?

15 A Yes, ma'am, I do. He is the defendant.

16 Q And, Mr. Warrick, backing up, before you began working
17 as a loss prevention officer, what was your prior
18 employment?

19 A I've worked prior loss, loss prevention for Wal-Mart,
20 Sear, Best Buy, and I've done security work and law
21 enforcement, Spindale Police Department.

22 Q How long were you in law enforcement?

23 A Two years and I also have a two year degree in criminal
24 justice.

25 Q When you began your time as a loss prevention officer,

Sean Warrick - Direct examination
by Solicitor Mabbs

1 did you receive any training during that time?

2 A I did, ma'am.

3 Q What -- can you briefly explain what kind of training
4 they put you through?

5 A Like when I, when I was at Wal-Mart it was the actual
6 training store for the southeast region and I had the head
7 trainer as my trainer for loss prevention as far as, you
8 know, identifying subjects, interviewing techniques. As far
9 as Burlington is, more like a three or four month type
10 training, consistent training, operating computers, closed
11 circuit television monitors, writing reports, and also
12 identifying subjects and surveillance.

13 SOLICITOR MABBS: Bet the Court's indulgence, Your
14 Honor.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 SOLICITOR MABBS: Nothing further at this point, Your
18 Honor.

19 THE COURT: Mr. Shealy, your witness.

20 MR. SHEALY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. SHEALY:

23 Q Mr. Warrick?

24 A Yes, sir.

25 Q I'm a little confused by the series of events that you

Sean Warrick - Cross-examination
by Mr. Shealy

1 related. So let's go all the way back to the very
2 beginning.

3 You've testified that you were on a smoke break,
4 correct?

5 A That is correct, sir.

6 Q All right. And somebody came up to you and asked if
7 y'all sold a large size of shorts?

8 A The defendant approached me and asked me --

9 Q Okay.

10 A -- if we sold a, a very large size of shorts, which
11 is -- caught my attention.

12 Q All right.

13 A Not to mention that he was in my personal space, maybe
14 a foot and a half away.

15 Q Okay. But I mean he wasn't -- when you say he was
16 inside of your personal space, you mean he was just talking
17 to you?

18 It wasn't like---

19 A He was just talking to me. He wasn't being aggressive
20 or belligerent.

21 Q All right. I just wanted to check and make sure.

22 And you said you saw him for a couple of minutes?

23 A Yes, sir.

24 Q All right. And then you finish your smoke break and he
25 goes -- you finished his smoke break simultaneous -- at

Sean Warrick - Cross-examination
by Mr. Shealy

1 roughly the same time as he went into the store?

2 A No, the subject entered the store. I quit my smoke
3 break and I followed him.

4 Q Okay. And then you kind of milled -- and what time was
5 this?

6 I meant to ask you that earlier.

7 what time was all this?

8 A I was mistaken earlier and I would say probably around
9 maybe six o'clock. I was --

10 Q Okay.

11 A You know it just basically, like I said, I followed him
12 around. It wasn't an extensive surveillance.

13 Q Okay.

14 A But enough to see.

15 Q So this was around six o'clock at night?

16 A Sir, yes, sir.

17 Q All right. In the Burlington Coat Factory parking lot
18 and the store that's over here on the west side of town
19 that's across from the Dorman Center?

20 Is that---

21 A Close enough to Burlington but it was, it was not in
22 the parking lot. I didn't do any surveillance in the
23 parking lot.

24 Q Right. I understand.

25 But you, you were smoking in front of the store?

Sean Warrick - Cross-examination
by Mr. Shealy

- 1 A Yes, sir, there's---
- 2 Q Were you---
- 3 A ---a designated smoking area beside the doors.
- 4 Q Yeah, I'm not, I'm not trying to get you on the smoking
5 area.
- 6 All right. And so---
- 7 A Understood.
- 8 Q You went in at six o'clock or roughly six o'clock and
9 this person was in the store that -- for an hour?
- 10 Is that what you testified to?
- 11 A Correct, sir.
- 12 Q Okay.
- 13 A Around about.
- 14 Q All right. And were you in the front of the store that
15 whole time or were you throughout the store?
- 16 A No, sir, I was throughout the store at that time --
- 17 Q Okay. And---
- 18 A -- which I noticed him in various departments.
- 19 Q All right. And then you got a call that you needed to
20 come to the front of the store.
- 21 Is that right?
- 22 A I'd gone back to the front of the store and---
- 23 Q You'd gone back?
- 24 A Yes, sir, and I was standing there and then that's when
25 I saw another gentleman who had all the body language and

Sean Warrick - Cross-examination
by Mr. Shealy

1 everything that would tell me that it was a possible
2 shoplifter headed to the back of the store where, like I
3 said, most people do -- they do their concealment there. So
4 there's where I follow him---

5 Q Okay. And that---

6 A ---and I started that direction but I didn't get all
7 the way back there.

8 Q But that's -- and that's a separate person---

9 A Yes, sir.

10 Q ---that's not my client?

11 A No, sir.

12 Q It's not my client?

13 A No, sir, that's right. It's a separate person.

14 Q How far into the store did you get?

15 A I'd say about 20 feet.

16 Q Twenty feet?

17 A That's when I got the call over the radio.

18 Q Okay. And you get a call over the radio to come to the
19 front of the store?

20 A Correct, sir.

21 Q Correct?

22 All right. And then you -- do you go outside or do you
23 not go outside?

24 A The lady that was here earlier that testified, Ms.

25 Esopa, she was out in the parking lot. She---

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Was it---

2 A She, she explained to me what had happened and I went
3 out there --

4 Q Okay.

5 A -- to investigate.

6 Q And -- but whatever vehicle was involved had already
7 left at that point?

8 A Yes, sir, that vehicle had left.

9 Q Okay. All right.

10 A Yes, sir.

11 Q So the only time you saw, saw my client was when he
12 came in in the store and then you got a call that -- you
13 were following a person who put on a hat, got a call to come
14 to the front, and that was your -- the extent of your
15 involvement with my client.

16 Is that correct?

17 A Personally but I did go down and review CC.

18 Q Well---

19 A The closed circuit television---

20 Q Okay. Thank you.

21 A ---which I have him on the TV running out the store.

22 Q Well, that's not -- I'm not, not asking you about that.

23 Okay. So -- but those are the things that you
24 personally saw at that time?

25 A Correct, sir.

Sean Warrick - Cross-examination
by Mr. Shealy

1 Q Is that correct?

2 Okay. And then the next morning, and this is the part
3 where I'm a little confused about based on your prior
4 testimony, you remember testifying earlier this morning?

5 A Yes, sir.

6 Q Correct?

7 Outside of the presence of the jury.

8 Is that right?

9 A Correct, sir.

10 Q Okay. And, at that time, it was my understanding that
11 you did not, in fact, see anybody sitting on the hood of the
12 car.

13 Are you saying that, that you did see somebody on a
14 hood of a car?

15 A No, sir.

16 Q So you didn't see anybody---

17 A No, sir, I can correct that. That was information
18 relayed to me.

19 Q Okay. So all of that was hearsay---

20 A Yeah.

21 Q ---evidence that probably shouldn't have come in?

22 A The hearsay evidence, yes, sir.

23 Q Yeah, that Ms. Esopa---

24 A I was mistaken.

25 Q Okay. Because you had just -- you just testified on

Sean Warrick - Cross-examination
by Mr. Shealy

1 direct that you saw him on the hood of a car but that's not
2 true, is it?

3 A What I meant to say---

4 Q Is it?

5 A What I meant to---

6 Q Is it true or not?

7 SOLICITOR GHENT: Please allow him to answer.

8 Yes, sir.

9 THE COURT: I'm gonna allow him to answer your
10 question.

11 MR. SHEALY: Yes, sir.

12 THE COURT: He doesn't have to answer it in any
13 particular fashion.

14 MR. SHEALY: Yes, sir.

15 THE COURT: So he has a right to explain his answer.

16 MR. SHEALY: Yes, sir.

17 THE COURT: Sir, you can answer the question.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 A What I meant to say was it was told to me he was
21 sitting on the car. That was my mistake.

22 Q It was told to you. You did not see it.

23 A Sir, I did not see it.

24 Q Thank you.

25 Okay. Now, this third time it's my understanding that

Sean Warrick - Cross-examination
by Mr. Shealy

1 you have testified that you did see him and is that the case
2 or not?

3 A That is correct.

4 Q Okay.

5 A After the female subject that was with him was trying
6 to return stolen goods without a receipt.

7 Q Okay. Now, did you give a description in this case?

8 A Yes, sir, I did.

9 Q All right. And what was that description.

10 A Subject was around five foot five, maybe six, and
11 slender build, goatee, brown hair, and crooked teeth wearing
12 a Polo shirt, short sleeve, short sleeved, horizontal
13 stripes, yellow and blue.

14 Q Okay. And did you give that description to the police
15 officer, Officer Walter I believe is his name?

16 A Yes, ma'am. Yes, sir, when he first, when he first
17 responded.

18 Q Okay. Did you provide him with a name at all?

19 A No, sir, I never met the gentleman.

20 Q Okay.

21 A I don't know the gentleman.

22 MR. SHEALY: All right. That's all I have of this
23 witness.

24 THE COURT: Redirect.

25 SOLICITOR MABBS: Briefly, Your Honor.

Sean Warrick - Redirect examination
by Solicitor Mabbs

1 THE COURT: Yes, ma'am.

2 REDIRECT EXAMINATION

3 BY SOLICITOR MABBS:

4 Q Now, Mr. Warrick, just to clarify.

5 When did you see the defendant in the vehicle in those
6 pictures?

7 A That was the third incident that happened and that's
8 when he came around the side of the building from Gold's
9 Gym. As he proceeded -- like I said, he had came in
10 diagonally, stopped, did a three-point turn, and the female
11 subject that was trying to return the goods or the
12 merchandise without a receipt, she walked out cause -- she
13 was walking very slow cause all she had on was socks and she
14 goes around, gets in the passenger side front, gets in, I
15 notice him, the defendant, and he pulls out. Right as he's
16 pulling out, the City P.D. is pulling up.

17 Q And what seat was he in in the vehicle?

18 A He was the driver. He was in the driver's seat, ma'am.

19 SOLICITOR MABBS: No further questions, Your Honor.

20 THE COURT: Recross.

21 MR. SHEALY: Nothing, Your Honor.

22 THE COURT: You may step down, sir.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Thank you.

25 Want to take a short break?

1 SOLICITOR MABBS: Yes, please, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, we're
3 gonna take a short break. I'll let you step back to the
4 jury room. While you're out of the courtroom I will caution
5 you, don't discuss anything about the case until I ask you
6 to do so.

7 You may retire to the jury room.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: We'll be in recess for about ten minutes.

11 SOLICITOR MABBS: Thank you, Your Honor.

12 SOLICITOR GHENT: Your Honor?

13 SOLICITOR MABBS: Your Honor, may Mr. Warrick be, be---

14 THE COURT: Ma'am?

15 SOLICITOR MABBS: ---be excused from his subpoena?

16 THE COURT: I'm sorry.

17 SOLICITOR MABBS: May Mr. Warrick be excused from
18 his---

19 THE COURT: Oh, any objection?

20 MR. SHEALY: No objection.

21 THE COURT: You're free to go, sir. Thank you.

22 SOLICITOR MABBS: Thank you, Your Honor.

23 THE WITNESS: Thank you, sir.

24 (WHEREUPON, a short recess was taken at this time.)

25 THE COURT: State ready to proceed?

1 SOLICITOR MABBS: We are, Your Honor.

2 THE COURT: Defense ready?

3 MR. SHEALY: Yes, Your Honor.

4 THE COURT: Let's bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect the
8 jury has returned to the courtroom.

9 At this time the State may call its next witness.

10 SOLICITOR MABBS: Thank you, Your Honor.

11 The State would call James Rhodes.

12 THE COURT: Sir, if you'll come forward to my left here
13 to be sworn.

14 (Witness complies.)

15 THE COURT: Thank you.

16 (WHEREUPON, fourteen photographs were marked as State's
17 Exhibit Nos. 9 through 22 for identification purposes only
18 at this time.)

19 JAMES RHODES, being first duly
20 sworn, testified as follows:

21 THE COURT: Have a seat please, sir. Once you're
22 seated, state your name.

23 THE WITNESS: James Rhodes.

24 THE COURT: Thank you.

25 Your witness, counselor.

James Rhodes - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR MABBS:

4 Q Deputy Rhodes, where do you work?

5 A Spartanburg County Sheriff's Office.

6 Q And how long have you been employed at the Sheriff's
7 office?

8 A May will be 18 years.

9 Q What -- I guess what unit are you with at the --?

10 A Currently assigned to investigations.

11 Q And where were you or what unit were you with back in
12 May of last year?

13 A I was assigned a K-9 handler for Bravo shift. I
14 handled a patrol dog.

15 Q What does someone who handles a patrol dog do?

16 What were some of your duties?

17 A We assist with serving warrants, search, anybody that
18 runs, tracking, trailing, apprehension, narcotics search,
19 article search, building clear are various duties that we
20 do. Backup unit.

21 Q Were you assigned a specific dog?

22 A Yes, I had a patrol dog named Elko.

23 Q And what kind of dog is Elko?

24 A He's a Belgium Malinois.

25 Q And what kind of training did Elko have?

James Rhodes - Direct examination
by Solicitor Mabbs

1 A We came -- he came from Holland. I went to Wilmington
2 and trained for five week, five weeks with him with the
3 vender, came back, and we went through multiple years of
4 N.A.P.W.A., N.A.P.W.A., which is North American Police
5 Working Dog Association, certificates each year.

6 Q And was Elko, and I guess yourself, were y'all up on
7 your certifications back in---

8 A Yes.

9 Q ---May?

10 How long had y'all been partners?

11 A I worked him seven years. So six and a half up to that
12 time.

13 Q Where, where do y'all go now?

14 A He is retired.

15 Q Okay. Tell me, do you -- were you -- do you recall the
16 events on May 24th of last year?

17 A Yes, I recall that Deputy Jurek called me for
18 assistance working Elko, that he possibly had a subject
19 hidden thought to be possibly in an attic.

20 Q What did you do in response to this call?

21 A I responded to the call and went to see exactly what
22 they had.

23 Q And what did you see when you arrived at the scene?

24 A I spoke with Deputy Jurek. He had an ongoing
25 investigation. I believe they were two females there as

James Rhodes - Direct examination
by Solicitor Mabbs

1 well and that they was a lot of indication that the subject
2 was up, up in the attic and that would not come out.

3 So I make sure that the particular crime met with the
4 criteria for an apprehension. It did. So I made K-9
5 announcements multiple times to try to get the unit -- the
6 subject to come down that was believed to be in the attic,
7 tried to get him to come down, got not response. After we,
8 we made our announcements, I did go out. I got Elko,
9 deployed him into the home, and made the announcement again,
10 loud verbal commands for him to come down, could be
11 apprehended by the dog, and still no -- nothing. I gave
12 Elko a bark command and he barked.

13 I heard the individual. I made sure and I heard him
14 again saying that he was gonna come down. Immediately made
15 contact with as he -- told him to crawl to me, small crawl
16 space. He crawled and I told him to show his hands and I
17 saw his hands come out. Once I made sure he had his hands
18 out, I stepped back and the other deputies took him into
19 custody.

20 Q And the scene, the scene that you responded to, do you
21 remember where it was?

22 A It was on Nazareth Church Road.

23 SOLICITOR MABBS: Your Honor, permission to approach
24 the witness?

25 THE COURT: You may approach the witness.

James Rhodes - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Showing opposing counsel what has
2 been marked as Exhibits 14 through 17.

3 (Pause.)

4 Q Deputy Rhodes, do you recognize the pictures that I've
5 handed you?

6 A Yes, that's the house that we responded to.

7 Q And are those fair and accurate depictions of the house
8 as it looked --

9 A Yes.

10 Q -- the day that you arrived?

11 A Yes.

12 SOLICITOR MABBS: Your Honor, at this time State would
13 move Exhibits 14 through 17 into evidence.

14 THE COURT: Any objections?

15 MR. SHEALY: No objection.

16 THE COURT: Without objection, those exhibits will be
17 made part of the record.

18 (WHEREUPON, State's Exhibit Nos. 14 through 17 were
19 received into evidence at this time.)

20 THE COURT: You may proceed.

21 Q And, deputy, can you just briefly describe what's in
22 each photograph?

23 A The first is the house number, [REDACTED] The second is the
24 back, I believe, was a bedroom with a closet where the crawl
25 space was at. The crawl space into the attic was up inside

James Rhodes - Direct examination
by Solicitor Mabbs

1 this closet. You can see the insulation that is on the
2 floor that was -- that had fallen out and just another
3 picture of, of the closet.

4 Q Now, Deputy Rhodes, about how much -- I mean how big
5 was this attic---

6 A The crawl---

7 Q ---from what you could see?

8 A The crawl space?

9 Q Yes, sir.

10 A It was just under my shoulders. I knew I was gonna
11 have a little bit of trouble getting into it.

12 Q All right. And as far as you could tell from, I guess,
13 standing in the closet area, about how tall was the area up
14 top?

15 A A little -- I think it was eight -- roughly eight or
16 nine feet high.

17 Q And once you saw someone coming, who, who was the
18 person that came out at the attic?

19 A I saw the defendant come out of the attic.

20 Q Was anyone else in the house besides the two women?

21 A Just other deputies.

22 Q And once he did come out of the attic, was there any
23 further incident?

24 A No, he came down. Once the dog barked and I realized
25 that he was acknowledging us, he, he complied.

James Rhodes - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Beg the Court's indulgence, Your
2 Honor.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 SOLICITOR MABBS: Your Honor, I'm showing opposing
6 counsel what's been marked as Exhibits 9 through 13.

7 (Pause.)

8 SOLICITOR MABBS: Permission to approach, Your Honor?

9 THE COURT: You may.

10 Q Deputy, do you recognize the photographs I just handed
11 you?

12 A Yes.

13 Q And what are those of?

14 A I believe that is Deputy Jurek having the defendant in
15 custody after we -- after he came down from the attic.

16 Q And is that an accurate picture of what he looked
17 like---

18 A Yes.

19 Q ---at the time?

20 A Yes.

21 SOLICITOR MABBS: Your Honor, at this time we would
22 move Exhibits 9 through 13 into evidence.

23 THE COURT: Any objections?

24 MR. SHEALY: No, Your Honor.

25 THE COURT: Without objections they'll be admitted as

James Rhodes - Direct examination
by Solicitor Mabbs

1 they've been marked into the record.

2 SOLICITOR MABBS: Thank you.

3 (WHEREUPON, State's Exhibit Nos. 9 through 13 were
4 received into evidence at this time.)

5 Q Deputy Rhodes, what is -- what color shirt is the
6 defendant wearing in those photographs?

7 A He has a yellow and blue striped appears to be some
8 type of Polo shirt.

9 Q And what is, I guess, the other substance that appears
10 to be on the defendant?

11 A It's white insulation.

12 Q Where did the insulation come from?

13 A From the attic.

14 Q Okay. And, again, what was the date that all this
15 occurred?

16 A May. I think May 16th.

17 Q Would May 24th sound about right?

18 A Okay. I'd have to look at my documents. It's been
19 over a year or almost a year. Yes.

20 SOLICITOR MABBS: Your Honor, no further questions at
21 this time. Permission to publish State's Exhibits to the
22 jury.

23 THE COURT: You may do so.

24 Again, by publishing, I'm gonna allow her to pass those
25 among you and, again, try not to let it distract you from

James Rhodes - Direct examination
by Solicitor Mabbs

1 listening to what's going on.

2 Does that complete your questioning of this witness?

3 SOLICITOR MABBS: Yes, Your Honor.

4 THE COURT: All right. You may proceed.

5 MR. SHEALY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. SHEALY:

8 Q Deputy Rhodes, just a few questions.

9 That's blow-in insulation, right?

10 A It's insulation.

11 Q okay. You don't know -- do you know what blow-in---

12 A Yes, sir.

13 Q ---insulation is?

14 A Yes, sir.

15 Q Is that what that looks like?

16 A It appears to be.

17 Q All right. And blow-in insulation is designed to be
18 blown in, right?

19 A Yes.

20 Q By a jet of air?

21 A Yes.

22 Q Yeah.

23 So I know I've got it at my house and it gets on a lot
24 of stuff if you're up in the attic.

25 Is that right?

James Rhodes - Cross-examination
by Mr. Shealy

1 A Yes, sir.

2 Q Is that fair?

3 A Yes, sir.

4 Q Okay. How long have you been with the Sheriff's
5 office?

6 A Almost 18 years.

7 Q Eighteen years.

8 What did you do before that?

9 A I worked out at Kohler Company on South Pine Street.

10 Q Okay. Okay. And you've testified that this was May
11 25th.

12 You got any idea as to what time it was?

13 A It was in the afternoon.

14 Q In the afternoon.

15 Would -- but I guess it's still light out, right?

16 A Yes.

17 Q So what time do you -- just ball park it for me.

18 A I'd say between 2:00 and 4:00.

19 Q 2:00 and 4:00.

20 Do you remember if -- did y'all have any kind of
21 warrant for his arrest?

22 Do you know?

23 A I think that we had the consent to go in on the -- from
24 the females.

25 Q Okay. But did you have a warrant to arrest Timothy

James Rhodes - Cross-examination
by Mr. Shealy

1 Johnson?

2 A At that time, no, sir.

3 Q No.

4 Okay. Bear with me, judge.

5 (Pause.)

6 MR. SHEALY: That's all I have of this witness.

7 THE COURT: Redirect.

8 SOLICITOR MABBS: No, Your Honor.

9 THE COURT: All right. You may step down, sir.

10 Ms. Mabbs, do you want to allow for him to be excused?

11 SOLICITOR MABBS: Yes, please, Your Honor.

12 THE COURT: Any objections?

13 MR. SHEALY: No, Your Honor.

14 THE COURT: You're free to go. Thank you, sir.

15 All right. You may call your next witness, Ms. Mabbs.

16 SOLICITOR MABBS: Thank you, Your Honor.

17 The State would call Kyle Jurek.

18 THE COURT: Come forward, sir, and be sworn.

19 KYLE JUREK, being first duly

20 sworn, testified as follows:

21 THE COURT: Have a seat. Once you're seated, state
22 your name for the court record.

23 THE WITNESS: Deputy Kyle Jurek.

24 THE COURT: Thank you.

25 Ms. Mabbs, your witness.

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR MABBS:

4 Q Deputy Jurek, where are you employed?

5 A At Spartanburg County Sheriff's Office.

6 Q And how long have you been there?

7 A In October will be five years.

8 Q Are you familiar with the incidents that occurred the
9 weekend of May 23rd and 24th?

10 A I am.

11 Q Okay. And what was your role in the case?

12 A Well, I was the initial responding officer to the
13 incident location. It was [REDACTED] Nazareth Church Road or
14 Nazareth Road, and, when I was dispatched, it was for a
15 recovery of a stolen vehicle as well as a possible
16 disturbance that was going on. And when I arrived on scene
17 I was -- I recognized the residence as being one I had been
18 to before. I had knew the folks who lived there.

