

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable R. Lawton McIntosh, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MARY HELEN ROBERTS,

APPELLANT

APPELLATE CASE NO 2017-000526

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RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

**SC Court of Appeals**

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2016-GS-46-02642

7 MARY HELEN ROBERTS,

8 Defendant.

9 -----x

10 December 14, 2016

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE R. LAWTON MCINTOSH

15

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

17 RYAN NEWKIRK, Esquire

18 Assistant Solicitor

19

20 JAMES BOYD, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
Plf's 1	CD	7	8
Plf's 2	Receipt	11	12
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I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Steven flower				
4	Mr. Newkirk	5			
5					
6	Eric Olson				
7	Mr. Newkirk	15			
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1 THE COURT: Is this the State versus Roberts.

2 MR. NEWKIRK: Yes, Your Honor, State of South  
3 Carolina versus Mary Helen Roberts on one true bill  
4 indictment number 2016-GS-46-02462. Mr. Jim Boyd of  
5 the York County Bar is present for the defense.

6 Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 MR. NEWKIRK: I am handing up to the Court a copy  
9 of the State's witness list. I already provided a  
10 copy to Mr. Boyd as well as the court reporter.

11 THE COURT: Okay.

12 Does the State have any pretrial matters before we  
13 get started?

14 MR. NEWKIRK: No, Your Honor.

15 THE COURT: Does the defense?

16 MR. BOYD: No, Your Honor.

17 THE COURT: Do either one of you wish to make a  
18 general opening statement to me since this is non-  
19 jury?

20 MR. NEWKIRK: The State would waive any opening  
21 statement.

22 THE COURT: Mr. Boyd?

23 MR. BOYD: The defense would waive.

24 THE COURT: Call your first witness.

25 MR. NEWKIRK: Thank you, Your Honor. The State

1 would call Steven Flowers from the Walmart loss  
2 prevention to the stand.

3 STEVEN FLOWERS, called as a witness, having been  
4 duly sworn by the clerk, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. NEWKIRK:

8 MR. NEWKIRK: If it please the Court.

9 THE COURT: Yes, sir.

10 Q Good afternoon Steven.

11 A Good afternoon.

12 Q Would you state your full name for the court reporter  
13 please?

14 A Steven Eugene Flowers.

15 Q And Steven where are you currently employed?

16 A At Walmart in York.

17 Q And in January of 2016 where were you employed?

18 A Walmart in Rock Hill.

19 Q Were you also -- what's the address of that Walmart?

20 A I am not sure of the address. It's on Dave Lyle  
21 Boulevard.

22 THE COURT: I need you to speak up a little bit  
23 please, if you don't mind.

24 A It's on Dave Lyle Boulevard in Rock Hill. I'm not sure  
25 of the street address.

1 Q Is that in York County?

2 A Yes, sir

3 Q And were you in the loss prevention office?

4 A Yes, sir.

5 Q And did you have an incident at that -- on that date  
6 that you can tell the Court about?

7 A Yes, sir.

8 Q Would you please tell the Court what you recall  
9 happening on the 20th of January?

10 A Yes, sir. I was working at the Walmart store on Dave  
11 Lyle Boulevard I got a call from the customer service manager.  
12 She said a lady --

13 MR. BOYD: I am going to object to hearsay.

14 THE COURT: Sustained.

15 Q Steven without talking about what other people told you  
16 tell the Court about your investigation?

17 A Okay. After I was notified I observed the video of  
18 Mary Roberts coming into the store with no merchandise in her  
19 hands or in her buggy. She went to the automotive section where  
20 she got two jugs of oil off the shelf. She came up to the front  
21 to return them. She was told that she would have to do an even  
22 exchange and at that point is when I started looking at the  
23 video on her. Once it was determined that she did not come with  
24 anything they did the return and we stopped her for shoplifting.

25 Q Did you have occasion to go down to the customer

1 service office?

2 A Yes.

3 Q And at that time were you close to the person that you  
4 believed was shoplifting?

5 A Yes, sir, I could see her.

6 Q How close would you say you were?

7 A A couple people back. Near the back of the register.

8 Q Was it well lit?

9 A Yes.

10 Q And how long were you there?

11 A About five minutes or so.

12 Q What happened after this person left the store?

13 A She left the store and went to the parking lot and  
14 left.

15 Q Did you do anything in this time?

16 A No, sir. I went and called the police, made the video  
17 and made a report.

18 (Plaintiff's Exhibit One, video, marked for  
19 identification as of this date.).