19 When I arrived I spoke with the Brewtons who were the
20 owners of the vehicle that was reported stolen earlier I
21 believe is the day before. And when I spoke to the Brewtons
22 they advised that---

23 MR. SHEALY: Objection, Your Honor. That's hearsay.

24 THE COURT: Yeah, I'm gonna caution the witness not to
25 quote what someone told you, sir.

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 THE WITNESS: Thank you.

2 THE COURT: You may proceed.

3 THE WITNESS: All right. It was discovered by me that
4 the vehicle was located by the owner of the vehicle. The
5 owner of the vehicle located the vehicle at that incident
6 location and there -- and they had had a meeting with folks
7 who were at the house. So at that time I, I went to -- up
8 to the front door, knocked on the door, was allowed to come
9 into the house, and I made contact with two female
10 individuals there.

11 In being in there I, again, I knew that the defendant,
12 Mr. Johnson, had lived at that house recently, had been out
13 there two days prior and he was at that house. So I knew
14 that he should be there.

15 Once I got -- was in there I asked where Mr. Johnson
16 was, and they stated that he was out, out of town at work.
17 His girlfriend told me that. In speaking with them some
18 more, I asked if they mind if I looked around for Mr.
19 Johnson in the house. They stated no problem with me
20 looking around. They had no problem with that at all and I
21 believe I asked several times to make sure and they stated
22 that that was fine for me to look around.

23 While I'm walking around the, the female who is not in
24 a relationship with Mr. Gregory -- I mean -- I'm sorry.
25 With Mr. Johnson indicated to me, she pointed up in the

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 ceiling like this and which made me to believe that
2 Mr. Johnson was hiding in the attic. She did it in a way
3 that the other female couldn't see. So it was obvious that
4 she didn't -- it was something that she didn't want her to
5 know about.

6 So, at that time, I asked where the attic access was
7 and was directed to the bedroom in the house. I did find
8 that attic access in the room on the pictures that you just
9 looked at. The -- I did call out to Mr. Johnson asking him
10 to come down and I got no response from him. At that time I
11 came out of the house and I called for a K-9 unit to arrive
12 on scene and assist with getting Mr. Johnson on out.

13 I had previous knowledge about the vehicle that was at
14 the house because -- the first, first way, when I came on
15 the shift that morning, I had read the incident report and
16 saw that that vehicle was stolen and so -- cause it was
17 stolen the night before and the second reason is I had,
18 while working on the 24th, I heard a BOLO given out by our
19 dispatchers about---

20 MR. SHEALY: Objection, Your Honor. Again, that's
21 hearsay.

22 THE COURT: He's not quoting anyone. He's simply
23 saying he heard a BOLO from the dispatcher. I haven't heard
24 him quote anybody at this point in time. Overruled.

25 A So I heard a BOLO about an incident that had occurred

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 in the city involving that vehicle, an incident where that
2 vehicle was involved. And so it was clear to me that there
3 was some type of more going on here than just a coincidence
4 of this vehicle being behind the house.

5 I did see the vehicle behind the house and it was
6 parked very very closely to the house. Right up against the
7 back part of the house in a way that could be concealed.
8 There is a driveway to the house on the -- actually both
9 sides of the house. There's one driveway on the right side
10 and the left side. The vehicle was not parked in either
11 side of the house. It was behind the house. So it made me
12 believe that the vehicle was trying to be concealed back
13 there.

14 It was checked and it was found to be, to be the
15 vehicle that was stolen. It was listed in N.C.I.C. as a
16 stolen vehicle.

17 Q Deputy, just to take a, take a few steps back, when you
18 first arrived at the house, who, who was standing outside?

19 A The victim. The owners of the vehicle.

20 Q The Brewtons?

21 A The Brewtons, yes, ma'am.

22 Q And were they present the entire time you were in the
23 house?

24 A I, I believe so. I believe they were.

25 Q And a moment ago you stated that the car came back

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 stolen through N.C.I.C.

2 Can you explain what N.C.I.C. is?

3 A Sure. Absolutely. If any vehicle is stolen or a
4 missing person occurs or somebody who's wanted, we can put
5 that person in a N.C.I.C. It's a national database where
6 any agency, any law enforcement agency in the country can,
7 if they run the tag or they run a person's name, they will
8 show up as stolen, or missing, or wanted, something like
9 that.

10 So, so it had, from the incident that had occurred the
11 night before when it was reported stolen, the deputy had
12 policed it into N.C.I.C. and it -- that's how I was able to
13 verify this was the same vehicle and that's done through the
14 tag number as well as a V.I.N. off the vehicle. So it's no
15 doubt that it's the vehicle.

16 Q And the V.I.N. number, can you explain what that is?

17 A Sure. The V.I.N. number is the vehicle identification
18 number. If you have a vehicle, if you look on your dash
19 right above the steering wheel in the corner, it is a long,
20 it's a 17 digit number, and it's also on the door jam of the
21 driver's side. Sometimes they put it on the, on the engine
22 block as well. But basically that number is to identify
23 that that -- this is the vehicle that should be with and
24 that is also, if you notice on your registration that you
25 have when you register your vehicle, you'll have a tag

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 number, you'll also have your V.I.N. number. So those match
2 up to that vehicle so that we know that the tag is coming
3 back to that same vehicle and know it's suppose to be on
4 that vehicle.

5 Q Now, can V.I.N. numbers be -- with, with a tag you
6 could switch on cars.

7 Could you switch a V.I.N. number and put it on a
8 different vehicle or is it attached to that vehicle?

9 A It's attached to that vehicle and manufacturers do that
10 for a reason because and they, they do it in multiple places
11 for that reason. It is possible for, for maybe one V.I.N.
12 to be messed up or disturbed somehow but they -- that's why
13 they put it in multiple locations to, to -- just in case
14 some, somebody attempts to do that and it can be positively
15 attached to that vehicle.

16 Q Now, once you enter the house and were informed that
17 Mr. Johnson may be hiding in the attic, about how long
18 between when you, I guess, first called out for him to come
19 down compared to when he actually did come down?

20 About how long was that time period?

21 A I would say it was, it was a good while. Maybe about
22 20 to 30 minutes from the time I first got there to the time
23 that Deputy Rhodes made the call, when his K-9 barked, and
24 then Mr. Johnson came out of the, out of the attic.

25 Q And---

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 A I would say a safe estimate would be thirty minutes.

2 Q And did Mr. Johnson have an opportunity, during that 30
3 minutes, to come down at any point in-between?

4 A No, ma'am, in fact, I made sure that anytime that I was
5 not in the room that there was a deputy in the room to, to
6 make sure that nobody could -- would of come down. I also,
7 before or while I was waiting on Deputy Rhodes to get there,
8 I exited the house and made sure that there was no exterior
9 way to get out of the house or to get out of the attic, out
10 of the house, except for through that one attic space and,
11 again, as I stated, every time I was out of the house I was
12 speaking to Deputy Rhones, it's -- there was somebody
13 standing by watching that, that attic access.

14 Q But if Mr. Johnson had changed his mind and chose to
15 come down, with the deputy in the room, would he have been
16 able to do so?

17 A Absolutely, yeah. He, he was -- there was -- the attic
18 access is -- was an open hole. There was no door on it.
19 Sometimes you'll see an attic access where you actually have
20 to pull down from the, from the outside. That's not what
21 this was. You saw on the pictures there. This was just a,
22 a hole in the ceiling in the closet.

23 Q Now, after you got Mr. Johnson out of the attic, what
24 did you do at that point?

25 A I did place him in handcuffs. I escorted him out to my

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 vehicle. I did read him Miranda rights before asking him
2 any questions and he was -- I believe, at that point, is
3 when I.D. had already responded and they took the
4 photographs that you saw there of Mr. Johnson. So he was
5 not -- there wasn't a lot of time when he came out of the
6 attic and when those pictures were taken by I.D.

7 Q Did you ever have occasion to search the, the vehicle
8 at the scene?

9 A After Mr. Johnson was in custody there was a search
10 done of the, of the vehicle and that -- an inventory search
11 of the vehicle to indicate what was there because it's
12 typical, whenever there's a vehicle that's been returned
13 back to the owners, you know, we don't want to give them
14 stuff that doesn't belong to them. So we make sure.

15 SOLICITOR MABBS: Your Honor, I'm showing opposing
16 counsel what has been previously marked as Exhibits 18
17 through 22.

18 MR. SHEALY: Judge, I think we may have an issue to
19 take up outside of the jury.

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, this is one of the occasions I've told you that I'd
22 ask you to step back to the jury room. Please don't discuss
23 anything about the case while you're in the -- away from the
24 courtroom. You may retire at this point.

25 (WHEREUPON, the following takes place outside the

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 presence of the jury.)

2 THE COURT: Yes, sir.

3 MR. SHEALY: Judge, I would object to these as being --
4 I don't know what their relevance is. It's -- I've got
5 pictures of a Burlington Coat Factory bag. I've got
6 pictures of some pants and they're a pair of shorts but I
7 don't, I don't know what their relevance is. They've not
8 been able to tie it -- they've not had anybody testify that
9 those were the -- I mean there's just no relevance and I
10 don't think that they -- I just don't know how they're
11 relevant.

12 THE COURT: Ms. Mabbs.

13 SOLICITOR MABBS: Your Honor, we did have Justina Esopa
14 here earlier. She did testify that she saw the defendant
15 with various items from Burlington Coat Factory. Both she
16 and Mr. Warrick saw him leaving Burlington with various
17 items, various items in a Burlington Coat Factory bag. I
18 believe they testified that, when they came back that second
19 day, she did see him, again, with that bag, and, again, this
20 would be just another step to tie him to this vehicle.

21 THE COURT: Since I would imagine all Burlington Coat
22 Factory bags look the same, it might be difficult for anyone
23 to ever testify that one was the same bag.

24 MR. SHEALY: Yes, sir, and thousands of people -- well,
25 presumably thousands of people shop at Burlington Coat

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 Factory everyday and get bags---

2 THE COURT: Well, but you would have---

3 MR. SHEALY: ---from Burlington Coat Factory.

4 THE COURT: You would have to admit, Mr. Shealy, I
5 assume -- I don't know what the testimony's gonna be about
6 this.

7 Is this gonna be the items that were found in the car?

8 SOLICITOR MABBS: Yes, Your Honor.

9 THE COURT: Okay. And I assume this gentleman must of
10 conducted the search of the car?

11 SOLICITOR MABBS: Yes, Your Honor.

12 THE COURT: So these were items that he found in the
13 car located by the house that had been seen earlier at the
14 location involved in what is alleged to be some illegal
15 activity?

16 SOLICITOR MABBS: Yes, Your Honor, and it has been
17 verified that those are, in fact, the items from the illegal
18 activity.

19 THE COURT: Well, I, again---

20 MR. SHEALY: Judge, I don't believe there's been any
21 verification.

22 THE COURT: I'm not sure that there is. You know,
23 again, are these items that appear to be new and have tags
24 on them and things of that nature?

25 SOLICITOR MABBS: Yes, Your Honor, and also have a size

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 on those pants of a Size 50, which Mr. Warrick did testify
2 as to the defendant asking for Size 50.

3 THE COURT: Well, that's---

4 MR. SHEALY: Again, Your Honor---

5 THE COURT: ---another interesting fact.

6 MR. SHEALY: Your Honor, he didn't testify as to a Size
7 50. He said a really large size.

8 SOLICITOR MABBS: Which Size 50 would---

9 MR. SHEALY: It might be---

10 SOLICITOR MABBS: ---would qualify.

11 MR. SHEALY: ---any large size, judge.

12 THE COURT: That would be large.

13 MR. SHEALY: Again, that's not what he said and that's
14 just not what he testified to.

15 THE COURT: I understand that but we're, we're -- can I
16 see the photos so I see what we're talking about?

17 MR. SHEALY: Yes, sir, if I may hand them up?

18 THE COURT: Ms. Mabbs, I assume it's your position that
19 this would be circumstantial evidence --

20 SOLICITOR MABBS: Yes, Your Honor.

21 THE COURT: -- that would indicate that there were
22 items located in a Burlington Coat Factory bag in the back
23 of the car that had been seen at the location earlier
24 involved in criminal activity, these items being brand new
25 with tags still on them?

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Yes, Your Honor.

2 THE COURT: And your position is?

3 MR. SHEALY: I, I -- my position is it's not relevant,
4 that it doesn't go to prove anything regarding a receiving
5 stolen goods. They'd be excellent exhibits in a shoplifting
6 trial but they're---

7 THE COURT: Well, what we've got here I believe,
8 Mr. Shealy, is your client was seen, I'm just taking the
9 evidence that I've heard in the light most favorable to the
10 State at this point in time, was seen operating the vehicle
11 in question, that it was identified by the owner as being
12 his vehicle that was stolen in his presence, that it was
13 located at a home in which your client was present at that
14 home, and then made efforts to either abscond and/or hide
15 himself. I'm not sure which he was trying to do when he
16 went into the attic and was retrieved by a sheriff and a
17 dog. I think this would be circumstantial evidence to
18 indicate that somehow he had participated in the use of the
19 vehicle in question and he's charged with possession of the
20 vehicle in question.

21 Overruled.

22 MR. SHEALY: Thank you, judge.

23 THE COURT: Bring the jury back in.

24 Now, I don't believe this officer has yet identified
25 those things. You're gonna have to go through him

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 identifying---

2 SOLICITOR MABBS: Yes, Your Honor.

3 THE COURT: ---those things. My ruling is based on my
4 assumptions that he will do that.

5 SOLICITOR MABBS: Yes, Your Honor.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: All right. The record will reflect the
9 jury has returned to the courtroom.

10 I have denied a defense motion to exclude the evidence
11 at this time. It is not yet been admitted.

12 You may proceed.

13 SOLICITOR MABBS: Thank you, Your Honor.

14 May I approach?

15 THE COURT: You may.

16 SOLICITOR MABBS: And, again, Your Honor, put back on
17 the record these are Exhibits 18 through 22.

18 CONTINUED DIRECT EXAMINATION

19 BY SOLICITOR MABBS:

20 Q Deputy Jurek, do you recognize what I've just handed
21 you?

22 A Yes, ma'am, I do.

23 Q And what do those photographs reflect?

24 A Reflect items that were clothing items that are in a
25 Burlington Coat Factory bag that were located inside of the

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 recovered stolen vehicle on the scene.

2 Q And are those a fair and accurate depiction of, I
3 guess, the interior of the vehicle you saw that day?

4 A Yes, ma'am.

5 SOLICITOR MABBS: Your Honor, at this time we would
6 move Exhibits 18 through 22 into evidence.

7 THE COURT: Subject to your previous objections, Mr.
8 Shealy?

9 MR. SHEALY: Yes, Your Honor.

10 THE COURT: Subject to those objections I am going to
11 allow that into evidence and they'll be made a part of the
12 record.

13 (WHEREUPON, State's Exhibit Nos. 18 through 22 were
14 received into evidence at this time.)

15 THE COURT: You may proceed.

16 SOLICITOR MABBS: Thank you, Your Honor.

17 Q Deputy Jurek, with regards to the items in the
18 Burlington Coat Factory bag, did the owners of the vehicle,
19 were those their items?

20 A No, ma'am.

21 Q What did you do with the items after they were
22 photographed?

23 A Immediately they were placed into evidence at the
24 Spartanburg County Sheriff's Office. Later they were
25 returned to Burlington Coat Factory.

Kyle Jurek - Direct examination
by Solicitor Mabbs

1 SOLICITOR MABBS: Your Honor, beg the Court's
2 indulgence.

3 (Pause.)

4 SOLICITOR MABBS: No further questions at this time,
5 Your Honor.

6 THE COURT: Mr. Shealy, your witness.

7 MR. SHEALY: Thank you, judge.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. SHEALY:

11 Q Deputy Jurek, let's just, for clarity of the record, I
12 believe you testified on direct that you responded to [REDACTED]
13 Nazareth Church Road.

14 You sure?

15 Could it have been [REDACTED]

16 A It, it could have been.

17 Q Okay.

18 A But I, again, I --.

19 Q All right. So it could of been [REDACTED] Nazareth Church
20 Road?

21 A It, it---

22 Q I can hand you your report.

23 A If you have my report then I would---

24 Q I do.

25 A Absolutely.

Kyle Jurek - Cross-examination
by Mr. Shealy

1 Q I will---

2 A Whatever's written on my report, that's where I
3 responded.

4 MR. SHEALY: If I may report or approach?

5 THE COURT: You may approach, yes, sir.

6 A Yes, that is correct.

7 Q Okay.

8 A [REDACTED] Nazareth Road is where I responded.

9 Q About what time was this?

10 Do you remember?

11 A It was in the afternoon on the 24th.

12 Q Okay. You have a ball park estimate, 2:00 to 4:00
13 sound right?

14 A I would agree with Deputy Rhodes, sometime around two
15 to four o'clock in the afternoon, the evening.

16 Q Okay. And you've testified that it, that this car
17 that's at issue was parked close to the house, right?

18 A (Witness nods affirmatively.)

19 Q And you characterize it like it was being concealed?
20 Is that accurate?

21 A That's correct.

22 Q Okay. Is this house bigger than a car?

23 A Yes.

24 Q Okay. But the back end of the car was hanging out from
25 behind the house?

Kyle Jurek - Cross-examination
by Mr. Shealy

- 1 A No, sir.
- 2 Q No?
- 3 A No.
- 4 Q Okay. So you couldn't see the car from the road?
- 5 A You could.
- 6 Q You could see the car from the road?
- 7 A Yes.
- 8 Q Okay. So despite the fact the house is bigger than the
- 9 car you could still see the car from the road?
- 10 A Absolutely.
- 11 Q All right. In fact, that's how you or you -- that's,
- 12 when you arrived, how you found it?
- 13 A I was pointed out the vehicle by the -- Mr. Brewton,
- 14 Mr. and Mrs. Brewton --
- 15 Q Okay.
- 16 A -- that it was theirs.
- 17 Q So that's how they found it --
- 18 A That's how they found it.
- 19 Q -- is they saw the or well they somehow saw it behind
- 20 the house?
- 21 A They indicated to me that they saw it as they were
- 22 driving by the house.
- 23 Q Okay. Now, you've testified you've been at the
- 24 Sheriff's office for five years?
- 25 Is that accurate?

Kyle Jurek - Cross-examination
by Mr. Shealy

- 1 A Almost five years, yes, sir.
- 2 Q Almost five.
- 3 Okay. When you were processing this vehicle you said
- 4 you searched it.
- 5 Is that right?
- 6 A I never processed the vehicle, no, sir.
- 7 Q You didn't process the vehicle?
- 8 A No, sir.
- 9 Q I thought you just testified you searched it.
- 10 A I did but I didn't say that I processed it.
- 11 Q Okay. So searching and processing are two different
- 12 words or two different meanings?
- 13 A In my understanding, yes.
- 14 Q Okay. What do you mean?
- 15 A My understanding is processing is taking fingerprints,
- 16 photographing. That's processing.
- 17 Q Okay.
- 18 A Searching includes looking in a, in a vehicle.
- 19 Q All right. Did you take these photographs?
- 20 A I did not.
- 21 Q You didn't take those photographs?
- 22 A No, sir.
- 23 Q Who took the photographs?
- 24 A I.D. unit.
- 25 Q Okay. You got any ideas as to the name?

Kyle Jurek - Cross-examination
by Mr. Shealy

- 1 A Yes, it was Deputy Talanges I believe.
- 2 Q Okay. Did he take fingerprints?
- 3 A I believe he did but I can't testify for certainty that
- 4 he did.
- 5 Q Okay. Now, at this time you were at -- on patrol.
- 6 Is that accurate?
- 7 A Yes, sir.
- 8 Q And you called for the ID unit?
- 9 A I did.
- 10 Q Did you ask him to take pictures?
- 11 A It was -- I don't believe I asked him to take pictures
- 12 but it was -- it's a very common thing, when I'm, when I
- 13 call an ID unit, is understanding that he's going to do his
- 14 job as his job and I usually don't tell him how to do his
- 15 job.
- 16 Q Okay. So you don't direct him, for example, to take
- 17 fingerprints or---
- 18 A No, sir.
- 19 Q ---that's, that's not your job?
- 20 A No, sir.
- 21 Q Okay. Is there somebody who does -- whose job that is
- 22 to tell him what to do or does he just know what he needs to
- 23 do---
- 24 A He knows what he needs to do.
- 25 Q ---and he just does it?

Kyle Jurek - Cross-examination
by Mr. Shealy

1 Okay. All right. If I may approach you---

2 THE COURT: You may.

3 Q ---at this point.

4 That's all I have for this witness, Your Honor.

5 THE COURT: Redirect.

6 SOLICITOR MABBS: No redirect, Your Honor.

7 THE COURT: All right, sir. You may step down. Thank
8 you very much.

9 THE WITNESS: Your Honor, would you like me to hand
10 these photos to the---

11 THE COURT: Please leave those with the, with the court
12 reporter there as you step down.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you.

15 You wish to excuse the witness?

16 SOLICITOR MABBS: Yes, Your Honor.

17 THE COURT: Any objections?

18 MR. SHEALY: No, Your Honor.

19 THE COURT: Sir, you're free to go. Thank you very
20 much.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: State may call its next witness.

23 SOLICITOR MABBS: Your Honor, at this time the State
24 has no further witnesses. We would just like to confirm
25 which exhibits have been entered into evidence.

1 THE COURT: You need to step up and go over those with
2 the court reporter?

3 SOLICITOR MABBS: If you don't mind, Your Honor.

4 THE COURT: You may do so.

5 (Pause.)

6 SOLICITOR MABBS: Your Honor, I would like to just
7 confirm that I have offered Exhibit 1 into evidence in front
8 of the jury.

9 THE COURT: Any objection to Exhibit 1 being confirmed
10 as part of the record?

11 SOLICITOR MABBS: It's the photo lineup.

12 MR. SHEALY: No, I have no objection. I believe it was
13 already moved in.

14 SOLICITOR MABBS: I believe so too, Your Honor. I just
15 wanted to make sure.

16 THE COURT: All right. It is part of the record.

17 SOLICITOR MABBS: Better safe than sorry.

18 THE COURT: I know it's been testified to a great deal.
19 I'm not sure what the status of that was.

20 (Pause.)