20 Q Steven, I am handing what's been marked for  
21 identification purposes as State's exhibit number one. Do you  
22 recognize what that is?

23 A Yes, sir.

24 Q And what do you recognize that to be?

25 A It's the surveillance video of that day.

1 Q How do you know it's the surveillance video?

2 A I made the video and signed it.

3 Q And have you watched that video before?

4 A Yes.

5 Q And you know it how?

6 A You showed it to me and I watched it prior to when I  
7 made it.

8 Q Is that a fair and accurate copy of the video you  
9 watched on the 20th of January?

10 A Yes, sir.

11 MR. NEWKIRK: Your Honor, at this time the State  
12 would move exhibit one into evidence.

13 THE COURT: Any objection?

14 MR. BOYD: Your Honor, I have no objection.

15 THE COURT: It will be admitted.

16 (Plaintiff's Exhibit One, video, received in  
17 evidence as of this date.)

18 MR. NEWKIRK: Your Honor, permission to publish  
19 exhibit one.

20 THE COURT: Yes, sir.

21 (WHEREUPON, they play the video.)

22 Q Steven, can you see the screen? We're going to have  
23 the light dimmed and I know you are kind of soft spoken, but try  
24 to do the best to speak up and try to explain to the Court clip  
25 by clip what you see going on.

1           A     Okay. There is Miss Roberts. She is coming down the  
2 isle from hardware and paint. She stops. She goes to the oil  
3 isle where she selects two jugs of oil off the shelf and puts it  
4 in the bottom of her cart.

5                   THE COURT: I really can't hear you.

6                   THE WITNESS: That clip right there is prior to her  
7 selecting the oil.

8                   THE COURT: Okay.

9           A     On the right side of the video clip there is Miss  
10 Roberts going down the isle. She selects two jugs.

11                   THE COURT: Say that again.

12           A     On the right side of the clip that is Miss Roberts  
13 going down the oil isle. She selects two jugs of oil and takes  
14 it back to the buggy and puts it on the bottom.

15                   There is Miss Roberts with the two jugs of oil and she  
16 places it on the bottom of the cart.

17           Q     Steven, this looks like to be a different part of  
18 store. Where is this?

19           A     This is the customer service desk. There is Miss  
20 Roberts going up to the customer service desk going to return  
21 the two jugs of oil.

22           Q     Steven, what are we looking at here?

23           A     Right here this is when the initial return happens.  
24 Miss Roberts has went to the store and bought several groceries  
25 and she is now doing the return.

1 THE COURT: She's now what?

2 THE WITNESS: Going to do the return on the oil.

3 Q Steven, were you present when this happened?

4 A Yes, sir. I was standing in line.

5 Q You are not on camera but you are there?

6 A Yes, sir.

7 Q Did you hear this exchange?

8 A Yes, sir.

9 Q Obviously without talking about what your customer  
10 service manager said did Miss Robert saying anything?

11 A She said she wanted to return the oil.

12 At this point the return has been done and she was  
13 given a gift card.

14 THE COURT: She is putting it on a gift card?

15 THE WITNESS: Yes, sir.

16 Q Steven what are we looking at here?

17 Q At this point I approach Miss Roberts for shoplifting.  
18 I was standing in line and I approach her and ask here to come  
19 the loss prevention office so we can talk about the oil she  
20 fraudulently returned?

21 A And just for the record Steven, which individual is  
22 you?

23 A The one standing next to Miss Roberts with the black  
24 shirt.

25 At this point Miss Roberts refuses to go with me and

1 she leaves her buggy of groceries at the desk that she's already  
2 paid for.

3 Q What have we got here?

4 A Me following Miss Roberts out the store asking her once  
5 again to come to the office with me.

6 This is Miss Roberts exiting the store with me behind  
7 her. After this she continues to exit out of the store into the  
8 parking lot.

9 Q What did you do at that point?

10 A At that point in time I phoned the police and I went  
11 and made the video.

12 MR. NEWKIRK: Thank you madame clerk.

13 Q Steven, what did you do with the oil after this  
14 occurred?

15 Q After this occurred the oil was placed back on the  
16 shelf?

17 Q Did you make any record of that?

18 A Yes.

19 Q And what is that?

20 A A receipt of how much it was.

21 Q If you were to see a copy of that would you recognize  
22 it?

23 A Yes, sir.

24 (Plaintiff's Exhibit 2, marked for identification  
25 as of this date.)

1 Q Steven, I am handing you what has been marked as  
2 State's Exhibit two for identification purposes do you recognize  
3 that?

4 A Yes, sir.

5 Q What do you recognize that to be?

6 A This is the receipt of the oil that was returned.

7 Q Is it a true and accurate representation of the receipt  
8 that you generated?

9 A Yes, sir.

10 Q Has it been changed or altered in any way?

11 A No, sir.

12 MR. NEWKIRK: At this point the State would move  
13 exhibit two into evidence.

14 MR. BOYD: No objection.

15 THE COURT: Admitted.

16 (WHEREUPON, State's exhibit 2 was received in  
17 evidence as of this date.)

18 Q Steven, just for the court's -- just for further  
19 explanation the receipt says there were four items. Can you  
20 explain that?

21 A There is an oil fee associated with each jug of oil.

22 THE COURT: What?

23 THE WITNESS: An oil fee associated with each jug  
24 of oil.

25 THE COURT: An oil fee?

1 THE WITNESS: Yes, sir, South Carolina oil fee. So  
2 that's is why there are four items.

3 Q And the other two items on the receipt?

4 A Are the jugs of oil.

5 Q Steven, after you comprised the video, did you do  
6 anything else with the video?

7 A I gave it to the police officer.

8 (WHEREUPON, Mr. Newkirk hands the witness picture.)

9 Q Steven do you recognize that?

10 A Yes.

11 Q And what is that?

12 A That is Mary Roberts entering the store without  
13 anything in her buggy.

14 Q Did you take any other snapshots of the video?

15 A I don't remember.

16 Q And Mr. Flowers this is before she entered the store?

17 A Yes.

18 Q And is the person that you watched on the video and  
19 were present for in the customer service stand present in the  
20 courtroom today?

21 A Yes.

22 Q Could you please point her out to the Court?

23 A That's her over there. (Indicating).

24 MR. NEWKIRK: Your Honor, please let the record  
25 reflect that Mr. Flowers has identified the defendant.

1 THE COURT: So reflect.

2 MR. NEWKIRK: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. NEWKIRK: Madame reporter, could I have this  
5 marked.

6 (State's Exhibit 3, marked for identification  
7 as of this date.)

8 Q Mr. Flowers, I am handing you what has been marked as  
9 State's Exhibit 3 for identification purposes only. Do you  
10 recognize State's Exhibit 3?

11 A Yes, sir.

12 Q And what do you recognize that to be?

13 A A picture of the video, video clip of Miss Roberts and  
14 I.

15 Q Is that a true and accurate representation?

16 A Yes, sir.

17 Q Does it appear to have been changed or altered in any  
18 way?

19 A No, sir.

20 MR. NEWKIRK: At this point I move State's Exhibit  
21 Number 3 into evidence.

22 THE COURT: Any objection?

23 MR. BOYD: No objection.

24 THE COURT: Admitted.

25 (State's Exhibit 3, Picture, received in evidence

1 as of this date.)

2 Q Steven, after you called the police did you have  
3 anything else to do with this investigation?

4 A Just filing the report.

5 MR. NEWKIRK: Thank you Steven. Please answer any  
6 questions that Mr. Boyd may have for you.

7 THE COURT: Cross examination.

8 MR. BOYD: I have no questions.

9 THE COURT: Thank you sir. You may step down. May  
10 this witness be excused.

11 MR. NEWKIRK: The State has no further need for  
12 Mr. Flowers.

13 THE COURT: Any objection for him being excused.

14 MR. BOYD: None, Your Honor.

15 THE COURT: Thank you sir. You are free to go if  
16 you like.

17 Call your next witness please sir.

18 THE COURT: The State would call Detective Olsen  
19 to the stand.

20 ERIC OLSEN, called as a witness, having been duly  
21 sworn by the clerk, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. NEWKIRK:

25 Q Good afternoon detective. Could you please state your

1 full name for the record?