21 SOLICITOR MABBS: Your Honor, I believe we have
22 everything. So the State rests.

23 THE COURT: So the State is resting?

24 SOLICITOR MABBS: Yes, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, that completes the presentation of evidence by the
2 State. There's some matters that I have to take up with the
3 attorneys at this time that don't involve you and so I'm
4 going to ask you to step out into the jury room again, and
5 you know, as every time you do that, I'm going to instruct
6 you not to talk about this case until I ask you to begin
7 deliberations.

8 You may retire to the jury room.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Motions.

12 MR. SHEALY: Your Honor, I'd move to dismiss or move
13 for a directed verdict, excuse me, judge. It would be our
14 position that the defense's position that the State is
15 failed in their burden to prove beyond a reasonable -- well,
16 to prove at all that my client knew or had reason to believe
17 that this vehicle was stolen.

18 Your Honor, it's an entirely circumstantial case where
19 they show -- they have a bang up case as to shoplifting.
20 I'll admit to that. That's why we, that's why we pled
21 guilty to shoplifting. What they haven't proven is anything
22 that would suggest that my clients knew that this case --
23 that this car was stolen.

24 Mr. Brewton testified only that a man had stolen his
25 car. He gave no description. He didn't identify my client

1 or anything like that. So he wasn't the thief and I mean
2 obviously had he been the thief there would of been some
3 problems with a receiving stolen goods charge but he
4 certainly didn't testify to that.

5 None of the various other witnesses in this case have
6 been able to even testify that it was a stolen vehicle. It
7 doesn't say that it's stolen or anything like that. So
8 there's nothing that would give somebody who looked at this
9 car the knowledge that it was stolen. It doesn't have to be
10 stolen written on the side of it or anything like that.

11 So there's no evidence that -- it was clearly a stolen
12 vehicle, judge, and the simple fact that a vehicle is
13 involved in a shoplifting certainly doesn't go to prove that
14 the vehicle was stolen and there's -- it doesn't even
15 circumstantially go to that.

16 Your Honor, I suppose all that they can point to, this
17 alleged hiding in the attic. But, again, Your Honor, that
18 standing alone, and that's where it would have to do is
19 stand alone, certainly doesn't prove that this is -- that my
20 client knew or should of known that this car was stolen
21 because they have no other evidence that my client should
22 have known it was stolen. There was no other fact. There
23 simply wasn't any.

24 It wasn't seen in my client's possession the night that
25 it was stolen. It was seen in his possession the next day.

1 cars are pretty changeable things. They can get -- they
2 flip all the time. I mean you can go sell your car right
3 now and it can be put in the stream of commerce in buying,
4 in a day, change hands three or four times.

5 So all they have, judge, is, at best, this hiding in
6 the attic and, if anything, that could go to the shoplifting
7 as well. I know that I've been involved in a shoplifting.
8 I know that I'm guilty. They probably have a warrant for me
9 for shoplifting. Let me get up in the attic, judge.

10 So that's all very easily explained away and a
11 circumstantial case has to point strongly to the fact
12 that -- to the conclusion, Your Honor, judge, and I would
13 point you to State versus Bostic. I've got a copy.

14 THE COURT: State versus what?

15 MR. SHEALY: Bostic, Your Honor. It's a Supreme Court
16 case from 2011 if I may?

17 THE COURT: Pass it up please, sir.

18 (Mr. Shealy complies.)

19 THE COURT: Thank you.

20 That's the burn pile case, right?

21 MR. SHEALY: It is, Your Honor.

22 THE COURT: I'm familiar with it.

23 MR. SHEALY: Judge, and so, again, it would be our
24 position that, at best, the State has produced a mere
25 suspicion of guilt regarding the attic, but other than that,

1 they just don't have anything that ties my client to -- that
2 shows any guilty knowledge or any willful blindness to
3 guilty knowledge or any reason he should have known that it
4 was stolen. There simply is no testimony to that, judge.

5 THE COURT: I'll hear from the State.

6 SOLICITOR MABBS: Thank you, Your Honor.

7 First, as Mr. Shealy did point out, the fact that he's
8 hiding in the attic of the house where the car is found in
9 the back of the house, you know, where Deputy Jurek did
10 testify there's two driveways. It's parked, as Exhibits 2
11 through 8 I believe, Your Honor, the pictures of the car
12 next to the house. It is right up next to that house. It
13 is parked behind the house making it very difficult to see
14 from the road.

15 When it was stolen, Mr. Brewton testified less than a
16 mile away from the gas station is where it's recovered at
17 his girlfriend's house.

18 THE COURT: The day before?

19 SOLICITOR MABBS: The day before, Your Honor. So the
20 timeline as well also factors into, you know, evidence that
21 he knew or should have know that the vehicle was stolen.

22 THE COURT: Help me with my timeline. When it was seen
23 at the Burlington Coat Factory or on the other side of the
24 Gold's Gym --

25 SOLICITOR MABBS: Yes, Your Honor.

1 THE COURT: -- which day was that?

2 Was that the day it was stolen or was that the day, the
3 second day?

4 SOLICITOR MABBS: The second day, Your Honor. The day
5 that it was recovered.

6 THE COURT: So it was seen at Burlington or at Gold's
7 Gym with the young lady trying to return the items and this
8 gentlemen driving the day after it was taken. Now, it was
9 taken late evening. He was on his way home.

10 SOLICITOR MABBS: Yes, Your Honor.

11 THE COURT: So it was actually taken, as I recall, 7:00
12 in the evening?

13 Is that about when that was?

14 MR. SHEALY: It was something like that.

15 SOLICITOR MABBS: Yeah.

16 THE COURT: Something like that.

17 SOLICITOR MABBS: After 7:00.

18 THE COURT: So probably less than 12 hours --

19 SOLICITOR MABBS: Yes, Your Honor.

20 THE COURT: -- later or around 12 hours later.

21 SOLICITOR MABBS: Yes, Your Honor, which we do believe
22 to be significant.

23 MR. SHEALY: Be our position it would be substantially
24 more than 12 hours, judge. Twelve hours would include---

25 THE COURT: Okay. It was overnight and it was seen

1 when then at Burlington?

2 When would you say it was seen?

3 MR. SHEALY: Judge, well, it depends on what parts of
4 the loss prevention officer's statement -- I know what we
5 saw---

6 THE COURT: I asked you what position you had. I
7 didn't ask you what position he had.

8 MR. SHEALY: Well, judge, again, it's, it depends on
9 how you believe him. I mean---

10 THE COURT: What position do you have, Mr. Shealy?

11 MR. SHEALY: My understanding, judge, if I may look, it
12 was some time in the afternoon certainly at, at the Gold's
13 Gym I think.

14 THE COURT: So less than 24 hours later?

15 MR. SHEALY: It would of been -- yes, sir, somewhere or
16 well less than but of---

17 THE COURT: And of those 24 hours, most of them would
18 of been in the evening?

19 SOLICITOR MABBS: Yes, Your Honor.

20 THE COURT: A good portion of them was in the evening.

21 MR. SHEALY: Yes, sir.

22 THE COURT: All right. Go ahead.

23 SOLICITOR MABBS: So, Your Honor, as---

24 THE COURT: I was trying to get my timeline straight
25 because I couldn't recall whether it's been seen the same

1 day that it was stolen but I knew it was seven o'clock.

2 SOLICITOR MABBS: Right.

3 THE COURT: And I was trying to be sure I had that
4 right but it's a pretty tight timeframe.

5 SOLICITOR MABBS: Yes, Your Honor, which---

6 THE COURT: Go ahead.

7 SOLICITOR MABBS: ---you know, we believe would tend to
8 show that it would be known or should of been known to have
9 been stolen given that very short timeframe that also this
10 car matched the -- it's available if you will.

11 Your Honor, second of all, as far as the hiding in the
12 attic goes, both Mr. and Mrs. Brewton testified seeing a
13 third person in the house. Mrs. Brewton testified seeing
14 the defendant in the house. It's been testified by multiple
15 parties. Nobody else was in that house except for---

16 THE COURT: And I think, when the officers went in,
17 they found two females and this gentlemen.

18 SOLICITOR MABBS: Yes, Your Honor, and those were the
19 only people in that house.

20 Your Honor, he did go upstairs when the police -- he
21 hid once the owners of that vehicle showed up and started
22 asking questions, and I believe that would also tend to
23 show, in light most favorable to the State, Your Honor,
24 given all these conditions, that there is sufficient
25 circumstantial evidence of knowledge.

1 THE COURT: Well, anytime you're trying to prove what
2 someone knew or should of known, the only way to prove it is
3 by circumstantial evidence, Mr. Shealy, because I charge
4 that all the time. You can't, you can't determine someone's
5 state of mind by direct evidence. You can't cut his head
6 open and look to see what he knew.

7 MR. SHEALY: Well, that, that may be true, judge, but
8 you need substantial circumstantial evidence and we just
9 have---

10 THE COURT: And that's the question. Is this
11 substantial enough.

12 MR. SHEALY: And this is certainly not substantial
13 enough because, again, as the State has agreed now, all they
14 have is the attic and, again, that doesn't point to
15 knowledge, in my opinion, and now they claim that there is a
16 tight timeframe but, again, judge, as I've already pointed
17 out, you can turn a car over any number of times in a day.

18 THE COURT: Yeah, well, you know, this was mostly at
19 night and a half a day.

20 MR. SHEALY: Well, I mean okay. Then if you can turn
21 it over five times in a day, judge, then you can turn it
22 over two and a half days in half a day.

23 THE COURT: But I -- thus far I haven't seen any -- go
24 ahead.

25 MR. SHEALY: Judge, in Bostic's case they had the

1 murder victim's items in the burn pile.

2 THE COURT: Yes, sir.

3 MR. SHEALY: The fire was accelerated. Bostic's mother
4 said she didn't use those accelerants. Bostic had a pattern
5 that matched those accelerants. There was the DNA, while it
6 couldn't be matched to the murder victim's DNA, they did
7 find DNA that excluded 99 percent of the population. Judge,
8 I believe there was also a fingerprint in that case
9 regarding a borrowed BMW.

10 If this is all that it takes, judge, then that's mighty
11 slim circumstantial evidence. In this case, hiding in an --
12 simply hiding from the police surely can't be sufficient
13 for---

14 THE COURT: Well, let's, let's talk a little more
15 because there's a couple of factors that I'm thinking about
16 that you haven't mentioned. He takes apparently a female
17 subject back to the Burlington Coat Factory to return stolen
18 items, and instead of parking at the store he parks behind
19 the second store.

20 MR. SHEALY: Judge, there's---

21 THE COURT: It appears that that could be
22 circumstantial evidence that he was trying to conceal
23 himself and the car.

24 MR. SHEALY: Judge, they had just shoplifted from
25 Burlington Coat Factory.

1 THE COURT: Well, I understand that.

2 MR. SHEALY: And, again, all of that guilty knowledge
3 that y'all are now imputing to a receiving stolen goods can
4 just as easily be imputed to the fact that there was a
5 shoplifting in progress.

6 THE COURT: But it also could be imputed to this charge
7 as well.

8 MR. SHEALY: And, judge, I would submit to you---

9 THE COURT: The fact that he's committed two crimes
10 doesn't make you any less culpable of one or the other.

11 MR. SHEALY: Well, judge, I would submit to you that---

12 THE COURT: If he's committed two crimes.

13 MR. SHEALY: The -- nobody's testified as to the
14 parking lot layout. So we don't know if you can part over
15 there next to the store.

16 THE COURT: Well, no, they testified as to the store
17 layout. They said that they're in the same building but he
18 parked around the far end of the, of the gym.

19 MR. SHEALY: Again, judge, I think that's---

20 THE COURT: I'm familiar with the shopping center.
21 Been out there many times. It's a very large building. Use
22 to be the Home Depot. It's a large building.

23 MR. SHEALY: Yes, sir.

24 THE COURT: It's a long distance to get to the other
25 side of that Gold's Gym. That's where somebody wouldn't

1 normally park doing business at Burlington.

2 MR. SHEALY: Well, judge, again, it would be our
3 position that that is certainly -- it's simply not
4 substantial circumstantial evidence.

5 THE COURT: Well, any one item is probably not. The
6 question is I have to look at the totality of the facts and
7 circumstances.

8 MR. SHEALY: I understand that, judge.

9 THE COURT: Not just any one particular act.

10 MR. SHEALY: But the problem is, in this case, there is
11 only one particular item and that's this alleged guilty or
12 avoidance of guilt, this alleged concealment, where even the
13 deputy has said no, no, I mean you could see the car from
14 outside -- I mean from the road and---

15 THE COURT: Well, it's behind the house but was visible
16 from the road.

17 MR. SHEALY: He's, he's also testified that the house
18 is bigger than the car. So he could have, if they were
19 really trying to conceal this car behind the house, they
20 could of. It just -- if, if we're gonna say that to park it
21 behind---

22 THE COURT: Well, let's look at the Bostic case.

23 Is there any evidence that Bostic did anything in that
24 case?

25 MR. SHEALY: Well, judge, again, it would be our

1 position that the fact that the pile was accelerated with
2 either kerosene or diesel fuel---

3 THE COURT: You're not answering my question.

4 MR. SHEALY: Well, I believe that he had a pattern of
5 gasoline on him that would of matched that pile.

6 THE COURT: Is there any evidence that he did anything?

7 In fact, it said it didn't match it but did, did -- is
8 there any evidence that he did anything in that case?

9 Let's read it. I'll look at it again. I didn't see
10 it.

11 MR. SHEALY: Judge, I don't see where my client has
12 done anything in this case.

13 THE COURT: Well, he's hiding in an attic. He was
14 peeking through -- apparently peeking through the blinds and
15 wouldn't come to the door when the owner of the car showed
16 up.

17 MR. SHEALY: And that's sufficient for guilty
18 knowledge, judge?

19 THE COURT: Well, it's some action on his part.
20 It's -- Bostic -- in Bostic I didn't see anything that
21 Mr. Bostic himself did. I'm just trying to compare the
22 circumstantial evidence in the two cases. You asked me to
23 look at Bostic. I'm looking at it.

24 MR. SHEALY: Well, judge, again, we would be -- we
25 would point to the law of Bostic, which is---

1 THE COURT: Well, you're changing my---

2 MR. SHEALY: ---when the evidence---

3 THE COURT: You just changed my question. I want you
4 to answer my question.

5 Is there any evidence that Bostic took any actions that
6 would have indicated somehow that he was responsible for
7 that murder?

8 MR. SHEALY: Well, again, judge, I would point out the
9 burned pile and it was my reading of it that he did actually
10 have gasoline that matched.

11 THE COURT: Show me that in here.

12 MR. SHEALY: Yes, sir, it's on Page 5 of 5.

13 THE COURT: Okay.

14 MR. SHEALY: Number 2 and Number 3. The fire in the
15 burn pile was accelerated with either kerosene or diesel
16 fuel. The mother -- Bostic's mother did not use those
17 accelerants when she burned things in the pile. Bostic had
18 a pattern that matched gasoline on his shoes and the
19 gasoline was the accelerant used for the house fire.

20 THE COURT: So you're saying that that's what matched
21 him to it?

22 MR. SHEALY: That's one of the things that would match
23 him to it --

24 THE COURT: Okay.

25 MR. SHEALY: -- that that gasoline matches him to the

1 house fire.

2 THE COURT: Five of five where?

3 MR. SHEALY: It's five of five, Your Honor, on the
4 middle of the page. It's -- starts Pages 142.

5 THE COURT: But then the DNA excluded him?

6 MR. SHEALY: It did exclude -- well, it was allegedly
7 Polite's, the murder victim's DNA, Your Honor, and it
8 excluded 99 percent of the pop -- of the population. So it
9 was very nearly a match to the murder victim's, but it -- so
10 it could of been but it wasn't a complete match is my
11 understanding.

12 THE COURT: So it was not a match?

13 MR. SHEALY: It was, it was not a match but it
14 excluded -- I don't know what that means. I can just read
15 it to you, judge.

16 THE COURT: I don't know what that means either other
17 than it wasn't -- it didn't say it was a match.

18 MR. SHEALY: That the DNA from the blood found on
19 Bostic's jeans excluded about 99 percent of the population,
20 but while the DNA from the blood found on Bostic's jeans
21 excluded about 99 percent of the population, the blood could
22 not be matched to Polite's DNA.

23 THE COURT: All right.

24 MR. SHEALY: So it's---

25 THE COURT: Anything further from the state?

1 SOLICITOR MABBS: Your Honor, at this point I'd stand
2 by my previous arguments. I can obviously disagree that I
3 believe that there is substantial circumstantial evidence.
4 I don't think I need to repeat the various pieces of
5 evidence that have been put in.

6 THE COURT: All right. Anything further, Mr. Shealy?

7 MR. SHEALY: Judge, again, I would stick with our
8 position that this is not substantial jury circumstantial
9 evidence.

10 THE COURT: I'll overrule the motion. Denied.

11 SOLICITOR MABBS: Thank you, Your Honor.

12 THE COURT: Any other motions, Mr. Shealy?

13 MR. SHEALY: Judge, I would have a motion to settle the
14 record of Ms. Jackie Gregory.

15 THE COURT: I'll hear from you on the record.

16 SOLICITOR GHENT: May it please the Court?

17 THE COURT: Yes, sir.

18 SOLICITOR GHENT: I'm not sure exactly, first of all,
19 if counsel's the moving party, and I'll be glad to let him
20 go first. I have her record.

21 THE COURT: Yes.

22 Has he been provided a copy of that?

23 SOLICITOR GHENT: Yes, sir, he has.

24 MR. SHEALY: No, I've not been.

25 THE COURT: He says he hasn't.

1 SOLICITOR GHENT: My apologies.

2 THE COURT: You need a few minutes to look over it?

3 MR. SHEALY: Your Honor, I don't think so. I mean we
4 can just see what he wants to use.

5 THE COURT: Okay.

6 MR. SHEALY: I don't know if I have---

7 THE COURT: Why don't you two confer for just a minute.
8 I'll take a short recess and remain on the bench.

9 SOLICITOR GHENT: My apologies, Your Honor. I thought
10 he had that.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: All right. We had a chance to review that
13 record, Mr. Shealy?

14 MR. SHEALY: I'm finishing up, judge.

15 THE COURT: Okay. Let me know when you're ready.

16 (Pause.)

17 MR. SHEALY: Judge, I think we're prepared to move
18 forward with this.

19 THE COURT: All right. Well, first of all, what I'm
20 going to do is I'm going to ask the State -- now, this is a
21 record of proposed witness of ours.

22 Is that right, Mr. Shealy?

23 MR. SHEALY: It is, Your Honor, I just wanted to make
24 sure that we're all on the same page.

25 THE COURT: All right. And does the State intend to

1 use any of that record to challenge her credibility?

2 SOLICITOR GHENT: Yes, sir.

3 THE COURT: Can you tell us what convictions you might
4 be intending to use for that purpose?

5 SOLICITOR GHENT: Your Honor, I assume that Mr. Shealy
6 himself will be addressing the conviction dated October the
7 26th, 2015, which involves the -- a plea to the
8 possession, receiving stolen goods, the car involved in
9 this. That was the case that Mary Francis Dassel, also with
10 the Public Defender's Office, represented Ms. Gregory.

11 Then going back, we have charges July 20th, 2015,
12 arrest for possess, possession of selling stolen vehicle.
13 Convicted. Ten years suspended concurrent. That I believe
14 is the one I just mentioned.

15 Then petit larceny enhanced. Convicted. Ten years
16 suspended, time served, probation for five years.

17 Petit larceny. Convicted. Ten years.

18 All these were at the same time, Your Honor.

19 Breaking into auto tanks where fuel's stored.
20 Convicted. Five years suspended 97 days credit for time
21 served.

22 Petit larceny. Convicted. Enhanced ten years.

23 Shoplifting, \$2,000 or less enhanced ten years.

24 Convicted. Credit for time served, 97 days.

25 July 21st, 2015, grand larceny. Convicted. Five

1 years suspended to time served. Credit for time served, 97
2 days.

3 Finally, petit larceny. Ten years. Five years
4 probation. Ten years. Credit for time served.

5 That would of been October the 26th, 2015.

6 THE COURT: Mr. Shealy.

7 MR. SHEALY: Judge, I would just add that I don't
8 believe that the time that she's looking -- I mean the
9 sentences are particularly probative of anything. I don't
10 think he can ask that.

11 THE COURT: Well, I don't think I would allow him to
12 get into what her sentences was.

13 SOLICITOR GHENT: I would say---

14 THE COURT: The only purpose it would serve is,
15 according to the rule, it must be something that carried
16 more than one year.

17 MR. SHEALY: Yes, sir, I just wanted to---

18 THE COURT: And I think he's pointing out that a lot of
19 those are petit larcenies and things that normally wouldn't
20 carry a year, but apparently did in this case because of the
21 enhancement.

22 MR. SHEALY: Yes, sir, and so it would just be those
23 2015 charges?

24 Is that my understanding of what you're gonna ask
25 about?

1 There's a 519 and a 720?

2 SOLICITOR GHENT: I believe that's correct.

3 May I have just a moment?

4 THE COURT: Yes, sir. Sure.

5 (Pause.)

6 SOLICITOR GHENT: Your Honor, that's correct and the
7 2015 charges.

8 MR. SHEALY: All right. That settles the record, Your
9 Honor.

10 THE COURT: All right. Anything else, Mr. Shealy,
11 before I talk to your client about his right to remain
12 silent?

13 MR. SHEALY: If I may confer with him just about that.

14 THE COURT: Please do.

15 (Pause.)

16 MR. SHEALY: Okay. Judge, I think we're ready at this
17 time.

18 THE COURT: All right. Place the defendant under oath
19 at this time for me.

20 (WHEREUPON, the defendant was placed under oath at this
21 time.)

22 THE COURT: All right. You can be seated, sir.

23 Mr. Johnson, we've reached the stage of your case where
24 you have the right to present your defense, and, in doing
25 so, there's some matters that I want to go over with you so

1 that I'm sure you understand this. So, if there's anything
2 that you don't understand about what I tell you, I'll give
3 you a chance to ask questions or ask for further explanation
4 in just a few minutes.

5 As I said, we have reached the point in the trial where
6 you can present your defense. You also have the right to
7 claim the protections that are given to all defendants under
8 the Fifth Amendment to the United States Constitution. That
9 amendment reads, in part, that no person shall be compelled,
10 in any criminal case, to be a witness against himself.

11 That means that you, while you have the right to
12 testify on your behalf, you also have the right to claim the
13 protections granted you by that amendment and not to testify
14 and no one can make you testify in this case. The right to
15 remain silent during this case is a personal right. It
16 belongs to you and no one can waive or give up that right
17 except yourself. If you decide to testify, you'll be
18 subject to the rules that govern other witnesses as well.
19 That means you'd be examined by your lawyer and
20 cross-examined by the State on any relevant issue in the
21 case, and you also, if you should have any convictions that
22 involve dishonesty or false statements or if you have
23 convictions for crimes that are punishable by imprisonment
24 for more than one year, and this Court makes a determination
25 that the probative value of admitting the evidence outweighs

1 its prejudicial effect, if that ruling would be made, the
2 solicitor would be able to introduce that record to attack
3 your credibility.

4 If you decide to testify, the decision on your part
5 must be made freely, voluntarily, and intelligently. That
6 means with knowledge of the protections given to you by the
7 Fifth Amendment and any consequences that might result from
8 your decision to testify.

9 If you decide not to testify, then I will instruct the
10 jury that they can not give the fact that you did not
11 testify any consideration whatsoever and that there is to be
12 absolutely no prejudice to you simply because you did not
13 testify.

14 The decision as to whether or not to testify, that's
15 left up entirely to you. You have the right to talk to your
16 lawyer, family, friends, anybody else you'd like to consult
17 with but the final decision is your decision and yours
18 alone.

19 Now, do you understand the rights that I just went over
20 with you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions about what I've
23 explained?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you had an opportunity to discuss the

1 decision as to whether or not to testify with your lawyer?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And with anyone else you'd like to discuss
4 it with?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, have you made a decision as to whether
7 or not to testify in this case?

8 THE DEFENDANT: I have, sir.

9 THE COURT: Do you intend to testify?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Thank you very much.

12 Anything else you'd like to go over with the Court, Mr.
13 Shealy, before we proceed?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: And with the defense -- I mean prosecution?

16 SOLICITOR MABBS: No, sir.

17 THE COURT: Anything else you want to go over with me?

18 SOLICITOR GHENT: No, sir.

19 THE COURT: One other thing that I -- in ruling on the
20 motion for directed verdict, I got into the discussions with
21 you, Mr. Shealy, and I forgot to make one point that I did
22 want to make in support of my decision not to grant the
23 motion for directed verdict and that is, at the time your
24 client decided to go into the attic to avoid contact with
25 the police, he was also confronted at that time directly by

1 the owner of the vehicle who had identified himself at the
2 door as being the owner of the vehicle and claiming that
3 vehicle is his, which I find -- found to be the more direct
4 cause of his concern than the shoplifting case. You
5 indicated he might of been fearing for the shoplifting
6 arrest or prosecution, but, however, he was being confronted
7 at that moment by the owner of the vehicle. The owners had
8 knocked on the door, talked to the two females. He
9 obviously was aware that they were outside since he
10 apparently came to the window. They said a third person
11 came to the window other than the two that they had met, and
12 there were only three people in the house, and that that
13 person peered outside. Then, when the police got there,
14 they found him in the attic.

15 So I find that that is probably -- and that, as far as
16 circumstantial evidence, that appears to be the more direct
17 cause for him to go into the attic than the shoplifting case
18 or certainly a jury could make that determination. So I
19 find that to be an additional supporting circumstantial
20 evidence for my decision. I wanted to be sure to put that
21 on the record cause I already thought of that and considered
22 it since he was being confronted by the owner at that time.
23 Not by anyone from Burlington Coat Factory.

24 All right. Are we ready to proceed as far as the State
25 is concerned?

1 SOLICITOR MABBS: Yes, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MR. SHEALY: I am, Your Honor. I do -- I have thought
4 of one issue. I'm going to call Jackie Gregory.

5 THE COURT: Yes, sir.

6 MR. SHEALY: And she was similarly charged in this case
7 with possession of stolen vehicle.

8 THE COURT: I just learned that.

9 MR. SHEALY: Yes, sir, and she pled guilty too, as you
10 heard, to that possession of stolen vehicle.

11 THE COURT: Yes.

12 MR. SHEALY: Given that, I believe jeopardy has already
13 attached to that circumstance. She will be testifying in
14 ways that would implicate her in possession of stolen
15 vehicle. At least I believe having discussed it with her---

16 THE COURT: Well, why don't I bring her up and let's
17 put her under oath and I'll tell her---

18 MR. SHEALY: Yes, sir.

19 THE COURT: ---go over with her the concerns that she
20 might have. I don't know if she does or not.

21 MR. SHEALY: And I just wanted it in an abundance of
22 caution.

23 THE COURT: All right. Ma'am, come forward and be
24 placed under oath please.

25 (WHEREUPON, the witness, Jackie Gregory, was placed

Jackie Gregory - Examination
by the Court

1 under oath at this time.)

2 THE COURT: Have a seat please, ma'am.

3 Your name is?

4 THE WITNESS: Jackie Gregory.

5 THE COURT: Mrs. Gregory, I've been informed by Mr.
6 Shealy that he intends to call you as a witness in this
7 case.

8 Are you aware of that?

9 THE WITNESS: Yes, sir.

10 THE COURT: And, as such, you will be placed under oath
11 and he was going to ask you questions that pertain to this
12 incident that we're talking about at this point in time,
13 which is the possession of a stolen vehicle by the
14 defendant, Mr. Johnson.

15 THE WITNESS: Yes, sir.

16 THE COURT: Are you aware of that?

17 THE WITNESS: Uh-huh. (Affirmative).

18 THE COURT: Now, I've been informed, just a few minutes
19 ago, that you apparently have already pled guilty to similar
20 offenses such as possession of a stolen vehicle.

21 Any other offenses that you pled guilty to?

22 THE WITNESS: Yeah.

23 MR. SHEALY: Judge, she pled guilt to some shopliftings
24 and some other possession of stolen vehicles, receiving
25 stolen goods. All of those, those 2015 charges

Jackie Gregory - Examination
by the Court

1 essentially---

2 THE COURT: I see.

3 MR. SHEALY: ---all in a---

4 THE COURT: Were you represented by Ms. Dassel at that
5 time?

6 THE WITNESS: I can't remember.

7 THE COURT: Well, can you describe the person that you
8 were represented by?

9 THE WITNESS: Oh, the public defender?

10 THE COURT: It was a public defender.

11 Is that right?

12 Is that who you had?

13 THE WITNESS: Yeah, but I don't remember who it was.

14 THE COURT: Okay. Was -- does she have blond hair?

15 THE WITNESS: Uh-huh. (Affirmative).

16 THE COURT: Okay. Female?

17 THE WITNESS: Yeah, and she quit.

18 THE COURT: Okay. She's no longer there?

19 THE WITNESS: Right.

20 THE COURT: That would describe Ms. Dassel and that's
21 who I believe Mr. Shealy indicated represented you.

22 Now, you're not represented by a lawyer today.

23 You understand that?

24 THE WITNESS: I understand.

25 THE COURT: You were present in the courtroom. You

Jackie Gregory - Examination
by the Court

1 heard me go over with Mr. Johnson his right to remain silent
2 and not to testify in this case.

3 Did you hear me go over that right with him?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did you understand what I told him?

6 THE WITNESS: Yes, sir.

7 THE COURT: You have to answer me verbally, ma'am.

8 Now, I will tell you that, in addition to that right,
9 that particular Constitutional amendment has been
10 interpreted such that people are not required to offer any
11 information under oath that would tend to incriminate them
12 in any crime that they have not yet been prosecuted for and
13 so I don't know where this testimony is going to go. I
14 don't know what you're going to be testifying to and I'm
15 certainly not in a position to offer you legal advice in the
16 case.

17 What I can do -- advise you is that you'll be
18 interviewed under oath. What you say under oath will be on
19 the record of the case. It can and will be used against you
20 in the future if the prosecution feels that other crimes are
21 mentioned or other issues are mentioned other than what
22 you've been prosecuted for already and you could be in
23 jeopardy of criminal prosecution as to other matters.

24 Do you understand that?

25 THE WITNESS: Uh-huh. (Affirmative).

Jackie Gregory - Examination
by the Court

1 Yes, sir.

2 THE COURT: So you have the right to claim the
3 protections of the Fifth Amendment and not testify at all if
4 you feel this testimony might, in anyway, incriminate you in
5 any other crimes for which you have not already been
6 prosecuted.

7 Did you understand what I just said?

8 THE WITNESS: Yes, sir.

9 THE COURT: And you have the right to consult with an
10 attorney before you testify in this case if you wish to
11 consult with an attorney.

12 Do you understand that?

13 THE WITNESS: Yes, sir.

14 THE COURT: Now, you've not yet been charged with a
15 crime. I'm not in a position to appoint a lawyer for you
16 but you certainly have the right to consult with an attorney
17 if you wish to do so.

18 THE WITNESS: Yes, sir.

19 THE COURT: Now, would you like to add anything, Mr.
20 Shealy?

21 Mr. Shealy, to this -- you're going to be doing the
22 questioning. So if there's something she needs to be aware
23 of--

24 MR. SHEALY: Yes, sir.

25 THE COURT: ---perhaps you know that better than I do.

Jackie Gregory - Examination
by Mr. Shealy

1 EXAMINATION

2 BY MR. SHEALY:

3 Q Ms. Gregory, I just want to make sure you understand
4 that I've not given you any promises.

5 Is that accurate?

6 A Uh-huh. (Affirmative).

7 Q I've told you I don't know what will happen with your
8 testimony.

9 Is that---

10 A Yes, sir.

11 Q And that I've not -- I'm not advising you.
12 okay?

13 A Okay.

14 Q Is that your understanding?

15 A Yes, sir.

16 SOLICITOR MABBS: Okay. Judge, I think---

17 THE COURT: The prosecution wish to discuss anything
18 with her?

19 SOLICITOR GHENT: If I could just clarify, one or a few
20 things, Your Honor?

21 THE COURT: Yes, sir.

22 EXAMINATION

23 BY SOLICITOR GHENT:

24 Q Ms. Gregory, my name's Russell Ghent. I'm one of the
25 prosecutors in this case.

Jackie Gregory - Examination
by Solicitor Ghent

1 Is it fair to say that you don't know me from Adam's
2 House Cat?

3 A Uh-huh. (Affirmative).

4 Q We've never met?

5 A No.

6 Q Never made any promises?

7 A No.

8 Q Never made any threats?

9 A No.

10 Q Never made any guarantees, any deals, nothing?

11 A (Witness nods negatively.)

12 Q You pled guilty to a number of charges involving
13 shoplifting involving this car, this very same car --

14 A Yes, sir.

15 Q -- in last year?

16 Is that correct?

17 A Yes, sir.

18 Q And is it also correct to say -- A, Your Honor, I'm
19 just clarifying this because I had a question.

20 One of those charges is a shoplifting that took place
21 October, excuse me, May the 24th, 2015. You were
22 convicted or pled guilty June 25th, 2015.

23 Is that the Burlington Coat Factory cases?

24 A No, sir.

25 Q It's not, is it?

Jackie Gregory - Examination
by Solicitor Ghent

1 A Hu huh. (Negative).

2 Q Okay. So any reference to that, if counsel asked you
3 about it or I ask you about it, anybody ask you about it,
4 that's not asking you about the Burlington Coat Factory
5 case?

6 A No.

7 Q Correct?

8 A Hu huh. (Negative).

9 SOLICITOR GHENT: Okay. Your Honor, I just wanted to
10 clarify that, that I wasn't going in back of anything the
11 Court had instructed.

12 Thank you.

13 THE COURT: All right. Now, ma'am, I'm gonna ask you
14 now, do you wish to invoke your protections under the Fifth
15 Amendment and not testify in this matter?

16 THE WITNESS: No, I want to testify.

17 THE COURT: So you want to go forward and testify?

18 THE WITNESS: Uh-huh. (Affirmative).

19 THE COURT: And have you had an opportunity to consult
20 with anyone that you wish to consult with about this matter
21 if you had chosen to do so?

22 THE WITNESS: Yes, sir.

23 THE COURT: Were you aware that you were gonna testify
24 before today?

25 THE WITNESS: Yes, sir.

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1 THE COURT: So you've had an opportunity to do so if
2 you wanted to?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Anything further?

5 MR. SHEALY: Just, Your Honor, that she can invoke that
6 right at anytime and you---

7 THE COURT: Oh, absolutely, ma'am. You do have the
8 right, at anytime if you hear questioning from, from any of
9 the attorneys that you feel uncomfortable about in regards
10 to this matter of self-incrimination, you do have the right
11 to invoke your rights and not testify at anytime.

12 THE WITNESS: Okay.

13 THE COURT: You understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Now, ma'am, I'm gonna ask you
16 to have a seat back out in the courtroom. We'll call the
17 jury in and you'll be called back and placed under oath for
18 this case in front of the jury.

19 (Witness complies.)

20 THE COURT: You ready to proceed?

21 MR. SHEALY: Yes, sir.

22 THE COURT: You ready?

23 SOLICITOR GHENT: State's ready.

24 THE COURT: Bring the jury in.

25 (WHEREUPON, the following takes place within the

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1 presence of the jury.)

2 THE COURT: All right. The record will reflect that
3 the jury has returned to the courtroom.

4 We've completed the presentation of evidence by the
5 State and, at this time, the defense has the right to call
6 witnesses.

7 Mr. Shealy.

8 MR. SHEALY: Your Honor, the defense would call Jackie
9 Gregory.

10 THE COURT: All right, ma'am. If you'll come forward
11 over here to my left to be sworn please.

12 (Witness complies.)

13 THE COURT: Thank you.

14 JACKIE GREGORY, being first duly
15 sworn, testified as follows:

16 THE COURT: Have a seat please, ma'am, and, once you're
17 seated, I'd ask that you state your name.

18 THE WITNESS: My name's Jackie Gregory.

19 THE COURT: Thank you.

20 Your witness, Mr. Shealy.

21 MR. SHEALY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. SHEALY:

24 Q Ms. Gregory, if I can get you to speak up.
25 okay?

Jackie Gregory - Direct examination
by Mr. Shealy

- 1 A Okay.
- 2 Q Everybody over here needs to hear what you're saying.
- 3 All right?
- 4 A (Witness nods affirmatively.)
- 5 Q Okay. How old are you, Ms. Gregory?
- 6 A I'm 33.
- 7 Q Okay. And do you have occasion to know Mr. Johnson?
- 8 A I do.
- 9 Q Timothy Johnson.
- 10 Is that---
- 11 A Yes, sir.
- 12 Q ---him over there?
- 13 A Uh-huh. (Affirmative).
- 14 Q How do you know him?
- 15 A He's my boyfriend.
- 16 Q Okay. And how long have you known him?
- 17 A Forever. For a long time.
- 18 Q For a long time?
- 19 A Uh-huh. (Affirmative).
- 20 Q Give me a ball park number.
- 21 A Probably ten years.
- 22 Q Ten years.
- 23 How long y'all been dating?
- 24 A About a year.
- 25 Q About a year.

Jackie Gregory - Direct examination
by Mr. Shealy

- 1 Okay. So you've known him a long time prior to---
2 A Yes, sir.
3 Q ---y'all dating?
4 All right. Did you have occasion to be with him on May
5 the 24th?
6 A I did.
7 Q You did.
8 Okay. Suppose we'll take a short detour here.
9 In 2015 you got into some trouble?
10 A Yes, sir.
11 Q Is that fair to say?
12 A Yes, sir.
13 Q You got convicted of some possession of stolen vehicle?
14 A Yes, sir.
15 Q A couple of shopliftings?
16 A (Witness nods affirmatively.)
17 Q A couple of receiving stolen goods?
18 A Yes, sir.
19 Q A couple of petit -- I guess three petty larcenies?
20 A Uh-huh. (Affirmative).
21 Q Something like that.
22 A car breaking and a grand larceny, didn't you?
23 A Yes, sir.
24 Q So you had kind of a rough 2015?
25 A I did.

Jackie Gregory - Direct examination
by Mr. Shealy

1 Q All right. What happened to you?

2 You get mixed up in drugs or something?

3 A I did.

4 Q Okay. Now, this -- back to May the -- and that all
5 happened in 2015, right?

6 A Yes, sir.

7 Q So that was last year?

8 A Uh-huh. (Affirmative).

9 Q All right. Did you have a trial or did you plead
10 guilty?

11 A I did a guilty plea.

12 Q And why did you do that?

13 A Because I needed help. I was a drug addict --

14 Q Okay.

15 A -- and I needed help.

16 Q And you committed those crimes?

17 A Yes, sir.

18 Q Okay. Ms. Gregory, tell me about this particular -- do
19 you have -- do you remember that Grand Marquis?

20 A I do.

21 Q That 2001 Grand Marquis?

22 A I do.

23 MR. SHEALY: If I may, Your Honor, approach the
24 witness?

25 THE COURT: You may.

Jackie Gregory - Direct examination
by Mr. Shealy

- 1 Q I'm gonna show you some pictures. State's Exhibit 7 --
2 well, 6, 7, 3, 4, and 5. So let me put those in some kind
3 of order for you.
- 4 All right. I started with 7 down to Exhibit 3.
5 would you look at those?
- 6 A (Witness complies.)
- 7 Q Is that the car?
- 8 A That's the car.
- 9 Q Okay. And you've pled guilty to possession of that
10 car?
- 11 A I have. I had, I had this---
- 12 Q Okay. Hang on. Hang on.
- 13 A All right.
- 14 Q We'll get there.
- 15 So you came into that, into possession of that vehicle
16 on May the -- when?
- 17 May the 23rd or May the 24th?
- 18 A I think it was May 24th.
- 19 Q May the 24th?
- 20 A Yeah, I think so.
- 21 Q Okay. Early in the morning?
- 22 A Uh-huh. (Affirmative).
- 23 Q All right. Tell us what happened.
- 24 A I know a guy who gets high too and he had that car and
25 he wanted some drugs. So I rented the car on him so that I

Jackie Gregory - Direct examination
by Mr. Shealy

1 could have a ride---

2 Q Okay.

3 A ---and---

4 Q what did you do with that car?

5 A I let him drive it.

6 Q All right. So after you rented the car from -- do you
7 remember that guy's name?

8 A It was like Brian Turner I think.

9 Q Brian Turner?

10 A Uh-huh. (Affirmative).

11 Q Okay. And did he give you the keys to the car or---

12 A Yes, sir.

13 Q He did?

14 A Uh-huh. (Affirmative).

15 Q And what did y'all do with the car then?

16 I mean I guess where did you get the car?

17 Excuse me.

18 A Well, when he was at -- he was at work. The guy come
19 by with the car and I gave him some drugs for the car.

20 Q Okay.

21 A So --.

22 Q And you took that car to pick him up from work?

23 A No, he got dropped off back at the house. I don't like
24 to drive if I'm high cause I can't drive right. So --.

25 Q That's safe of you.

Jackie Gregory - Direct examination
by Mr. Shealy

1 So is that -- and then y'all went over to Burlington
2 Coat Factory?

3 A Yes, sir.

4 Q Okay. Did you tell him that you had---

5 A I just told him I had -- he wanted to know where it
6 come from. I told him I rented it.

7 Q Okay. Did you tell him who?

8 A I mean it's, it's a drug world. Don't nobody care
9 about all names and---

10 Q Okay. But did you---

11 A ---that.

12 Q Did he know that you rented it from some guy?

13 A No, I didn't want to tell him it was from some guy.

14 Q Okay. What did you tell him?

15 A I just said a friend.

16 Q So you had rented it from a friend of yours?

17 A Uh-huh. (Affirmative).

18 Q Okay. At no time did you tell him that it was not
19 yours to or that it was stolen?

20 A No, cause I didn't know it was stolen. I rented it
21 from Brian. So --.

22 Q Right.

23 But in, in that kind of a case, you probably had some
24 knowledge that he didn't come into contact with that car
25 legally?

Jackie Gregory - Direct examination
by Mr. Shealy

1 SOLICITOR GHENT: Objection to leading, Your Honor.

2 THE COURT: I'll sustain the objection.

3 Rephrase the question.

4 MR. SHEALY: Yes, sir.

5 So did you think he had come into possession legally?

6 A I mean he's -- his family has a little of bit money.

7 So --.

8 Q So it could---

9 A You'd be, you'd be surprised at what people, just cause
10 they're addicts. I mean they don't have nothing. They just
11 lose it.

12 Q Uh-huh. (Affirmative).

13 Okay. But, in any event, there's no reason he would of
14 known?

15 A No.

16 SOLICITOR GHENT: Object to the leading, Your Honor.

17 THE COURT: I'm going to sustain that objection.

18 Ask that you rephrase.

19 Q Is there any reason to believe that he would have known
20 that it was stolen?

21 A No, sir.

22 Q No.

23 Okay. Cause you certainly didn't tell him?

24 A I mean if he would of knew it was stolen why would he
25 have drove the car to shoplift anyways.

Jackie Gregory - Direct examination
by Mr. Shealy

1 Q Okay.

2 A I mean that's common sense.

3 Q All right. Oh, why did you park your car in behind
4 your house?

5 A Because there's a lot of transfer trucks. There's a
6 big old brick house right behind us with transfer trucks and
7 they use that driveway too.

8 Q Okay.

9 A So we put it back there to keep it out of sight of the
10 18 wheelers.

11 Q So you didn't want it to get runover by the---

12 A Right.

13 Q Okay.

14 A Right.

15 MR. SHEALY: That's all I have for this witness.

16 THE COURT: You may cross-examine.

17 SOLICITOR GHENT: May it please the Court?

18 THE COURT: Yes, sir. Excuse me.

19 CROSS-EXAMINATION

20 BY SOLICITOR GHENT:

21 Q Ms. Gregory, you testified that you have known the
22 defendant for ten years?

23 A Yes, sir.

24 Q And y'all've been seeing each other together for about
25 a year?

Jackie Gregory - Cross-examination
by Solicitor Ghent

- 1 A Yeah.
- 2 Q This is 2016?
- 3 A Yes, sir.
- 4 Q Last year was 2015?
- 5 A Yes, sir.
- 6 Q And as counsel says, 2015 was not one of your better
7 years, was it?
- 8 A It wasn't one of my worst either.
- 9 Q You had a number of charges to which you pled guilty,
10 as you said, so that you could get clean?
- 11 A Yes, sir, and because I was guilty.
- 12 Q Okay. A number of those charges, there was a receiving
13 goods.
- 14 That was May 24th, 2015, is when it happened?
- 15 A Yes, sir.
- 16 Q Shoplifting, May 24th, 2015?
- 17 A Yes, sir.
- 18 Q Shoplifting, June 25th, 2015?
- 19 A Yes, sir.
- 20 Q Receiving stolen goods, that was also I believe June?
- 21 A I only have one receiving stolen goods.
- 22 Q Okay. And you have kept up those?
- 23 A I try to keep up with my record.
- 24 Q Okay. July 20th, 2015, you were arrested on matters
25 having to do with possession/selling of stolen vehicle?