2 A Eric Olson.

3 Q And where are you currently employed?

4 A The Rock Hill City Police Department.

5 Q And how long have you been employed there?

6 A A little over five years.

7 Q Were you employed and on duty on January the 20th of  
8 last year?

9 A I was.

10 Q At that time did you have occasion to respond to  
11 Walmart on Dave Lyle?

12 A I did.

13 Q Could you please tell the Court a little bit about  
14 that?

15 A On the said day and time of my report I received a call  
16 from dispatch to respond to Walmart in reference to a shoplifter  
17 that already left the store. Upon my arrival I met with Mr.  
18 Flowers who provided me with statements that a woman came into  
19 the store. Took jugs of oil off of the shelf and return them  
20 for a gift card. He also stated due to Walmart's return policy  
21 that if a customer does not have a receipt they take a photo ID  
22 for the return and that's when he provided me a license number  
23 and the name of Mary Roberts.

24 Q And after receiving that information what did you do  
25 next in your investigation?

1           A     I went immediately back to my patrol car where I  
2 assessed the South Carolina Department of Motor Vehicles on  
3 line. I ran that name and South Carolina DL number and it came  
4 back to a Mary Roberts and I brought up a photograph of the  
5 subject.

6                     MR. NEWKIRK: Your Honor, may I approach the  
7 witness?

8                     THE COURT: Yes.

9           Q     Detective Olsen, I am handing you State's exhibit  
10 number three. Do you recognize that?

11          A     Yes.

12          Q     And how do you recognize it?

13          A     It was the still shot of the vestibule area of Walmart  
14 the day of this incident.

15          Q     And had you seen that photograph before today?

16          A     Well, before today in court I saw it at the time of the  
17 incident.

18          Q     And did you view the photograph at the time of your  
19 response to the Dave Lyle Walmart?

20          A     I did.

21          Q     And did you do anything else with that?

22          A     Yes. I compared this photograph to the D.M.V. photo  
23 that I brought on line of Miss Roberts.

24          Q     And what did you do next?

25          A     I could clearly see that it was the same person. I

1 went back into the store. I printed out a copy of the  
2 photograph and brought it back into the store and showed it to  
3 another loss prevention employee who was there at the time.

4 Q Did you at any point after that seek warrants?

5 A I did.

6 Q And whom were they for?

7 A Mary Roberts.

8 Q Detective Olsen, where is the Dave Lyle Walmart?

9 A It's 2377 Dave Lyle Boulevard. It's is just east --  
10 east of I-77 on Dave Lyle.

11 Q Is that in York County?

12 A Yes.

13 MR. NEWKIRK: Thank you detective. I don't have  
14 any further questions but please answer any questions  
15 Mr. Boyd may have.

16 THE COURT: Cross examination.

17 MR. BOYD: I have no questions Your Honor.

18 THE COURT: Thank you sir. You may step down.

19 THE COURT: May this officer be excused.

20 MR. NEWKIRK: The State has no further questions  
21 for Mr. Olsen.

22 THE COURT: Mr. Boyd?

23 MR. BOYD: I have no objection.

24 THE COURT: Thank you sir. You may be excused.

25 MR. NEWKIRK: Your Honor the State has no further

1 witnesses.

2 THE COURT: All right. If you want to I will let  
3 you make a closing statement and let you go last since  
4 you didn't put up any evidence. Would you like to  
5 make a closing statement on the State's behalf?

6 MR. NEWKIRK: Your Honor -- the --

7 MR. BOYD: Your Honor, I think it is incumbent  
8 upon me to even though it is non-jury --

9 THE COURT: Yes, excuse me. I am jumping ahead.  
10 You do need to make your motions. I apologize.

11 MR. BOYD: Yes, sir.

12 THE COURT: Go ahead.

13 MR. BOYD: Your Honor, the State has made out a  
14 case of obtaining property by false pretenses but they  
15 have not made out a case of shoplifting. If you look  
16 at section 16-13-110 and I guess it will go going  
17 under (A). It talks about the statute provides a  
18 person is guilty of shoplifting if he takes possession  
19 of, carries away, and then it goes to other things  
20 that wouldn't be applicable to this case -- any  
21 merchandise displayed, held, stored, offered for sale,  
22 with the intention of depriving the merchant of the  
23 possession, use or benefit of the merchandise.