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 A Yes, sir.

2 Q Same thing.

3 All of these charges for petit larceny, you recall
4 that?

5 A (Witness nods affirmatively.)

6 Q That petit larceny. Convicted. Breaking into auto
7 tanks where fuel was stored.

8 You recall that?

9 A Uh-huh. (Affirmative).

10 Q Petit larceny.

11 All these matters, essentially you got time to think
12 about it and, at this point, you, you are not interested in
13 getting into any more problems, any more trouble?

14 A No, sir.

15 Q July 20th, 2015, a number of cases that you pled
16 guilty to. Again, petit larceny, larceny, other matters.
17 July 21st, 2015, a number of charges.

18 Correct?

19 A (Witness nods affirmatively.)

20 Q And this, the onset of this, this flurry of charges,
21 was in 2015, correct?

22 A Yes, sir.

23 Q You also pled guilty to the receiving stolen goods
24 involved with this car?

25 A Yes, sir.

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 Q Possession and receiving of a 2001 Mercury Marquis.

2 This was May 24th, 2015?

3 Is that correct?

4 A Yes, sir.

5 Q Your testimony was you don't know whether the defendant
6 knew or---

7 A No, I said he didn't. He wasn't there. When I got
8 that car I said he was not in the house.

9 Q No, no. Please allow me to finish my question, ma'am,
10 if you would.

11 You were asked about whether or not he knew it was
12 stolen. All you told him was that you had rented it from
13 some guy.

14 A No, I rented it from a friend is what I said.

15 Q Was he aware of everything that you'd been involved
16 in---

17 A Oh.

18 Q ---in 2015?

19 A Yes, sir.

20 Q He was aware of the arrest, the numerous charges.

21 You show up with a car that you say is a rental car,
22 correct?

23 A Not like a rental car you go to rent it out of a place.
24 You rent it from an individual who does drugs --

25 Q Okay.

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 A -- and you give them drugs and they let you drive their
2 car till whenever they tell you to give it back.

3 Q Okay. And it would be your testimony that, under the
4 circumstances of what he knew of you -- y'all were living
5 together?

6 A Yes, sir.

7 Q What he had experienced with you, what he knew of
8 you---

9 A Yeah, because if you'll look, that's the first time
10 I've ever got in trouble for anything like that. So it
11 was---

12 Q Was in 2015?

13 A Yes, sir.

14 Q And that's when y'all got together, in 2015, correct?
15 That's when y'all started living together, correct?
16 Yes or no.

17 A No.

18 Q That is when you started -- all these charges occurred
19 in 2015, correct?

20 A Yes, sir.

21 Q Thank you.

22 I have one other question. The matter of possession of
23 a stolen car, you've been in Court when you heard testimony
24 of witnesses regarding you being in the house when the
25 defendant was up in the attic.

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 Do you recall that?

2 A Uh-huh. (Affirmative).

3 Q Did you tell the officers he was up in the attic?

4 A No, I didn't and it was also left out that, when they
5 pulled up, the couple, when they pulled up and they was out
6 in the yard screaming about crackers in the house and
7 cussing and going on, that wasn't ever mentioned either.

8 Q Okay. So your testimony is that the gentleman and the
9 lady who testified from the witness stand basically
10 surrounded the house?

11 A No.

12 Q And they're the ones who started yelling racial
13 epithets at y'all, the people---

14 A They was out in the yard yelling stuff, cussing, and
15 carrying on.

16 Q And so y'all hid in the house and all three of you went
17 up in the attic?

18 A No, sir.

19 Q Only the man went up into the attic?

20 The defendant went up into the attic?

21 A Because of the shoplifting.

22 Q And the -- I'll move on. I -- the, the, the matter of
23 the car, it was in back of your house, correct?

24 A Yes, sir.

25 Q It was apparently spotted by the couple who showed up

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 at your door, correct?

2 A Yes, sir.

3 Q The couple said -- the gentleman said that is, looks
4 like my car in back.

5 what did you tell him?

6 A He didn't come up and say that. It was the lady that
7 was out there cussing and carrying on. The lady that was up
8 here that was out in the yard cussing and carrying on. He
9 didn't say nothing.

10 Q This was the lady who worked at Spartanburg Regional
11 and at Greenville Memorial?

12 A That's irrelevant. She was out in the yard cussing and
13 carrying on and the man wasn't saying nothing.

14 Q My, my point simply is that your credibility, once you
15 take the stand, is at issue just as her credibility, once
16 she takes the stand, is at issue.

17 In terms of him, the defendant, knowing that car was
18 back there, where was he when they showed up and asked about
19 their car?

20 Was he in the attic yet?

21 No, he wasn't, was he?

22 A Yes, he was.

23 Q Oh, okay. I said potato. You said potato.

24 Immediately I said left you go right. You did not answer me
25 until I said he had not gone up into the attic.

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 A Because I don't say how that's irrelevant (sic) to the
2 car.

3 Q Well, that's not the question. The question is whether
4 or not you're telling the truth.

5 A Receiving stolen goods and---

6 Q Okay. Well, receiving stolen goods can also be
7 possessing stolen goods. If the both of you were riding in
8 a stolen car, and he had reason to believe it was stolen,
9 and you were engaged in criminal activities, that is
10 possession of a stolen vehicle with knowledge, is it not?

11 A He didn't know it was stolen.

12 Q According to your testimony.

13 In terms of possession, more than one person can
14 possess something at the same time, can they not?

15 MR. SHEALY: Objection, Your Honor. He's testifying at
16 this point---

17 SOLICITOR GHENT: No, I'm not.

18 MR. SHEALY: ---and she isn't a lawyer. He's asking
19 her---

20 THE COURT: He's on cross-examination and he's given
21 some latitude.

22 MR. SHEALY: Your -- but I would also argue that he's
23 asking her questions that she doesn't have the legal
24 knowledge to know.

25 THE COURT: She has the right to indicate she does not

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 know. That's an answer.

2 MR. SHEALY: Yes, sir.

3 THE COURT: So if she's not capable of answering the
4 questions she could say I don't know.

5 So I'm gonna allow you to ask the question but let's
6 not testify as we ask questions.

7 SOLICITOR GHENT: Yes, sir.

8 THE COURT: You can ask leading questions on
9 cross-examination. That's allowed.

10 SOLICITOR GHENT: Yes, sir.

11 THE COURT: But let's don't get into argument in those.
12 Let's don't make them argumentative.

13 You may proceed.

14 SOLICITOR GHENT: Thank you, Your Honor.

15 May I approach the witness?

16 THE COURT: Yes, you may.

17 Q Ma'am, if you wouldn't mind, would you take hold of the
18 end of that pen?

19 A (Witness complies.)

20 Q No, just hold it.

21 A (Witness complies.)

22 Q Okay. Both of us just had that pen in our possession.
23 Is that not correct?

24 A But it ain't stolen.

25 Q Regardless of that, both of us had the pen in our

Jackie Gregory - Cross-examination
by Solicitor Ghent

1 possession and the only question would be whether or not
2 either of us or both of us had knowledge that it was stolen.

3 Isn't that correct?

4 Isn't that correct?

5 A I don't know.

6 SOLICITOR GHENT: No further questions, Your Honor.

7 THE COURT: Redirect.

8 MR. SHEALY: Thank you, judge.

9 REDIRECT EXAMINATION

10 BY MR. SHEALY:

11 Q Ms. Gregory, when you just had a hold of that pen---

12 A Yes, sir.

13 Q ---did you know it was stolen?

14 A I didn't.

15 Q Do you know whether it was stolen?

16 A Hu huh. (Negative).

17 Q would he have known it was stolen?

18 A No, I don't know. He could of.

19 Q But he could of known it was stolen?

20 A Yeah.

21 Q And then he would be guilty of receiving stolen goods?

22 A Yes, sir.

23 Q Would you?

24 A No, sir.

25 Q Okay. Did you tell Timothy Johnson that this car was

Jackie Gregory - Redirect examination
by Mr. Shealy

1 stolen?

2 A No, sir.

3 Q Did you give him any reason to believe it was stolen?

4 A No, sir, that's why I pled guilty to it cause it was --
5 cause I was in the wrong.

6 Q Cause it was your fault?

7 A Yes, sir.

8 Q Now, the solicitor's made a big deal of your charges
9 happening in 2015.

10 Is that his fault?

11 A No, sir.

12 Q Whose fault is that?

13 A It's my own fault.

14 Q Okay. And are you doing better now?

15 A Yes, sir.

16 Q He still your boyfriend?

17 A Uh-huh. (Affirmative).

18 Yes, sir.

19 Q He ain't driving you to get crack?

20 A No, sir.

21 Q No. Or meth or whatever it was?

22 A No, sir.

23 MR. SHEALY: Okay. That's all I have of this witness.

24 THE COURT: Recross.

25 SOLICITOR GHENT: Recross.

Jackie Gregory - Recross examination
by Solicitor Ghent

1 RECROSS EXAMINATION

2 BY SOLICITOR GHENT:

3 Q All I would ask is, again, the two of you were living
4 together in 2015, correct?

5 A Yes, sir.

6 Q Regardless of whose responsibility or fault it was that
7 you got involved in drugs, there's no question he knew about
8 what you were involved in, is there?

9 A No, sir, because I ain't -- that right there, that's
10 the first receiving stolen goods I've ever had in my life.
11 So how would he -- why would he think that I would do
12 something like that?

13 Q Earlier when I asked you about it you indicated that
14 you were living with him and he was aware of the charges
15 against you.

16 A Yeah, since I've got them.

17 Q Okay.

18 A You just named out a bunch of charges.

19 Q And you show up with a car---

20 A That was after the fact.

21 Q ---that you say you "rented" from somebody.

22 That's your story on his behalf, correct?

23 That's your story?

24 A I didn't have none of those charges on that car -- when
25 I got charged with that car. That's what he's failing to

Jackie Gregory - Recross examination
by Solicitor Ghent

1 understand.

2 SOLICITOR GHENT: No further questions, Your Honor.

3 THE COURT: All right, ma'am. You may step down.

4 Defense may call its next witness.

5 MR. SHEALY: Your Honor, I believe that that will be
6 the defense's case.

7 THE COURT: All right. State have any witnesses in
8 reply or rebuttable?

9 SOLICITOR MABBS: No, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, we've had
11 a fairly lengthy day. We're at four o'clock. At this stage
12 we're in the position to begin closing arguments and charge
13 you on the law. I would suspect that would take probably at
14 least an hour and that means I'd be sending you out for
15 deliberations at five o'clock and you might be here into the
16 evening.

17 So what we're gonna do is we're gonna stop at this
18 point in time. We'll come back in the morning, allow the
19 attorneys to make their closing arguments. I'll charge you
20 on the law at that time and then the case will be turned
21 over to you for your deliberations.

22 You already know my instructions when you leave the
23 court house. I'll repeat them again. Don't attempt to
24 gather any information on your own. Don't listen to, watch,
25 or read media reports. Don't discuss the case with anyone.

1 Don't allow anyone to discuss it with you and, if anybody
2 contacts you about your service on this jury, you report
3 that when you return.

4 We'll start at nine o'clock in the morning. Please be
5 back in the jury room at that time. I expect we'll start
6 pretty much on time. So be there promptly and we'll get
7 started promptly.

8 Thank you very much. You're free to go for the
9 evening.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Mr. Shealy, I assume you wish
13 to renew your motions for directed verdict.

14 MR. SHEALY: I do, Your Honor. I would add that, to
15 that testimony of Ms. Gregory that, in fact, my client --
16 and she's the only one who was with my client. She said she
17 obtained the vehicle. I believe we've explained away all
18 those other circumstantial issues. Again, I guess not the
19 attic thing but it's---

20 THE COURT: Well, you know, it's not my job here to
21 weigh evidence. It's to determine whether or not the
22 evidence exists. I have to view the evidence in the light
23 most favorable to the party that's resisting the motion. I
24 realize there's always evidence on both sides of the case
25 that might tend to discount the evidence on the other side

1 of the case but I'm required to view the evidence that's in
2 the case in the light most favorable to the, to the State in
3 this situation and I think I have.

4 I do find, again, that there was sufficient
5 circumstantial evidence to indicate that the defendant may
6 of had knowledge that this car was stolen. Again, I think
7 that can be taken from the various actions I cited in making
8 my ruling and the actions that he, he took when he was
9 confronted by the owner of the vehicle at the home. And so,
10 all of those things, taken together, all of those
11 circumstances taken together, in the light most favorable to
12 the State, requires me to deny the motion still.

13 All right. Anything further from either side before we
14 adjourn for the evening?

15 SOLICITOR MABBS: Nothing from the State, Your Honor.

16 THE COURT: And from the defense?

17 MR. SHEALY: No, Your Honor.

18 Do you want requests for charge tomorrow?

19 THE COURT: If you, if you have requests we'll accept
20 them right now. I don't mind reviewing that this evening.

21 MR. SHEALY: Well, I don't have the case printed out is
22 the problem. That's why I was asking---

23 THE COURT: Well, which case?

24 Tell me what case you're talking about.

25 MR. SHEALY: It's State versus Logan, 405 SC 3.

1 There's a new circumstantial evidence charge that we get if
2 we ask for it. I am asking for it, Your Honor.

3 THE COURT: I think I'm familiar with what you're
4 talking about and I will certainly review that and consider
5 it.

6 All right. Thank you very much.

7 SOLICITOR MABBS: Thank you, Your Honor.

8 THE COURT: I think I'll probably be giving that
9 charge. So if you want to prepare your argument in that
10 fashion.

11 MR. SHEALY: Yes, sir, I will.

12 SOLICITOR GHENT: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Court's adjourned until nine o'clock.

15

16 (WHEREUPON, Court was in recess for the evening.)

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Wednesday, March 16th, 2016

THE COURT: All right. We're on the record in the case of State versus Johnson.

First of all, when we broke yesterday, Mr. Shealy made the request that the Court include additional language in its charge concerning circumstantial and direct evidence as taken from the case of State versus Logan. I've reviewed that and have agreed to add that language to my charge. So I'll be taking -- I'll be doing that.

You indicated there was something the State might wish to take up with me.

SOLICITOR GHENT: Yes, sir, Your Honor, and it's, it's in relation to that and the Court's standard charge and Mr. Shealy's standard argument as to reasonable doubt. Taking all those together, based on the evidence, it would appear that this case is gonna come down to reasonable doubt.

For that reason, I would simply ask, by way of clarification, if the Court is going to give Your Honor's standard charge as to reasonable doubt and I ask that because Mr. Shealy, in his opening statements, routinely describes it as the kind of doubt that would cause a reasonable person to hesitate to act and he stops there. From Judge Anderson's charge book, there are at least one, one, two, three, four other paragraphs and Your Honor takes

1 the same approach in terms of clarifying that that's the
2 beginning of the conversation, not the end, and I would
3 simply ask---

4 THE COURT: I'm -- I intend to give my standard charge
5 on reasonable doubt.

6 SOLICITOR GHENT: Thank you, Your Honor.

7 THE COURT: And Mr. Shealy now has a puzzled look on
8 his face.

9 Mr. Shealy.

10 MR. SHEALY: Well, I just wanted to make sure that I
11 can still give my explanation about reasonable doubt.

12 THE COURT: Well, certainly, I'm going -- and I'm going
13 to define it as -- that it's been defined as that kind of a
14 doubt that would cause a reasonable person to hesitate to
15 act.

16 MR. SHEALY: Yes, sir, I just wanted to make sure I
17 didn't get objected to on it.

18 THE COURT: But then I'm going to go on and talk a
19 little further about and, you know, I think it ends up by
20 saying that if, after consideration of all of the evidence,
21 if you are convinced, beyond a reasonable doubt, of the
22 guilt, you must find him guilty. On the other hand, if you
23 think there's a real possibility that the defendant is not
24 guilty, then you must give him the benefit of the doubt and
25 find him not guilty.

1 MR. SHEALY: Yes, sir.

2 THE COURT: That's how I intend to do it.

3 SOLICITOR GHENT: And the only reason why I ask is for
4 the very reason counsel just gave. You don't like to
5 interrupt the opening statement nor the closing argument.
6 Thank you, Your Honor..

7 THE COURT: I understand but I think we'll make it
8 clear that the jury is to follow the Court's instructions on
9 the law.

10 (Pause.)

11 THE COURT: All right. I'm informed that all jurors
12 have now arrived.

13 Is the State ready to proceed?

14 SOLICITOR MABBS: We are, Your Honor.

15 THE COURT: Defense ready to proceed?

16 MR. SHEALY: Yes, Your Honor.

17 THE COURT: Now, I believe the defense has presented
18 evidence. That means you'll be going first.

19 Is that right, Mr. Shealy?

20 You're---

21 MR. SHEALY: Yes, sir.

22 THE COURT: ---prepared for that?

23 MR. SHEALY: Yes, sir.

24 THE COURT: State agree?

25 SOLICITOR MABBS: Yes, Your Honor.

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

2 (WHEREUPON, the jury begins to come into the courtroom
3 at this time.)

4 THE COURT: One second. Take, take them out. Just one
5 second. I'm sorry. Just take them back just one second.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: One other factor may add -- may somehow
9 affect your closing argument is that I do intend to charge
10 the offense that's charged, which is possession of stolen
11 goods valued between 2,000 and 10,000. I also intend to
12 offer a lesser included possibility, if they find that the
13 value of the goods stolen was not to that value, that they
14 could find him guilty of the lesser included charge, which
15 would be with possession of stolen property between zero and
16 \$2,000.

17 MR. SHEALY: I, I object to that. I don't -- I would
18 prefer you not to offer that charge. I don't believe the
19 State's asked for a lesser included offense and we would---

20 THE COURT: Does the State request a lesser included?

21 SOLICITOR MABBS: Yes, Your Honor.

22 THE COURT: State's requesting a lesser included.

23 MR. SHEALY: Well, judge, again, they, they did that at
24 prompting. It would be our position that they failed to
25 request that at our charge conference. We would ask that

1 you---

2 THE COURT: Well, I'm still in the charge conference.
3 If you want to discuss the charge now's the time to do so.
4 I sent the jury out for that purpose, so we could complete
5 that charge conference, because I wanted to make you aware
6 that I intended to allow that if someone wished to do so.

7 You tell me you do wish for that to happen?

8 SOLICITOR MABBS: Yes, Your Honor.

9 THE COURT: Okay. And you object. I understand.

10 MR. SHEALY: Yes, sir.

11 THE COURT: But it is, it is a lesser included charge
12 and I think the proof might support that charge. So I'm
13 gonna allow the jury to consider it if they find him not
14 guilty of the higher charge.

15 Bring the jury in.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: All right. The record will reflect that
19 the jury has returned to the courtroom.

20 I trust everyone had a good evening.

21 If there were any of you who had any problems in
22 following my directions concerning your behavior while you
23 were away from the courthouse I'd ask that that person
24 please stand.

25 (No response.)

1 THE COURT: It appears that all jurors have been able
2 to comply with my instructions thus far.

3 I told you that, upon your return, we would begin the
4 morning with the closing statements or arguments by counsel,
5 and as far as closing arguments are concerned, the defense
6 will be going first at this time.

7 You may proceed, Mr. Shealy.

8 MR. SHEALY: Thank you, Your Honor.

9 May it please the Court.

10 Ladies and gentlemen, well, it took a little longer
11 than I thought it would but you've finally heard all of the
12 testimony in this case and I'll tell you that they have a
13 bang up case regarding that shoplifting Ms. Gregory talked
14 about. They just have a wonderful case for that.

15 That case isn't before you and they're very good
16 reasons for that. Primarily, they've got a bang up case.
17 That's just not what's at issue here.

18 What's at issue here is a receiving stolen goods. It's
19 whether or not my client possessed a vehicle that he knew or
20 should of known was stolen.

21 Okay. That case, not so good. They have to prove that
22 beyond a reasonable doubt.

23 Now, let's -- I've broken this down as into three
24 parts. First, there was an investigation in this case but
25 it wasn't a particularly good investigation.

1 As you heard Michael Brewton testify, he testified he
2 got a really good look at the person who stole his car. Saw
3 him get into the car, followed him, banged on the door or on
4 the window, saw a scared look on this guy's face as he
5 reversed and drove away but he never gave a description to
6 the police so far as we know. So far as we know he's never
7 presented a photo -- any kind of lineup. He doesn't -- we
8 don't -- all we know is it's a man. He said the guy. But
9 other than that, there's absolutely no description given.

10 The police officers could of talked to him, could of
11 gotten a description of that guy, could of gone and found
12 that guy, and they could of very easily tried to tie that
13 guy with Mr. Johnson. They didn't do that here. Can't tell
14 you why, but they didn't do that here, and that would of
15 been very easy.

16 They talked to him. Well, presumably they talked to
17 him. I mean he was the victim of a crime. But never did
18 they get any kind of description from him. Never did they
19 try to solve who stole the car. They didn't try to solve
20 that case. Had they solved that case, then maybe they could
21 of attempted then to tie that guy to Mr. Johnson because,
22 remember, that's not what they're saying Mr. Johnson did
23 here. He did not steal the car.

24 We know he didn't steal the car because that's what --
25 not what he's charged with. He's being charged with

1 possession of it. Okay. So that's the first fumble in this
2 case.

3 The second fumble is we've got this photo lineup that
4 no one seems to know how it's made. They say they got a
5 name but nobody seems to know where it came from. It may of
6 been another officer. It may -- well, Mr. Warrick said he'd
7 never seen him before in his life. Who knows where that
8 name came from.

9 What we also know is, interestingly, the description
10 that was given is a yellow -- blue and yellow striped shirt.
11 So they find a mug shot that has that blue and yellow
12 striped shirt.

13 That's awfully suggestive, isn't it?

14 In this lineup there's only one person who has just a
15 goatee.

16 That's awfully suggestive, isn't it?

17 Other people have facial hair. They've got a line of
18 facial hair. They got some kind of like mine. Kind of
19 patchy. My wife likes it. I don't know why but it's
20 patchy. There's another guy who's pretty clean shaven.
21 They're a couple of guys who are all the way clean shaven.
22 None of them have just a goatee and Officer Walter
23 testified, that while he wasn't really sure how that process
24 works, he thinks it's -- it might be a computer program.
25 There may be a way of overriding those pictures. We just

1 don't know. Just don't know.

2 And, ladies and gentlemen, when they arrested my client
3 they had no warrant. Now, unfortunately, legally ultimately
4 it -- that's not that important. You think it would be.
5 But, unfortunately, in this case, it's not that important
6 but it suggests they just didn't have very much evidence.

7 If they couldn't get a warrant, then why are they
8 arresting him?

9 The police show up at your house un -- they show up and
10 then you got these other angry people out there. You know,
11 I don't know that I want to come to the door either quite
12 frankly. They're segments of our population who they don't
13 want to come to the door and poor white folks are some of
14 them and you've seen Ms. Gregory. You've heard her testify.
15 She's my client's girlfriend and they're not that well off
16 obviously. They have drug problems obviously.

17 Now, you've also heard from the State's witnesses. You
18 heard from Ms. Esopa who, when she got up here, had this
19 vast description. Slender guy, blue and yellow striped
20 shirt. He had crooked teeth. He had a goatee, which,
21 interesting, matched almost exactly what Mr. Warrick
22 testified to. But in that written statement she wrote, and
23 you remember I handed it to her, none of that was on there.
24 None of it.

25 All she says, again, is man. The man. A man. That's

1 it.

2 So her identification, again, not very good and they
3 never give her this lineup. They never give her a lineup
4 and say do you see the guy that you saw. Can't tell you why
5 they don't do that but this was a poorly investigated case.
6 It just was. And often -- and Mr. Warrick, who testified, I
7 mean he just flat out, he just flat out lied I mean and he
8 admitted that he, he just flat out lied about at least one
9 of the encounters.

10 He had heard me object to hearsay. In fact, he heard
11 the judge explain the hearsay rule in Court, decided to
12 adopt Ms. Esopa's story as his own in that middle incident,
13 and just -- he said that he saw it and he testified that way
14 for minutes. I mean a mistake is when that, that officer
15 said [REDACTED] instead of [REDACTED] That's a mistake. He made a
16 mistake. He just got the numbers transposed. You don't
17 testify to something for five, six, seven minutes as a
18 mistake.

19 I told you that all of these witnesses would have a
20 certain bias and I think that is the clearest indication
21 I've ever seen. I've never done that on the stand. I've
22 never caught somebody that spectacularly in a lie. I mean
23 that's just what it was and, ultimately, none of these
24 witnesses, none of these witnesses the State has presented
25 you provided a single shred of direct evidence that my

1 client knew this car was stolen or should have known this
2 car was stolen. Not a single one of them.

3 They couldn't say that it looked like it was stolen.
4 There's any information -- that it was driven like it was
5 stolen, that -- anything. There was some testimony it was
6 concealed behind the house. They saw it from the road. The
7 officer testified that this house is bigger than the car.
8 If you want to hide the car they could of hid the car. Just
9 like if I want to hide, I hide behind something that's
10 bigger than me. So there is no concealment of the car
11 otherwise it would of been concealed.

12 So the State's evidence proves nothing. So we could of
13 stopped there quite frankly because the State has not
14 provided you a single shred of direct evidence that my
15 client stole the car. They're going to claim that they have
16 provided you some kind of circumstantial evidence and we'll
17 talk about what circumstantial evidence is here in just a
18 bit.

19 But we went on. We presented a witness. The witness
20 who stole, or she didn't steal the car, who got the car has
21 pled guilty to possessing the stolen vehicle who said he
22 didn't know it was stolen. I mean I don't know what else I
23 can do. She says I told him it was from a friend.

24 Now, the State wants you to believe -- and that's the
25 best evidence. That's the only evidence of any kind of mind

1 frame of my client.

2 She's they're only -- she's the only person who can
3 testify as to what she told him, that she gave him the
4 information that it was borrowed from a friend. I -- you
5 know, that that's it and so he couldn't have known it was
6 stolen.

7 Now, the State wants you to believe two things. One
8 that it's involvement with my client they caused her to go
9 crazy. That -- or to have this drug problem, these, these
10 crimes. That's insulting. That's just insulting cause if
11 you've ever known anybody who has a drug problem, who has a
12 drinking problem, it is not your fault that person has that.
13 It is not your fault your wife has a drug problem. It is
14 not your fault that your kid has a drug problem. It's not
15 your fault that your parents have a drinking problem, that
16 your loved one has, unfortunately, succumbed to a drug
17 problem. That is not your fault and to blame Mr. Johnson
18 for her problem that she blames herself for that she has
19 gotten help for is insulting and I hope you treat that
20 implication as the insult that it is and disregard it.

21 He also wants you to believe that, because she was out
22 committing crimes in 2015, my client was on some kind of
23 notice that well, you can't trust her. As she herself
24 pointed out, she had no charges until after this incident.
25 She had no charges.

1 All right. I mean they all happened -- I believe there
2 was one in May, May 19th or May 20th and then everything
3 else was from July 20th was the date that the solicitor
4 read out.

5 So how -- why is he on notice of that and you better be
6 careful because if that loved one, who has a problem, ever
7 gives you anything, ever let's you ride in their car, Mr.
8 Ghent's coming for you, Ms. Mabbs is coming for you, Mr.
9 Smith is coming for you because you should of known that
10 that person is a bad guy. They must be letting you or must
11 be having a stolen something and is letting you use that
12 stolen thing or whatever because that's ultimately what
13 their argument is.

14 You shouldn't touch -- trust Jackie Gregory because
15 one, she's a thief. Well, she's copped to that. She's
16 admitted that. You shouldn't trust her because it's his
17 fault she's got a drug problem. As she said, it's not his
18 fault. It's her fault. And three, that because of her
19 character, somehow he should know that this is happening and
20 put yourself in those shoes. That's terrifying.

21 As I've told you earlier, reasonable doubt is the doubt
22 that a -- that would cause a reasonable person to hesitate
23 to act and the State -- the judge is going to give a fairly
24 lengthy charge as to reasonable doubt. So there's some
25 other things he's gonna say but that's the meat of the

1 charges in my opinion.

2 So they have to have proven it beyond that reasonable
3 doubt. Remember I told you about the meat. Either you take
4 it or you don't. If you do take it you still had a
5 reasonable doubt, you still hesitated to act, and I don't
6 know how you can possibly not hesitate to act in this case
7 because, again, the State has no direct evidence. They,
8 they will argue circumstantial evidence.

9 The judge is going to explain that the circumstantial
10 case -- in a circumstantial case that all of the
11 circumstances must be consistent with each other, and when
12 taken together, point conclusively to the guilt of the
13 accused. If the circumstances merely portray the
14 defendant's behavior as suspicious, say it again, as
15 suspicious, the proof has failed.

16 They have failed in carrying their burden if you think
17 well, that's -- it's suspicious but it doesn't prove it.
18 It's not beyond a reasonable doubt, and, ladies and
19 gentlemen, I'll point out that they got three prosecutors in
20 this case. Either that's a big compliment to me, which I
21 don't think it probably is, or it suggests the weakness of
22 their case. They got three of them against little old me
23 and my guy.

24 I expect you to find my client not guilty. I can't
25 possibly see how you could find him otherwise.

1 Thank you.

2 THE COURT: State may proceed.

3 SOLICITOR MABBS: Thank you, Your Honor.

4 THE COURT: Yes, Ms. Mabbs.

5 SOLICITOR MABBS: May we have a brief moment just to
6 set up the---

7 THE COURT: Okay.

8 SOLICITOR MABBS: ---courtroom?

9 (Pause.)

10 SOLICITOR MABBS: May it please the Court?

11 THE COURT: You may proceed.

12 SOLICITOR MABBS: Your Honor.

13 Mr. Shealy.

14 Members of the jury, again, as my cocounsel stated, my
15 name is Allison Mabbs. I'm here on behalf of the State, and
16 just as Mr. Ghent began his opening statement, I'm gonna
17 begin my closing argument with the same two words. Thank
18 you. Thank you for your time throughout the course of this
19 trial and jury selection. Thank you for your patience when
20 we had to send you back so we can discuss various arguments
21 and thank you for your attention.

22 I know a full day of trial can be very taxing and it's
23 taxing on lawyers as well but I thank you for continuing to
24 pay attention to the various witnesses you've heard, the
25 instructions you've heard from Judge Couch, and from the

1 various pieces of evidence that you saw presented to you.

2 Now, Mr. Ghent discussed a lot about your duty in his
3 opening statement and you fulfilled part of your duty so
4 far. You've come. You've been selected to be a part of a
5 jury. You've shown up everyday. You listened to the facts
6 and the evidence and your duty continues because you're
7 continuing to listen to our closing arguments, listen to the
8 judge or as he instructs you on the law, and then you'll go
9 back and you'll deliberate on this case and you'll reach a
10 verdict.

11 Now, part of your duty is that you are the judge of the
12 facts, and as judge of the facts, part of that duty includes
13 things like weighing the evidence presented and judging the
14 credibility of witnesses and you can consider either all of
15 the facts presented, none of the facts from a witness, or
16 maybe some. You get to judge how much weight to give either
17 a witnesses testimony or a piece of physical evidence
18 presented to you. That's part of your duty as the judge of
19 the facts.

20 Now, as I mentioned a moment ago, at the end of my
21 closing argument Judge Couch will instruct you on the law in
22 this case and it will be your job to attach the law that he
23 gives you with the facts that you've heard throughout the
24 course of this trial.

25 Now, remember, as I believe Mr. Shealy said when he

1 described his version of reasonable doubt, that was his
2 opinion as to what the most important part was and I
3 certainly have my own opinions as to what the most important
4 pieces of the law are.

5 What's important isn't what I think, what Mr. Shealy
6 thinks about the law. It's what Judge Couch instructs you
7 on the law. So I encourage you to pay very close attention
8 when he does that.

9 Now, y'all know at this point that you are here on a
10 trial for receiving stolen goods valued somewhere between
11 two and ten thousand dollars and I anticipate Judge Couch
12 will also instruct you on the lesser included charge for
13 receiving stolen goods valued less than \$2,000. Now, with
14 those charges, the basic elements of that law would include
15 possession of a stolen good valued between two and ten
16 thousand dollars with either knowledge -- either that you
17 knew or should have known that that good was stolen.

18 So, in this case, to start, we have a stolen good, 2001
19 Mercury Marquis quiz. Now, you've seen various pictures of
20 the evidence of that vehicle. You heard from Mr. Brewton,
21 the owner of the vehicle, him and his wife. They both got
22 up and testified. You heard Mr. Brewton tell you about the
23 night that the car was stolen, that he didn't give any
24 permission -- anyone permission to use that vehicle. Not
25 the person who took it. Not the defendant. Not Ms.

1 Gregory. He didn't give any of them permission. His car
2 was taken from him. It's reported to the police.

3 He told you that when that vehicle is eventually
4 recovered with the defendant present that there was some
5 fairly significant damage to that car. Enough damage that
6 the insurance company totaled it and they paid him out
7 \$3,500. And he also told you that he had paid \$10,000 for
8 that car back he said about nine years ago.

9 Now, you also heard from Deputy Jurek about running an
10 NCIC report when that car was recovered and explained to you
11 how that's basically the national database where you can put
12 in various stolen goods, if you're looking for somebody,
13 things like that.

14 Part of the police department's job is that they make
15 sure they run that report to make sure that, when it's
16 recovered, it is still considered to be stolen. Not that it
17 had been recovered at some point and then they found it, but
18 it was back with his rightful owner. He said nope, when we
19 recovered it, when the Brewtons called us and said there's
20 my stolen vehicle at Jackie Gregory's house with the
21 defendant hiding in the attic, still reported stolen. They
22 hadn't recovered it. They didn't pull it in that driveway
23 and say hey, he did it. Still reported stolen.

24 Now, the next important piece of the puzzle is
25 possession. You have to actually possess the car. It's not

1 enough that you're in the same driveway, anything like that.
2 You have to actually possess the car. And one important
3 thing, since we did have Ms. Gregory testify that she also
4 pled guilty to receiving stolen goods for this specific
5 vehicle, as Mr. Ghent showed you on cross-examination with
6 the illustration with that pen, more than one person can
7 possess something at the same time. Whether it's a car.
8 Whether it's a pen. So just because Ms. Gregory pled guilty
9 to this charge, that doesn't exclude the defendant from also
10 being found guilty.

11 Now, as we've heard various testimony about Burlington
12 Coat Factory, there are some items taken from it. You heard
13 from both Justina Esopa, from Sean Warrick.

14 Now, that first time when those goods were taken, they
15 testified that's a black Durango. Different car. But both
16 Justina came back and she said she saw both the defendant
17 and a woman sitting on the hood of this car, a stolen car,
18 first thing that morning on the 24th. The car had just
19 been taken on the 23rd late at night but she saw him on the
20 car.

21 Now, Mr. Shealy has been making a fairly big deal about
22 Mr. Warrick discussing that incident, saying that he lied,
23 that he took it as his own. I believe that's a bit of a
24 stretch. He was just testifying to what he had been told.

25 So, even if you ignore Mr. Warrick discussing that

1 first incident when they saw him sitting on the car, let's
2 talk about that second incident. He didn't see him sitting
3 on the car or on the car. He saw him in the car. He saw
4 him in the driver's seat. He saw him driving the vehicle.

5 That's possession, members of the jury, and both times
6 they saw him in a yellow and blue striped shirt. Same shirt
7 he was eventually found in the attic where the car was
8 found. Members of the jury, I don't think there's an issue
9 as to possession in this case at this point.

10 Furthermore, when that car was discovered, they found
11 the clothes, the clothes from Burlington. Now, you've heard
12 Mr. Warrick say, when he first met the defendant when he was
13 standing outside on his smoke break, the defendant had come
14 up to him and asked him about I believe he said an
15 abnormally large pair of shorts. As you can also see, the
16 defendant is not an abnormally large man and all the
17 descriptions given at the time, it's not that he's lost
18 weight.

19 well, members of the jury, you can see on the tags on
20 these these are a size 48. Fit the description of the items
21 that were believed to be taken from Burlington Coat Factory
22 that day and those were also found in the vehicle along with
23 the Burlington Coat Factory bag.

24 Now, these weren't the bag -- this wasn't, again, the
25 car from the original day. This was the car from the second

1 day. Not when the items were taken but from the last two
2 times when both Ms. Esopa and Mr. Warrick said that they saw
3 the defendant with that car and with some goods in that car,
4 and these bags and these shorts also tie the vehicle to that
5 car or to the defendant.

6 Now, that final element is not knowledge, whether the
7 defendant knew or should have known that that vehicle was
8 stolen. Mr. Shealy said we don't have any direct evidence
9 that he knew. I agree with him on that because the only way
10 we could have direct evidence is if we could go inside the
11 defendant's head and know what he was thinking.

12 Now, I don't know about y'all but I'm not a mind
13 reader. I can't do that. So what we have to do is we have
14 to look at circumstantial evidence and the judge will give
15 you a description of exactly what that means when he
16 instructs you. But one example I use to differentiate
17 direct from circumstantial evidence is, I believe it's two
18 nights ago, I left work and it was raining, cold,
19 temperature dropped to probably 20 degrees. So when I woke
20 up the next morning, I said well, you know, it was -- it's
21 been really warm here but it was really cold last night.

22 So when I leave the house today, do I need a coat?

23 So if I had stepped outside my house and, you know,
24 opened the front door, stood outside for a minute and said
25 no, you know, it's warmed back up, I don't need a coat, that

1 would be direct evidence for me cause I actually personally
2 felt whether or not it was cold outside. But if I just
3 looked out my bedroom window and looked and saw one of my
4 neighbors walking her dog and saw her, you know, she's just
5 wearing a tank top and shorts, say nope, that's
6 circumstantial evidence that it's warm outside, that the
7 temperature had risen back up and I didn't need a coat.

8 So, in this case, really can't -- circumstantial
9 evidence that the defendant knew or should of known that
10 that car was stolen and it's not one piece of circumstantial
11 evidence. There's a lot of circumstantial evidence in this
12 case that he knew and your job, as the jury, is to consider
13 all of those pieces of evidence, to look at the totality of
14 the circumstances.

15 Now, the first piece would be just the timeline of
16 events from when that car was stolen to when it was
17 recovered. Now, you heard Mr. and Mrs. Brewton get up here
18 and they testified that that car was stolen on May 23rd late
19 at night after seven o'clock. Dark outside.

20 Well, the first time that Ms. Esopa saw the defendant
21 in the vehicle she said it was about 9:30 the next morning,
22 then it was seen again later that day, and eventually,
23 fairly shortly after the second time Mr. Warrick saw the
24 defendant in the vehicle, it was recovered at the house with
25 him hiding in the attic.

1 Members of the jury, nighttime, from about 12 hours
2 from when the car was stolen to the first time that that
3 defendant was seen in the vehicle, most of time it's night.
4 Most people are sleeping. Car businesses aren't opened.
5 There's no place to go buy a vehicle. Very short period of
6 time, and even within that timeframe, the car was recovered
7 later, still light outside, later in the afternoon on the
8 24th. And by the time it was recovered there is
9 significant damage to that car that didn't exist the night
10 before when it was stolen from Mr. Brewton. So much damage
11 that they had to have it towed, that the insurance company
12 totaled the car.

13 Now, they also have, you know, their version where they
14 rented the car from the drug dealer. Well, when you rent a
15 car you don't total it. You're suppose to return it in good
16 condition or at least similar. You don't rip out wiring.
17 You don't do it so much that you can't get it back and the
18 Brewtons never even got their keys back. Now, if you rent a
19 car, you have the keys. You can give them back. And when
20 that car was recovered, it was recovered behind Ms.
21 Gregory's house.

22 Now, as you can see in this photo it is behind the
23 house. None of it is sticking out on either side. It's
24 about as far behind the house as it can get. It's pretty
25 close to that house. I don't really know how somebody can

1 even -- I mean it is right next to that house. There's
2 barely any room in-between the wall of that house and, and
3 that driver's side door. There's not enough room for
4 somebody who's just parking their car behind the house to
5 actually even open the door and get out of the driver's
6 side.

7 Now, Ms. Gregory said, you know, they park it in the
8 back because, you know, they don't want to get hit by an 18
9 wheeler. Well, I see extra space over here.

10 If you're not trying to hide that car behind this
11 house, why are you parking it I'd say maybe -- less than
12 six inches away from that wall?

13 Members of the jury, it doesn't make sense and just
14 because you happen to be able to see it from the road
15 doesn't mean someone's not trying to hide it. I don't know
16 what the shape of that road is. Maybe it's curved. Maybe
17 there's a way to still see it from the road but that car is
18 completely behind the house. It's not sticking out, and,
19 members of the jury, that house is less than a mile away
20 from where the car was taken. Less than a mile.

21 Now, members of the jury, let's, let's talk about some
22 hiding in this case. Hiding is evidence of knowledge.
23 There's multiple times in this case that the defendant's
24 hiding.

25 Now, first, I think probably the most obvious is,

1 again, hiding in the attic. Not only was the car hiding
2 behind that house, but, after the Brewtons showed up, the
3 defendant decided to get up in that attic and he waited.

4 Now, when the Brewtons showed up, Mr. Brewton said he
5 saw somebody in the window, not the two women, but somebody
6 else and Mrs. Brewton said she saw the defendant. He was
7 downstairs when they showed up.

8 Now, they weren't there talking about anything from
9 Burlington. They didn't know anything about that at that
10 point. They were there asking about their car. He went up
11 in that attic. You heard them. They said they waited I
12 believe it's somewhere around ten minutes or so for the
13 police to arrive and you heard Deputy Jurek say once they
14 got there and, you know, they called upstairs, they got
15 consent to search the house, and that Ms. Gregory's mother
16 was pointing upstairs. Someone's in the attic. The
17 defendant's in the attic.

18 They called for him. Come on down. He didn't. They
19 had to wait 30 more minutes to get Deputy Rhodes and his
20 K-9, Elko, to come. Even then called upstairs. Didn't want
21 to come down. Wasn't till he heard Elko bark finally he
22 said all right, it's enough, he came down. And when he came
23 down from the attic, he's covered in insulation. The end of
24 May, everybody. It's South Carolina. We all know what the
25 temperature's like at the end of May and he's covered in

1 sweat.

2 Now, at one point I believe Ms. Gregory tried to say,
3 oh, no, he was already up in the attic. Members of the
4 jury, again, credibility of witnesses and common sense.
5 Nobody sits up in the attic for any reason that I can think
6 of at the end of May for over an hour especially when police
7 are asking you to come down. And, you know, they -- both
8 officers testified, once he did come down from the attic,
9 there's no further incident. Nothing like that.

10 why would he hide in the attic unless he knew that car
11 was stolen?

12 When the Brewtons showed up asking about that car, he
13 knew. He knew. And not only was he hiding in the attic,
14 but he hid earlier that day in the car that second time he
15 went to Burlington Coat Factory. You heard from Mr.
16 warrick. He said, you know, a woman had come in the store
17 tried to return those items that they recognized that had
18 been taken the day before. When he went outside he saw the
19 defendant.

20 Now, was the defendant in the regular parking lot?

21 No.

22 The defendant was around the corner next to the Gold's
23 Gym. Not in plain view of any of the stores. Not in the
24 regular parking lot.

25 Now, you know, there might be an argument that he was

1 maybe trying to hide because of what he had done in
2 Burlington the day before. But, members of the jury, he did
3 not go inside Burlington that second day. There's no reason
4 for him to hide because of that and it was a completely
5 different vehicle.

6 The day before, when he took it, it was in a Dodge
7 Durango. The second day he's in this stolen vehicle. He
8 was hiding that vehicle because he knew it was stolen.

9 And finally you heard the defense's witness, Jackie
10 Gregory. And she got up here and she testified and she said
11 oh, no, I rented that from my drug dealer. It's a drug
12 world. People rent cars for drugs.

13 Well, members of the jury, again, as I previously
14 stated, that car got totaled in less than 24 hours. The
15 keys were never recovered. Her story doesn't make any
16 sense. And not only that, members of the jury, she got up
17 here and she testified she's pled guilty to these charges.
18 She said I pled guilty because I am guilty and she said that
19 multiple times.

20 Well, members of the jury, as y'all have learned
21 throughout the course of this trial, part of being guilty of
22 receiving stolen goods is knowing or that you should have
23 known that that car was stolen and she got up here and she
24 said I didn't know. I rented it.

25 Members of the jury, that's a lie. She knew because

1 she said she pled guilty to it because she was guilty.

2 That part of her testimony is true. She was guilty but
3 she knew that it was stolen and maybe she did get it from
4 someone in drugs. I don't know. But the important part is
5 that she knew that was stolen.