24 What clearly happened, my client took possession of  
25 oil. She took it up to the service counter. There

1 was no depriving the merchant of the establishment of  
2 the oil. The oil was going right back to them. What  
3 she got in return was some gift cards which they gave  
4 to her. It's definitely a false pretense. The false  
5 pretense being that she had purchased the oil earlier  
6 and that she was then in there returning that. That  
7 was an untruthful statement based on the facts that  
8 were presented. But there is no depriving the  
9 merchant of the possession, use or benefit of that  
10 oil. It went from one place in the store back to  
11 them. It wasn't concealed. It was clearly a case  
12 that wouldn't apply to the facts of a shoplifting  
13 case.

14 So I would submit, Your Honor, that the case -- the  
15 State has failed to make out a case of shoplifting.  
16 They made out a case of an entirely different crime.

17 THE COURT: Let me ask you this, Mr. Boyd, would  
18 you agree that if I went into Walmart or any other  
19 mercantile establishment and changed the tag of the  
20 price to a lower level, went and purchased it that  
21 would constitute shoplifting.

22 MR. BOYD: It would.

23 THE COURT: What would be the effective difference  
24 between that and what this lady in this store.

25 MR. BOYD: Effective difference is that what you

1 described is definitely covered in the statute under  
2 subsection two, about altering a label. What she did  
3 is not covered by the statute and of course the  
4 criminal statute has to be interpreted most strictly  
5 against the State in interpreting, and I would submit  
6 it's not covered by the statute. That's basically the  
7 difference.

8 Like I said, it's clearly a case of obtaining  
9 property by false pretenses. It's not a shoplifting.

10 MR. NEWKIRK: Thank you, Your Honor. I wrestled  
11 with this issue myself before sending this Indictment  
12 to the Grand Jury and I think that the same subsection  
13 (A) (1) that Mr. Boyd is referring to covers is a  
14 little unusual of a shoplifting but I think it's  
15 clearly covered in the statute that Miss Roberts did  
16 take possession of merchandise valued at less than  
17 \$2,000 and the subsequent end portion of the statute  
18 "With the intention of depriving the merchant of the  
19 possession, use or benefit of the merchandise without  
20 paying the full retail value. That is directly out of  
21 the statute. She clearly didn't pay the full retail  
22 value and even if Walmart had placed the oil back on  
23 the shelf and it had sold they're out the initial  
24 purchase because they would have had to issue a gift  
25 card to Miss Roberts. So I think the statute while

1 unusual -- an unusual case of shoplifting, I think  
2 it's covered in (A)(1) of 16-13-110.

3 THE COURT: I agree. I think it's a clear  
4 shoplifting.

5 MR. NEWKIRK: Thank you.

6 THE COURT: And I will point out on the record as  
7 well, that although the oil stayed in the store that  
8 gift card left with her when she left which is the  
9 value of the oil which she said she took it with her  
10 and so your motion would be denied. It's a good point  
11 but I think it is not applicable in this case.

12 Do you intend to call your witness?

13 MR. BOYD: No, sir.

14 THE COURT: Do you intend to present any evidence  
15 in this case?

16 MR. BOYD: No, sir, I do not.

17 THE COURT: Out of an abundance of caution let me  
18 go over with your client her Fifth Amendment rights  
19 just so it's on the record.

20 Ma'am, will you raise your right hand. Do you  
21 swear to tell the truth, the whole truth and nothing  
22 but the truth?

23 THE DEFENDANT: I do.

24 THE COURT: Miss Roberts, has your attorney  
25 explained to you your rights under the Fifth Amendment

1 of the United States Constitution?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Let me just go over that with you. I  
4 know your attorney says that he is not going to call  
5 you as witness but that choice is yours and yours  
6 alone to make. Effectively the Fifth Amendment of the  
7 United State Constitution says no person would be  
8 required to testify against themselves in a criminal  
9 trial. We are at the stage of the case where the  
10 State has presented all its evidence. They are not  
11 going to present any more. You have a right under the  
12 constitution to claim the benefits, protections of the  
13 Fifth Amendment which means that if I wanted to put  
14 you on the stand I couldn't. If you didn't want to  
15 your attorney wouldn't put you on the stand. He  
16 couldn't if he didn't want to, neither could the  
17 State. It's a decision to testify or not testify is  
18 yours and yours alone to make. But you need to make  
19 that decision after you given the protections under  
20 the statute and also the ramifications if you do  
21 testify.

22 If you do get on the stand you will be subject to  
23 direct examination from your attorney. You would be  
24 subject to cross examination from the State. If you  
25 have a criminal record which obviously because of the

1 charge there must be, and I find that it fits the  
2 requirements for admission into evidence, therefore  
3 the State would be allowed to cross examine you about  
4 your prior record if I find the probative value  
5 outweighs the prejudice to you. Obviously that  
6 information at trial might discredit your testimony  
7 and your credibility on the stand.

8 Now if you want to take a few more minutes and  
9 speak with your attorney or contact somebody who is  
10 close by and discuss with them whether or not you wish  
11 to testify in this case I will give you a few minutes.  
12 If you have any questions of your attorney I will let  
13 you ask him that in a few minutes.

14 Do you have any questions of me thus far?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Any questions about anything I told at  
19 this juncture?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you wish to have additional time  
22 with your attorney?

23 THE DEFENDANT: I have a couple of questions if you  
24 don't mind.

25 THE COURT: No, I do not. I tell you what I am

1 going to do so I'm not in here I am just going to walk  
2 out. If you would send word back Mr. Boyd after you  
3 answer her questions.

4 MR. BOYD: Yes.

5 (Whereupon, there was a brief recess.)

6 THE COURT: All right. Miss Roberts have you had  
7 sufficient time to speak with your attorney?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you wish to testify or do you wish  
10 to claim the privileges of the protection of the Fifth  
11 Amendment?

12 THE DEFENDANT: I am not going to testify.

13 THE COURT: Are you making that choice of your own  
14 free will.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Thank you, very much.

17 So I assume Mr. Boyd that's a continuation, the  
18 defense does not wish to present any evidence?

19 MR. BOYD: That's correct.

20 THE COURT: Thank you. Thank you for reminding me  
21 of that.

22 All right. Mr. Newkirk, go ahead and give your  
23 closing statement please sir.

24 MR. NEWKIRK: Your Honor, the State would just --  
25 I mean, I believe based on Mr. Boyd's motion the

1 State's position has been heard on the record. I  
2 think it's a shoplifting. You know, it wasn't a lot  
3 of money but it's still illegal in this state and I  
4 would ask the Court to take into consideration that.

5 THE COURT: Thank you. Mr. Boyd anything further.

6 MR. BOYD: Your Honor, I stated my position in the  
7 motion for the directed verdict.

8 I just want to add to that concerning whether the  
9 gift cards could be the -- constitutes shoplifting by  
10 taking them, I don't think it could because they were  
11 given, but also, the statute requires the -- it be  
12 any, merchandise displayed, held, stored or offered  
13 for sale and there was no evidence that the gift cards  
14 constituted merchandise that were displayed, held,  
15 stored or offered for sale. So I would also add that  
16 ground.

17 THE COURT: I hear you, but my thought is that it  
18 represents the value of the oil that she took out of  
19 the store and that falls under the statute. If I'm  
20 wrong certainly they'll have people to correct me.  
21 But I think there's beyond reasonable doubt clear  
22 evidence that this lady did as described by the State  
23 pick up the oil and without paying for it took it in  
24 to the customer service's section in Walmart. Got the  
25 value of that oil and walked out of the store without

1 ever having paid for it. I think it does constitute  
2 shoplifting. I am going to find that you are guilty.

3 That being said, would you prepare a sentencing  
4 sheet and let's hear what her record is please sir.

5 MR. NEWKIRK: Yes, Your Honor, and because this  
6 was a bench trial may I approach?

7 THE COURT: Yes, sir.

8 MR. NEWKIRK: I've turned over a copy of -- I  
9 didn't provide all -- I provided all of these  
10 certified convictions to the defense. These are  
11 copies of some of her priors just for jurisdiction. I  
12 do have a full copy of her record which I will read to  
13 the Court.

14 THE COURT: Okay. Mark that as a Court's exhibit.

15 (Court's Exhibit One, conviction record, received  
16 in evidence as of this date.)