6 Now, members of the jury, she said, you know, that
7 she's known the defendant forever I believe was her words.
8 she'd been dating him for a year. During that time period
9 she admitted she's had some drug problems but she's doing
10 better now.

11 But, members of the jury, I'm not trying to place blame
12 on anybody here. All I'm saying is that if she was dating
13 the defendant for a year -- they were living together. He
14 knew that she had a problem. She -- he knew about her
15 history. Now, yes, a lot of that history came after this
16 event. But as Mr. Shealy just said on closing arguments,
17 and as Deputy Jurek testified to earlier in the trial,
18 Deputy Jurek was at that house where he lived with Jack
19 Gregory a few days before this. He knew of some record,
20 maybe not the extent of her record, but he knew.

21 Now, members of the jury, if you look at one of these
22 individual pieces, that might not be enough for knowledge.
23 But as I stated, you get to look at the totality of the
24 circumstances. You get to consider everything. Not just
25 Ms. Gregory. Not just him hiding in the attic. Not just

1 him hiding at Burlington Coat Factory. Not just the fact
2 that that car was totaled. You get to look at all of that.
3 You get to consider all of that in your consideration, and
4 all of that circumstantial evidence, that's far more than
5 just suspicious. That's knowledge.

6 Now, members of the jury, Mr. Shealy brought up a few
7 points on his closing argument that I'd just like to briefly
8 address. He talked a lot about the investigation, that this
9 investigation wasn't very good.

10 Members of the jury, we're not here about who stole
11 this car. We're here about the defendant. We're here about
12 what he did and that is what is important.

13 Members of the jury, that investigation, there's
14 basically two parallel investigations. There was some
15 overlap obviously since some of the items were found in the
16 car. The car was used as part of the events at Burlington
17 Coat Factory. We have city and county police all working
18 together and some of these events happened simultaneously so
19 that other agencies didn't know about it. He said they
20 showed up and they didn't have a warrant yet.

21 Members of the jury, we discussed this photo lineup.
22 We went into great detail about it.

23 Now, members of the jury, you'll be able to take this
24 photo lineup back with you and it says right here, on the
25 second page, they have the date and time on this photo

1 lineup. It happened May 24th at 6:05.

2 Members of the jury, that was after they'd already
3 recovered the car. They had the car. Of course there
4 wasn't an arrest warrant. They hadn't done the photo lineup
5 yet and they arrested him on scene because he was in
6 possession of a stolen vehicle. That's why they didn't show
7 up with a warrant. They didn't need one cause they found
8 him at the scene for that second -- for the car. There was
9 no other warrant yet because they hadn't concluded their
10 other investigation yet. So now basically we have two
11 entirely separate investigations both pointing to the
12 defendant for having possession of a stolen vehicle.

13 Now, members of the jury, I'm, I'm -- I promise I'm
14 about to sit down.

15 Now, as I mentioned multiple times before, the judge
16 will instruct you on the law in this case, and, again,
17 members of the jury, I believe that the two most important
18 things to consider here are credibility and common sense.
19 You get to consider the credibility of all the witnesses
20 you've heard from. Whether they had reason to lie, whether
21 they've known the defendant forever, they're living
22 together, they've been dating for over a year, or whether
23 they just happened to be employees of the store having to
24 see something, did their best that they could to inform law
25 enforcement, and do their duty as citizens of Spartanburg,

1 and common sense, members of the jury, I know y'all have it
2 and common sense will tell you he knew, he knew that car was
3 stolen and if you didn't know he definitely should of known.

4 Now, members of the jury, as soon as the judge finishes
5 instructing you on the law in this case you get to go back
6 to your deliberation room and discuss the case. You'll be
7 able to take back all these pieces of evidence with you and
8 you'll get to consider them.

9 Now, right now, we're still standing out here. You've
10 been 12 sets of eyes, been able to see the evidence, see the
11 demeanor of the witnesses while they testified. See how
12 they react. See if they're -- if it looks like they're
13 taking this seriously. You're 12 sets of ears. You heard
14 all the testimony. You're 12 individual people with
15 different life experiences that you can use when you go back
16 and deliberate but, at the conclusion, you'll no longer be
17 12.

18 You'll be one. One jury. One voice. One verdict.

19 Members of the jury, based off the evidence presented
20 today, that should be a verdict of guilty.

21 Thank you.

22 THE COURT: Ladies and gentlemen of the jury, that
23 completes the closing statements to be made by the
24 attorneys. I told you, at the beginning of the trial, when
25 we reached this stage, it would be my additional

1 responsibility to charge you concerning the law to be
2 applied.

3 You may recall that we began the trial with my going
4 over with the jury the indictment in this case and we'll
5 start at that point as far as the charge on the law is
6 concerned.

7 The indictment has been presented to this Court as Case
8 Number 15-GS-42-4777. The indictment is for the charge of
9 receiving stolen goods valued at between 2,000 and \$10,000.
10 The indictment states that the defendant, Timothy Wayne
11 Johnson, did, in Spartanburg County, on or about May the
12 24th of 2015, buy, receive, or possess stolen goods valued
13 at more than \$2,000 but less than 10,000. Such goods having
14 been feloniously taken and carried away with the intent to
15 deprive the owner thereof permanently of such goods, and the
16 said defendant knew or had reason to believe such goods had
17 been stolen. To wit, a 2001 Mercury Marquis in violation
18 and it cites two code sections of the Codes of Law of South
19 Carolina. That's done against the peace and dignity of the
20 state and contrary to the statute in such case made and
21 provided.

22 Now, I told you I'm going to allow you to have the
23 indictment in the jury room so that you can review it at
24 that time but I've also told you that this indictment is
25 simply the charge that brings the case into the Court. It's

1 not evidence in this case. It can't be used by you as
2 evidence of, of the defendant's guilt. Again, it is the
3 informational document that informs us of the charge to be
4 tried. It informs the defendant of the charge that's been
5 lodged against him.

6 Now, the defendant has pled not guilty to the
7 indictment. That plea, under our law, places the burden on
8 the State to prove the defendant guilty.

9 A person charged with a commission of a crime in this
10 State, no matter how serious the crime might be, is always
11 to be -- is presumed to be innocent of the crime for which
12 the indictment has been issued until and unless guilt has
13 been proven to you, the jury, by proof beyond a reasonable
14 doubt.

15 The presumption of innocence doesn't end when you begin
16 your deliberations. It continues throughout the trial.
17 Some people describe it somewhat like the robe that a judge
18 wears into the courtroom. The presumption of innocence
19 being likened unto that robe. In other words, it's about
20 his shoulders when we begin the trial. That presumption of
21 innocence remains about his shoulders throughout the trial.
22 It accompanies him into your jury room during your
23 deliberations and remains about his shoulders and still --
24 until such time as it might be stripped from him by evidence
25 that satisfies you of his guilt beyond a reasonable doubt.

1 So the presumption of innocence is not just a legal
2 theory. It's not just a legal phrase. The presumption of
3 innocence is a substantial right that every defendant is
4 entitled to until and unless you, the jury, are satisfied
5 from the evidence of the defendant's guilt beyond a
6 reasonable doubt.

7 Now, I've used that phrase proof beyond a reasonable
8 doubt several times in our charge. That's an important
9 concept of -- under our law and you may ask yourself well,
10 just how, how does the Court or what is that -- how does the
11 law define a reasonable doubt and I will tell you, in the
12 cases that have discussed that, the definition most often
13 used is, is that a reasonable doubt is that kind of doubt
14 that would cause a reasonable person to hesitate to act and
15 the State has the burden of proving the defendant's guilt
16 beyond a reasonable doubt.

17 Now, I want to point out one thing to you. I don't
18 know if any of you have ever been involved in a civil case.
19 We talked about that when I qualified the jury earlier this
20 week on Monday and I explained, at that time, that they're
21 two types of cases that come before the Circuit Court. That
22 is cases where people are seeking monetary damages. We call
23 those civil cases and they can be various reasons. It can
24 be because someone didn't pay a bill or, or someone injured
25 someone or damaged someone's property, something of that

1 nature, and someone's seeking monetary damages for those
2 injuries.

3 The reason I'm talking to you about that because, if
4 you've ever been involved in a civil case, the standard of
5 proof for a verdict to be reached by a jury is different in
6 those cases than in a criminal case such as the one we're
7 in. In a civil case, the burden of proof is by the greater
8 weight of the evidence. The judges instruct juries that if
9 you think about the scales of justice, if they tilt ever so
10 slightly in favor of a defendant, then the defendant gets
11 the verdict. However, if those scales tilt ever so slightly
12 in favor of the plaintiff, then the plaintiff is entitled to
13 a verdict. So it's just by the tilting of that scale, the
14 greater weight of the evidence, that a verdict can be
15 awarded in a civil case.

16 Now, the standard of proof in a criminal case is more
17 powerful than that. It is proof beyond a reasonable doubt.

18 Now, I'm going to tell you there's very few things that
19 go on in this world that can be proven beyond any doubt
20 whatsoever and the State is not put to that test. The State
21 is not required to prove, prove its case to you beyond any
22 possible doubt.

23 What I will tell you is that if, after consideration of
24 all of the evidence, if you are firmly convinced of the
25 defendant's guilt beyond a reasonable doubt, you must find

1 the defendant guilty. However, on the other hand, if you
2 think there's a real possibility that the defendant is not
3 guilty, it is your responsibility to give him the benefit of
4 that doubt and find the defendant not guilty.

5 Now, I talked to you at the beginning of the trial
6 about our duties, the duties that we've had in this case.
7 Our duties are different in the case.

8 It's been my job to preside over the trial of the case.
9 I've had to rule on certain questions concerning the
10 appropriateness of questions that were asked or the
11 appropriateness of answers that were being given, the
12 admission of certain evidence, and I'll remind you, again,
13 I'm telling you, again, don't take from anything that I've
14 said or done during this trial to somehow indicate to you
15 that I have an opinion as to how you should determine the
16 facts in this case because the law doesn't allow me an
17 opinion on the subject. I don't have an opinion as to how
18 you should determine the facts in this case.

19 I've explained you are the sole and exclusive judge of
20 the facts. I'm not allowed an opinion on that point.

21 Now, I have the additional duty of charging you on the
22 law in this case now and I told you earlier your
23 responsibility, under your oath, is to accept the law
24 exactly as I give it to you at this time. Then you're to
25 apply that law to the facts as you decide those facts to be.

1 That will put you in a position to render a just and a fair
2 verdict between the parties in this case.

3 So, again, I'm not allowed to disagree with you
4 concerning your determination of the facts. You're not
5 allowed to disagree with me concerning the law to be applied
6 in this case. So if you came into the courtroom with a
7 notion as to what the law is or you've got some opinion as
8 to what the law ought to be, leave those notions and
9 opinions outside of the jury room. Just take the law as I
10 give it to you and apply it to the facts as you decide those
11 facts to be because, again, I'll remind you, in every case
12 tried before a jury in this courtroom, the judge, the judge
13 of the facts is the jury, the sole and exclusive judge of
14 the facts in this case.

15 So it's your responsibility to determine the effect,
16 the value, the weight, and the truth of the evidence that
17 you've heard in this case.

18 Now, in deciding a case, you have the right to consider
19 two types of evidence. The lawyers have talked to you about
20 those two types of evidence. I'm going to talk to you about
21 it a little bit at this time.

22 The law divides evidence into two different types. One
23 we call direct evidence. The other type of evidence we call
24 circumstantial evidence.

25 Now, direct evidence is testimony of a person who

1 claims to have actual knowledge of the facts that are sought
2 to be proven. In other words, someone who actually
3 experienced the event and, and testifies either as an eye
4 witness or someone relating what they actually experienced
5 themselves. In other words, that proof does not require any
6 further deduction or evaluation or inference.

7 The other type of evidence that you have is what is
8 called circumstantial evidence and that's described by the
9 law as proof of a chain of facts or circumstances that
10 indicate the existence of a fact. It's been described as
11 proof of collateral facts from which a main fact might be
12 reasonably inferred. Now, that's a lot of fancy lawyer talk
13 in my opinion and I always give a very simple example of
14 what I, I believe means -- is meant by proof of a fact by
15 circumstantial evidence.

16 Let's say last night before you went to bed you walked
17 over to the window in your bedroom and looked outside. The
18 stars were shining. It's a beautiful night outside and, in
19 fact, it was. You know, you went to bed. You slept well
20 all night, didn't wake up at all. The next morning you got
21 up. The sun's up. So you walked over to that same window
22 in your bedroom. You looked outside. Now, the sun's up
23 outside but then you notice well, there's water dripping
24 from the trees. The grass in front of the house is soaking
25 wet. There's puddles in the drive or the road that weren't

1 there the night before.

2 Now, you slept all night. You didn't hear it rain.

3 You didn't see it rain. But from the facts that you know to

4 be true, those collateral facts, that is water dripping out

5 of the trees, puddles in the drive, wet yard, you know at

6 some point in time or you can reasonably infer, at some

7 point in time during the night, that it, in fact, rained.

8 So that's what we mean by proof of collateral facts from

9 which a main fact can be reasonably inferred.

10 Now, the law doesn't make a distinction between the

11 weight or value that you can give to either circumstantial

12 or direct evidence. Nor is there a greater certainty

13 required of circumstantial evidence than that of direct.

14 You're the judges of the facts. You're the judges of the

15 evidence. You give it the weight you think the evidence

16 deserves.

17 I will tell you that, since there are two types of

18 evidence, that is direct and circumstantial evidence, crimes

19 can be proven either by direct or circumstantial evidence.

20 Again, direct evidence directly proves the existence of a

21 fact. It doesn't require further deduction. Circumstantial

22 evidence is proof of a chain of facts and circumstances,

23 again, indicating an existence of another fact.

24 Now, crimes can proven by both circumstantial and

25 direct evidence, and, again, I told you there's no

1 distinction between the weight or value to be given to those
2 types of evidence. However, to the extent that the State
3 relies upon circumstantial evidence, I will tell you that
4 all of the circumstances must be consistent with each other,
5 and when they are taken together, must point conclusively to
6 the guilt of the accused beyond a reasonable doubt. If the
7 circumstances merely portray the defendant's behavior as
8 suspicions, then the proof is failed.

9 The State has the burden of proving the defendant
10 guilty beyond a reasonable doubt. The burden rests with the
11 State regardless of whether the State relies upon either
12 direct or circumstantial evidence or some combination of the
13 two types of evidence. Again, you're the sole judges of all
14 of the evidence in this case. I will tell you, after, if
15 after your consideration of all of the evidence in this
16 case, if you are firmly convinced of the defendant's guilt
17 beyond a reasonable doubt, you must find the defendant
18 guilty. Again, however, if you believe that there is a real
19 possibility that the defendant is not guilty, you must give
20 the defendant the benefit of the doubt and find the
21 defendant not guilty.

22 Now, in deciding the facts of the case it's gonna be
23 necessary for you to decide the credibility or the
24 believability of the testimony you've heard and that's what
25 credibility means. It means believability. I told you, at

1 the beginning of the trial, bring your good common sense
2 with you in making that determination. Use it in deciding
3 what -- which testimony you choose to believe and which
4 testimony you choose not to believe. In determining the
5 believability of witnesses who testified in a case, you, as
6 the sole judges of the facts, can believe all of, part of,
7 or none of what any witness is testified to. You can
8 believe one witness against all the others. You can believe
9 all the others against one. You're the sole judges of the
10 facts. That makes you the sole judge of the credibility of
11 all of the evidence that you've heard in this case.

12 You have the right to consider such factors as whether
13 or not a witness has an interest, a bias, a prejudice, or
14 some other motive in testifying in this case, and, you know,
15 I've been in courtrooms now for about 40 some years. I hate
16 to tell you how many years I've been in courtrooms. It's
17 been a long time. I've never been in that courtroom where
18 the witness stand wasn't right in front of the jury box.
19 The reason for that is we want the jury to view the
20 witnesses as they testify. Watch them as they speak. Use
21 your good common sense and make a determination as to the
22 credibility and the believability of the testimony that
23 you've heard during this trial.

24 Now, I'm going to instruct you, and I'm going to
25 emphasize to you that the fact that the defendant did not

1 testify is not a factor for you to consider in anyway in
2 your deliberations and your consideration as to the
3 questions of guilt or innocence of the defendant. That
4 factor should not be considered by you in any manner
5 whatsoever because, you see, a defendant has the
6 constitutional right to remain silent. The fact that a
7 defendant has asserted that right must not be considered by
8 you in your deliberations at all.

9 I repeat to you that, under your oath as jurors, you
10 are to draw no conclusion whatsoever from the fact that the
11 defendant did not testify. The fact that the defendant did
12 not testify should not even be discussed by you during your
13 deliberations in the jury room. The only burden of proof in
14 this trial is not upon the defendant. It's upon the State.
15 It's the State's burden to prove the case. The defendant is
16 not required to prove his innocence and that burden of proof
17 remains on the State throughout the trial to prove the
18 defendant guilty beyond a reasonable doubt.

19 There's also been people who have testified in this
20 trial that had a prior criminal record. People who have a
21 prior criminal record are competent. They're allowed to
22 testify during a trial. A past record does not affect the
23 ability of that witness to testify. A past criminal record
24 may be considered by you, if at all, only in determining a
25 witnesses credibility or believability. Remember you're the

1 sole judges of the facts and the believability of any and
2 all witnesses in the case.

3 One of the issues in this case has been the
4 identification of the defendant as the person who committed
5 the crime and the State has the burden of proving the --
6 identity beyond a reasonable doubt. You must be satisfied,
7 beyond a reasonable doubt, of the accuracy of the
8 identification before you can convict the defendant as the
9 person who committed the crime. Identification testimony is
10 an expression or belief or an impression by a witness. You
11 must determine the accuracy of the identification,
12 identification and you must consider the believability of
13 the identification witnesses the same as any other witnesses
14 in the case.

15 You can consider whether the witness had adequate
16 opportunities or times to observe the offender at the time
17 of the offense. This can be affected by the length of time
18 available, how far or close the witness was, lighting
19 conditions, whether the witness had a chance to see or know
20 the person in the past. Once again, I instruct to you that
21 the burden of proof is upon the State and it extends to
22 every element of the crime and that includes the burden of
23 proving, beyond a reasonable doubt, the identity of the
24 defendant as the person who committed the crime. After
25 examining the testimony, if you have a reasonable doubt as

1 to the accuracy of the identification, you must find the
2 defendant not guilty.

3 Now, in this case, the defendant is charged with
4 receiving stolen goods. The defendant is charged with that
5 offense, and in order for the defendant to be found guilty,
6 the State must prove, beyond a reasonable doubt, that the
7 defendant either bought, received, or possessed goods,
8 chattels, and that's movable, things you can move around,
9 property, or other property, and that the defendant knew or
10 had reason to believe that the property was stolen.

11 Now, whether the defendant knew or had reason to
12 believe that the property was stolen, again, that can be
13 proven as any other fact can be proven, either by direct or
14 by circumstantial evidence. The State may prove that the
15 defendant knew or had reason to believe that the property
16 was stolen by showing that the defendant knew facts that
17 would make a reasonable person believe that the property was
18 stolen.

19 Again, you are the sole judges of the facts in this
20 case. You must determine the facts as they relate to the
21 elements of the crime in question.

22 Now, Mr. Wynn, raise your hand.

23 (Juror complies.)

24 THE COURT: You're the foreperson of the jury. That
25 means it will be your responsibility to conduct the

1 discussions of the jury.

2 Now, if, at anytime during those discussions the jury
3 has a question that you'd like to pose back to me, I'd ask
4 you to get the jury to agree upon the form of the question.
5 what they're asking. Write it on a piece of paper, knock on
6 the door, tell the bailiff you have a question and pass that
7 to the bailiff. The bailiff will bring the question to me.
8 Then I'll determine what the appropriate answer is for that
9 question.

10 I will tell you I can't get involved in all of your
11 discussions concerning the facts or your decisions on the
12 facts. So they'll be some questions you may have that I'm
13 not allowed to answer or get involved in but I'm not asking
14 you to edit any question. I'm asking you to submit them all
15 to me. I'll determine the appropriate response. I can
16 answer questions concerning my charge on the law, certain
17 questions about the evidence and questions about the
18 procedure we may follow, things of that nature.

19 So, again, don't edit, edit the question. Just submit
20 them to me and I will make the appropriate response. We'll
21 be bringing you back into the courtroom for the response.

22 Now, also it will be your responsibility to record the
23 verdict in this case and the recording of the verdict will
24 be on a form and I'm gonna discuss that with you in just a
25 few minutes about that.

1 Now, there's going to be a couple of choices on this
2 and I'll talk about that in more detail later on because one
3 of the elements of the crime that the defendant has been
4 charged with in this case, the indictment is for the offense
5 of receiving stolen goods valued between 2,000 and \$10,000.
6 I'm also going to charge you that, if you find him not
7 guilty on that charge, then you must consider the lesser
8 included charge under the law and that is receiving stolen
9 goods valued at between zero and \$2,000 and I'll talk to you
10 about that in more detail when I give you the verdict form
11 because it will explain that in more, in more detail on the
12 verdict form in just a minute.

13 But as to the questions that are posed to you, you will
14 not reach a verdict in the case until you all agree upon the
15 result of the verdict as to those questions. Your verdict
16 must be unanimous. So that means none of you is more
17 important than any other. Because I've asked Mr. Wynn to be
18 the foreperson doesn't mean that he's more important than
19 any other juror. Each of you must agree upon the verdict
20 before it becomes the verdict of this jury in this case.

21 Now, I've gone over a great deal with you. There's
22 some evidence in the case and you'll be allowed to take that
23 evidence back in the jury room while you discuss the outcome
24 of the case. I want to be sure that only the properly
25 admitted evidence goes back so that you don't receive

1 something you shouldn't consider.

2 So we're gonna go over some matters with the attorneys
3 right now. There's a couple of housekeeping matters I have
4 to take care of. This will be the last time I'll ask you to
5 go back to the jury room and not discuss the case. The next
6 time I send you out I'll be telling you to start your
7 deliberations but, one more time, go back to the jury room.
8 Don't discuss the case until I bring you back for final
9 instructions.

10 You may retire to the jury room.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Any objections to or requests in additions
14 to the charge from the State?

15 SOLICITOR MABBS: No, Your Honor.

16 THE COURT: Any from the defense?

17 MR. SHEALY: No, Your Honor.

18 THE COURT: All right. Come forward please and take a
19 look and let's segregate the evidence so the bailiff will
20 know what to take back. I have the indictment here and the
21 verdict form for you to look at before I give it to the
22 jury.

23 (Pause.)

24 SOLICITOR GHENT: Your Honor, may I approach and have a
25 look at that while they're looking at that?

1 THE COURT: Yes, sir, please do.

2 (Pause.)

3 THE COURT: All right. Are we in agreement that those
4 are the exhibits to go back?

5 MR. SHEALY: Yes, sir.

6 SOLICITOR MABBS: Yes, sir, Your Honor.

7 THE COURT: All right. Step up if you would. Take a
8 look at the indictment and the verdict form and see if
9 there's any objections.

10 (Pause.)

11 THE COURT: Is that okay?

12 SOLICITOR MABBS: Yes, sir.

13 MR. SHEALY: Yes, sir.

14 THE COURT: All right. We have an agreement then on
15 the verdict form and the indictment.

16 Bring the jury back.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Can you pass this over to Mr. Wynn?

20 (Bailiff complies.)

21 THE COURT: Thank you.

22 All right. Mr. Wynn, what I've had the bailiff hand
23 you are the two documents that I referred to earlier. One
24 of which is the indictment. That's the one that has the
25 charge on it and I'm submitting that to you so that you'll

1 have it for your information as you consider the charges.

2 The other is the verdict form and I'll go over that one
3 with you now. At the top you'll see that it has the county
4 and the state and the court in which we're located. It
5 indicates the parties that are involved in this trial and
6 below that there are two questions.

7 The first question has to do with the charge that's
8 contained in the indictment. That is possession of or
9 receiving stolen goods valued at between two and ten
10 thousand dollars. The choices on that are not guilty or
11 guilty and let me point out to the jury the fact that I put
12 those choices in any order on that form does not indicate a
13 preference on my part. I put those choices in the same
14 order on every verdict form I've ever given to a jury. So
15 it's not done separately -- differently for any case.
16 That's the same order I put them in.

17 Now, once a verdict has been reached on the main
18 charge, either not guilty or guilty, you'll check the line
19 opposite the appropriate verdict.

20 Now, if your verdict is not -- is guilty, then that
21 would end your discussion and it says that below that. You
22 would sign the form and then you would of reached a verdict
23 on the case. If you find the defendant not guilty, then you
24 must consider question number two which has to do with the
25 lesser included offense and the only difference in the

1 elements is the value of the goods that might have been
2 received.

3 So, again, you'd have the right to either find the
4 defendant guilty or not guilty of that offense.

5 So do you understand the form as to how it works?

6 THE FOREMAN: Yes, Your Honor.

7 THE COURT: All right. If there's any questions about
8 it, again, you certainly have the right to ask me during
9 deliberations.

10 The bailiffs have the exhibits. They're going to give
11 you those to review while you're in your jury room
12 considering those matters.

13 Let me go over just a couple of things with you as you
14 go in your deliberations. If, for any reason, it becomes
15 necessary for a bailiff or someone from the Clerk's Office
16 to come into the jury room while you're in deliberations, I
17 will instruct you to stop your deliberations while that
18 person is in the jury room. You only resume your
19 discussions about the case when that person leaves. That
20 person might come in to receive a question from you. That
21 person may come in, depending on where we are, if the jury
22 feels like you're going to need to have lunch brought in,
23 you will need to inform the bailiff of that. I will tell
24 you it takes about an hour for lunch to be delivered to here
25 at the courthouse. So I'll just make you aware that that's

1 available. So if the jury appears to be deliberating
2 through the lunch hour and you're going to need lunch, let
3 the bailiffs know. Someone may then have to come in and
4 take your order. Someone may then have to come in and
5 deliver that to you.

6 So during the time someone else is in the jury room,
7 stop deliberation. Don't discuss the case until that person
8 leaves. You should only discuss the case among yourselves.
9 Not with anyone else present.

10 Now, once a verdict's reached, you'll knock on the
11 door, inform the bailiff that a verdict has been reached.
12 We'll bring the entire jury back into the courtroom to
13 receive the verdict.

14 So, at this time, I'm instructing you to retire to the
15 jury room. Begin your deliberations at this time.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any objections to my final instructions
19 from the State?

20 SOLICITOR MABBS: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. SHEALY: No, Your Honor.

23 THE COURT: All right. We'll be in recess until such
24 time as a question is presented or a verdict is reached.

25 Thank you very much.

1 SOLICITOR GHENT: Thank you, Your Honor.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 (WHEREUPON, the jury began deliberations at 10:36AM and
4 returned with a question at 10:45AM.)

5 (WHEREUPON, a bench conference was held at this time.)

6 THE COURT: Bring the jury back.

7 MR. SHEALY: Judge, my client's not got here yet.

8 THE COURT: Wait a second. I thought the defendant had
9 made it back to the courtroom.

10 THE COURT: All right. Let's bring the jury back.

11 Come to order please.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. I have received a question or
15 actually two questions from the jury.

16 First of all, you request Jackie Gregory's criminal
17 record from January 1st of 2015 until May 23rd of 2015.

18 There was no documents placed into the record on that.
19 There was testimony given. The only way that I can have you
20 review that evidence would be if we set it up and played the
21 testimony back, the recording of the testimony. We don't
22 have a written record at this point in time. A written
23 record won't be prepared till weeks after this trial. So
24 I -- there are recordings available. If you wanted to
25 listen to those recordings, we can make that available to

1 you.

2 Now, as to the police incident reports, those generally
3 are not admissible into evidence. So they're not allowed
4 into evidence. Police officers, and any other witness, has
5 the right to use any writing that they have produced to
6 refresh their memory. So generally they're used in the
7 trial to refresh a police officers or any other witnesses
8 memory of something they've recorded a record of in the
9 past. So they are not in evidence, and since they're not in
10 evidence, they can't be given to you at this point in time.

11 THE FOREMAN: That's fine.

12 THE COURT: All right. Does that respond to the two
13 questions?

14 THE FOREMAN: Yes, sir.

15 THE COURT: If you decide you do want that portion of
16 the transcript or record played, you'll need to let us know
17 because it takes a little while for her to find it in the
18 recordings and set it up so that it can be played so that
19 you can hear it. So you'll need to let us know if you want
20 us to play that for you. But it was testified to. So it
21 can be -- that testimony could be repeated.

22 All right. Thank you very much. You can step back to
23 your deliberations.

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

1 THE COURT: All right. Any objections from the State
2 to the Court's response to the questions?

3 SOLICITOR MABBS: No, Your Honor.

4 THE COURT: Any from the defense?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: All right. The questions will be made a
7 Court's Exhibits and part of the record.

8 (WHEREUPON, the note from the jury was marked as
9 Court's Exhibit No. 1 and received into evidence at this
10 time.)

11 THE COURT: We'll be in recess in this case.

12 (WHEREUPON, the jury began deliberations again at
13 10:47AM and returned with a verdict at 12:00PM.)

14 THE COURT: All right. We've got a verdict, Ms. Mabbs.

15 SOLICITOR MABBS: We do?

16 THE COURT: We do.

17 Can you let -- is Mr. Shealy outside?

18 SOLICITOR MABBS: Yes, sir.

19 (Pause.)

20 THE COURT: All right. We're back on the record in the
21 case of State versus Johnson. I've been informed by the
22 bailiffs that a verdict has been reached.

23 Is the State ready to receive the verdict?

24 SOLICITOR MABBS: We are, Your Honor.

25 THE COURT: Defense ready?

1 MR. SHEALY: We are, Your Honor.

2 THE COURT: All right. Bring the jury in.

3 (Whereupon, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. The record will reflect the
6 jury has returned to the courtroom.

7 I've been informed by the bailiff that a verdict's been
8 reached.

9 Is that true, Mr. Foreman?

10 THE FOREMAN: Yes, Your Honor.

11 THE COURT: Pass that form to the bailiff please.

12 (Foreman complies.)

13 THE COURT: Thank you, sir.

14 Madam Clerk, you may publish the verdict.

15 THE CLERK: State of South Carolina, County of
16 Spartanburg, State of South Carolina versus Timothy Wayne
17 Johnson, on the Indictment Numbered 2015-GS-42-4777, we, the
18 jury, unanimously find the defendant, Timothy Wayne Johnson,
19 concerning the offense of receiving stolen goods valued more
20 than \$2,000 but less than 10,000, guilty. Signed by the
21 foreperson, Leroy Wynn, on today's date, March 16th, 2016.

22 Ladies and gentlemen of the jury, is this your verdict
23 and still your verdict, if so, please raise your right hand.

24 (WHEREUPON, all jurors raise their hands at this time.)

25 THE COURT: All right. Thank you very much.

1 Anything from the State before I release the jury?

2 SOLICITOR MABBS: No, Your Honor.

3 THE COURT: Anything further from the defense?

4 MR. SHEALY: No, Your Honor.

5 (WHEREUPON, the jury panel was dismissed at this time.)

6 THE COURT: Okay. All right. Any motions from the
7 State?

8 SOLICITOR MABBS: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. SHEALY: Your Honor, we would move for a new trial
11 based on all prior objections and motions in this case.

12 THE COURT: All right. Those are noted, Mr. Shealy. I
13 will make the same rulings or consistent rulings as I did
14 during the trial. So the motions are denied at this time.

15 Are we ready to proceed with sentencing?

16 SOLICITOR MABBS: Your Honor, Mr. Smith just ran to get
17 a restitution order. I do have a sentencing sheet filled
18 out.

19 THE COURT: Okay. We'll just -- I'll be in recess but
20 I'll stay on the bench until that is returned.

21 SOLICITOR MABBS: Thank you, Your Honor.

22 (Pause.)

23 THE COURT: And, Mr. Shealy, I'll be considering
24 sentencing in the shoplifting case as well. I have that
25 here.

1 MR. SHEALY: Yes, sir.

2 (Pause.)

3 SOLICITOR MABBS: Your Honor, State's ready to proceed.

4 THE COURT: All right. We're on the record in two
5 cases. Case Number 2015-GS-42-4776, shoplifting valued at
6 2,000 or less with an enhancement of sentencing and Case
7 Number 2015-GS-42-4777, receiving stolen goods valued at
8 2,000, at least 2,000 but less than \$10,000 again enhanced.
9 Each carries a possible ten year sentence. I'm considering
10 sentencing at this time. Mr. Johnson is present with his
11 attorney, Mr. Shealy.

12 I'll be happy to hear from you first, Mr. Shealy, and
13 then I'll give Mr. Johnson an opportunity to speak.

14 MR. SHEALY: Thank you, Your Honor.

15 Mr. Johnson is 33 years old. He has an eleventh grade
16 education and he does have two children who depend on him
17 for support. He's not on Court ordered support but he sees
18 them. It's a voluntary arrangement. She's never had to
19 request for Court ordered support.

20 Judge, he's always worked. Actually he always worked
21 at Clay Hood, Incorporated. I believe he's worked there for
22 around about 12 years I believe it was as a heavy equipment
23 operator. I think he's told you that.

24 Judge, it would be, obviously, our position that he's
25 pled guilty to the thing that he did, continues to deny the

1 possession of stolen vehicle. I think a three day long
2 trial suggests that we have a pretty good defense as to that
3 case.

4 He's currently in the Department of Corrections with a
5 start date of September 16th, 2015. He's doing a three
6 year sentence and ATU -- with ATU. That was a full
7 revocation of a probationary sentence. So his most recent
8 charges he was ordered to -- three years was the full amount
9 of time that he could be revoked and that was the topline
10 sentence of the Court was three years suspended to I believe
11 three years probation.

12 Your Honor, he's actually been in custody, my
13 understanding, since July the 20th of last year. So we
14 would ask for credit back to then because that's when they
15 served these warrants.

16 THE COURT: July 20th of '14?

17 MR. SHEALY: Of '15, Your Honor.

18 THE COURT: Of '15. I'm sorry.

19 You have a number of days, Ms. Mabbs?

20 SOLICITOR MABBS: Your Honor, I have him being arrested
21 on these charges on May 24th and that he was bonded out on
22 May 30th for these charges. So I believe the Court is
23 already aware he did have other charges which he then
24 later---

25 THE COURT: Well, was he out, was he out on bond and

1 then arrested on other charges?

2 MR. SHEALY: I believe he was bonded and then arrested
3 on some new charges as well as the probation matter. So
4 he's been -- but he's been in custody now since July 2015.

5 THE COURT: Well, is there an agreement as to how many
6 days he's served on this or is that something I'm gonna have
7 to rule on?

8 SOLICITOR MABBS: So, Your Honor, according to my
9 records it would be---

10 THE COURT: What was he put back in custody for in you
11 said July?

12 MR. SHEALY: In July, yes, sir. It was a grand larceny
13 and malicious injury to property.

14 SOLICITOR MABBS: And I believe---

15 SOLICITOR SMITH: That's the possession of stolen
16 vehicle, car chase charge. He got two sets of charges. I
17 think -- well, he got arrested for these on
18 September 16th, 2015. Been out on bond several times.

19 SOLICITOR MABBS: Yes, Your Honor, and---

20 MR. SHEALY: Judge, they served those warrants on him.
21 That's when they served the warrants---

22 THE COURT: In jail?

23 MR. SHEALY: ---is what he's talking about.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. I don't hear an agreement.

1 Go ahead.

2 MR. SHEALY: So, judge, again, Your Honor, I believe
3 that you can, even if they don't agree with those number of
4 days, even if they aren't technically coming to him, I don't
5 know if there was -- I don't know that there was a bond
6 revocation motion in this case or not but I believe that you
7 can consider the fact that he has been in jail since July of
8 2015.

9 Your Honor, he had a drug problem. He has an opiate
10 addiction. That's pills generally. He's been pretty open
11 with that. That's why the probation violation judge ordered
12 him to serve ATU because he had not, so far as I can tell,
13 ever gotten any kind of sentence where an ATU sentence would
14 be possible. There was also some concern about whether he
15 was gonna go to some drug rehab and so that's what ATU was
16 for was to address that drug addiction.

17 So, Your Honor, you've already heard from Ms. Gregory
18 who had testified earlier. So, Your Honor, like I say, we
19 deny that he knew that this vehicle was stolen. He's pled
20 guilty certainly to the shoplifting and he admits that. He
21 has admitted that. We would ask you to be as lenient as you
22 can.

23 Thank you.

24 THE COURT: Anything you want to tell me, Mr. Johnson?

25 THE DEFENDANT: Just asking for the mercy of the Court,

1 Your Honor. That's all.

2 THE COURT: Prior record.

3 SOLICITOR MABBS: Yes, Your Honor.

4 2000, shoplifting.

5 2001, simple possession of marijuana, malicious injury
6 to property and petit larceny.

7 2002, receiving stolen goods.

8 2002, public disorderly conduct.

9 Your Honor, in 2003, open container, operating
10 uninsured motor vehicle, and driving under suspension.

11 Then, Your Honor, in 2006, purse snatching and public
12 disorderly conduct.

13 2007, grand larceny between one and five thousand
14 dollars. Your Honor, he did receive a -- I believe a
15 probation revocation on that charge as well for five years.

16 Your Honor, in 2008, receiving stolen goods and failure
17 to return video, \$1,000 or less, grand larceny, property --
18 and two property offenses third or subsequent to which, Your
19 Honor, he received seven years suspended to five years with
20 two years probation.

21 In 2013, receiving stolen goods, obtaining property
22 under false pretenses, and, Your Honor, and that case he
23 received ten years suspended to three years with five years
24 probation. Also, in 2013, shoplifting enhanced, petit
25 larceny enhanced. I'm sorry. Two petit larcenies enhanced,

1 receiving stolen goods \$10,000 or more, grand larceny
2 between two and ten thousand dollars.

3 And, Your Honor, in 2015, hit and run with property
4 damage, reckless driving, unlawful possession of a
5 prescription, possession of a controlled substance first
6 offense.

7 And, Your Honor, I do have a letter from Mrs. Tiffany
8 Brewton. I have shared it with defense counsel if Your
9 Honor would like to read it.

10 THE COURT: She wants you to share that with the Court?

11 SOLICITOR MABBS: Yes, she did, Your Honor.

12 THE COURT: Pass it up please unless there's some
13 objection.

14 MR. SHEALY: There's none. I would like to respond to
15 certain assertions in it.

16 THE COURT: There is a restitution order, Mr. Johnson,
17 and it appears that you have signed that restitution order.
18 Is that correct?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: He's on a probation revocation at the
21 present time. I think I've heard at least one other
22 probation revocation on his record.

23 SOLICITOR MABBS: Yes, Your Honor. Actually I believe,
24 according to my rap sheet, it's actually in front of you,
25 Your Honor. It was five years.

1 THE COURT: All right.

2 MR. SHEALY: Your Honor, if I may, I would like to just
3 point out that my client wasn't convicted of having stolen
4 the vehicle and I believe, throughout that letter, she or
5 the letter says that he was---

6 THE COURT: I noted that she indicated---

7 MR. SHEALY: Yes, sir.

8 THE COURT: ---that he was the theft -- the thief.

9 However, there was no testimony to that at trial and I'm---

10 MR. SHEALY: Yes, sir, and I---

11 THE COURT: I'm aware of that.

12 MR. SHEALY: I just wanted to place that on the record.

13 THE COURT: Sometimes victims embellish a little bit.

14 I understand that.

15 MR. SHEALY: Yes, sir.

16 THE COURT: That happens.

17 SOLICITOR MABBS: And, and Your Honor, in case you do
18 decide to give him credit, which, again, the State would
19 argue that he's not entitled to the credit from July, but
20 Mr. Smith did run the numbers and it would be 240 days.

21 THE COURT: 240?

22 SOLICITOR MABBS: Yes, but, Your Honor, the State's
23 position would be that he should only be entitled to credit
24 for the dates in-between his arrest and when he bonded out
25 on these charges.

1 THE COURT: Okay.

2 (Pause.)

3 THE COURT: Mr. Johnson, you have a very extensive
4 record. One that, as far as the types of crimes involved, I
5 would expect from some -- a person who had drug problems
6 such as yourself.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: However, my rough count of the number of
9 convictions you have suffered is in excess of 20 at this
10 point in time. It appears that, at least for your last
11 probation stint or, and the one that I was involved in,
12 revocations have occurred. I have told people in the past
13 that, at some point in time, it becomes apparent to the
14 Court that certain individuals, while they go to the
15 Department of Corrections, take no effort or do nothing to
16 correct their behavior. They come out and continue to
17 behave in the same fashion as you have in your cases.

18 We've got cases where you were out on bond, reoffending
19 after you've told a judge, I suppose when you bonded out by
20 signing the bond papers, that you'd be of good behavior
21 during the period of your bond. So it appears to me that
22 you have a -- there's, there's a real difficulty as far as
23 your ability to conform your conduct to what's required in
24 society.

25 I don't know why that is. I just have recognized that,

1 after looking at your case, it's this court's belief that
2 that's the problem, that you simply do not want to conform
3 to what society requires.

4 That being said, I'm in a position of deciding how
5 long, for what's occurred, you should be removed from
6 society and that's where we are in your case.

7 Now, I, you know, it's disheartening sometimes to, to
8 me that we get to the point where I don't see much that I
9 could do to change your behavior until you decide that's
10 something that needs to be done and that's gonna be
11 difficult given your drug problems and things of that
12 nature. I understand that.

13 Now, as a result, the sentence in the shoplifting case
14 is ten years. I have given you credit for 240 days. I've
15 run it concurrent with your probation revocation. I've run
16 it consecutive to the other sentence that I'm giving in this
17 case. I'm recommending the Addiction Treatment Unit while
18 you're incarcerated.

19 On the receiving stolen goods, the sentence is ten
20 years. I have reduced that to service of three. Probation
21 for five. I've ordered the restitution in this case of
22 \$725. I'm ordering, again, substance abuse counseling,
23 random alcohol and drug testing. I hope you take advantage
24 of that counseling and that testing. After two years of
25 probation, if you have complied fully with your probation

1 and you have paid the restitution that you owe, I will let
2 you end the, the probation on that case.

3 So you're looking at a stint in prison. You'll get
4 out. You'll be given an opportunity to pay back the people
5 you've injured and hopefully, if you'll do that and comply
6 with probation for three years, you can start again. I hope
7 that's what you decide to do.

8 I have ordered payment of Public Defender's fees as
9 part of the probation as well in that case and let's see. I
10 did give credit on the receiving stolen goods also for 240
11 days.

12 Good luck to you, sir. I signed the restitution order.

13 SOLICITOR MABBS: Your Honor, if I may, can we get a no
14 contact provision on---

15 THE COURT: Oh certainly.

16 SOLICITOR MABBS: ---those charges?

17 THE COURT: Any objection?

18 MR. SHEALY: No, Your Honor.

19 THE COURT: No contact, direct or indirect, with the
20 victims. That will be part of the sentence in the receiving
21 stolen goods case.

22 SOLICITOR MABBS: Thank you, Your Honor.

23

24

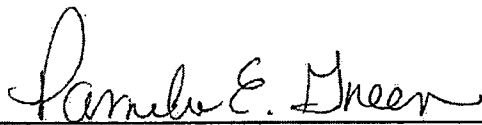
25 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 14th, 15th, and 16th day of March, 2016.

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

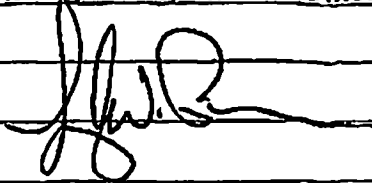
April 22nd, 2016

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2015A4210201693

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

OCT 23 2015

VERDICT

Guilty

Foreperson of Petit Jury

Date: March 16, 2016

DOCKET NO.

15-GS-42-4777
The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 26 2015

TERM

THE STATE
vs.

Timothy Wayne Johnson

Indictment for

RSG/RECEIVING STOLEN GOODS
>\$2000<\$10000

SC Code: 16-13-180(A) & 16-1-57
CDR Code: 3599
Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 OCT 27 AM 10:00
M. HOPE BLACKLEY

(83)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

OCT 23 2015

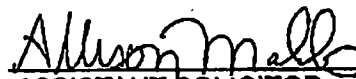
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

RSG/RECEIVING STOLEN GOODS >\$2000<\$10000

That the defendant, Timothy Wayne Johnson did in Spartanburg County on or about May 24, 2015, buy, receive or possess stolen goods, valued more than Two Thousand Dollars but less than Ten Thousand, such goods having been feloniously taken and carried away with intent to deprive the owner thereof permanently of such goods, and the said defendant knew or had reason to believe such goods had been stolen, to wit: 2001 Mercury Marquis in violation of §16-13-0180 (A) & 16-1-57 CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

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


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 26th day of January, 2017.

RECEIVED

JAN 26 2017

SC Court of Appeals