17 Miss Roberts, any sentence I impose you will you  
18 have ten days to appeal.

19 Okay, sir.

20 MR. NEWKIRK: Thank you, Your Honor. Miss Roberts'  
21 prior record includes a simple battery from 1988. A  
22 theft by shoplifting in '89, theft by shoplifting in  
23 '90. That's two counts. There was a -- she was  
24 placed on probation for those and subsequently  
25 violated probation. Again in '96 theft by

1 shoplifting. All those previous offenses occurred in  
2 the State of Georgia.

3 In '97 shoplifting, first offense in South  
4 Carolina. Petit larceny in '99, in South Carolina,  
5 malicious injury to property also in South Carolina.  
6 2001 threat by shoplifting in Georgia. 2005  
7 shoplifting in South Carolina. 2007 a grand larceny,  
8 and safe cracking in South Carolina. 2008 assault and  
9 battery of a high and aggravated. In 2009 marijuana  
10 possession, first offense and domestic violence, first  
11 offense. 2010 malicious injury to property. 2011  
12 domestic violence, first offense and 2013 marijuana  
13 possession first offense.

14 THE COURT: All right. Will you come around  
15 please ma'am.

16 All right, Mr. Boyd I will be glad to hear from  
17 you.

18 MR. BOYD: Yes, sir: Your Honor, upon undertaking  
19 representation of Miss Roberts realizing her prior  
20 record I did some background work on looking about her  
21 background. She is fifty years old. She described to  
22 me some a lot of issues with mental health issues in  
23 the past and I obtained -- got a release from her and  
24 obtained mental health records. I got them from her  
25 present mental health. She goes to the community

1 mental health facility here in Rock Hill. She also  
2 has a prior extensive mental health history dating  
3 back many, many years. Records from the Lexington  
4 County Mental Health Center indicated that she had  
5 eight suicide attempts. She had a history of  
6 non-suicidal self injury. She has had eight  
7 psychiatric hospitalizations. They listed her as  
8 having bipolar disorder, anxiety disorder, post  
9 traumatic stress disorder.

10 In going over her history with her she was involved  
11 in a long relationship with a man she had four  
12 children by. Also helped raise four other children,  
13 stepchildren that wasn't hers. She was in a very  
14 abusive relationship and that's probably where the  
15 post traumatic stress disorder comes from. But the  
16 mental history goes back basically to her very young  
17 years.

18 Your Honor, of course that doesn't excuse all the  
19 criminal history but it does show I believe that there  
20 is more to it than somebody that is going out  
21 stealing, somebody getting in trouble. For a long  
22 time I think they have been trying to get the medicine  
23 right. To get her balanced. In this particular case  
24 it was almost just really foolish what she did. It  
25 was an impulsive act that she had a cart full of

1 groceries that she in fact paid for and actually left  
2 there after she was charged with this and certainly  
3 wasn't worth the two quarts or canisters. I don't  
4 know how big they were of oil. But Your Honor, the  
5 good thing about it, about a year ago she was able to  
6 obtain a job working cleaning houses that were pre --  
7 pre -- just constructed houses. Not houses that  
8 people were living in, but going in and getting them  
9 cleaned up. She had just started that job basically  
10 when this happened. Since this time she was arrested  
11 she got out on bond. Her boss actually bonded her  
12 out. Thought so highly of her. She had been to the  
13 mental health in Rock Hill. Has gotten stabilized and  
14 basically right now is on medication. Doing well.  
15 Working every day. She describes she works, she comes  
16 home. That's all she does.

17 She has obtained her own home and that's important  
18 because prior to this basically she was just living  
19 from place to place after the breakup of this  
20 individual she had the long term relationship. Living  
21 different places with different people and she's  
22 managed to have a home of her own. She rents a home  
23 and works every day.

24 She does have some physical health problems in  
25 addition to her mental health problems. She has been

1 diagnosed with lupus and also has kidney disease that  
2 she is struggling with at this time and is on  
3 medication for that also.

4 I would like the Court to -- I have a letter from  
5 her boss that I would like to pass up.

6 THE COURT: Would you mind showing it to Mr.  
7 Newkirk.

8 (Whereupon a letter was shown to Mr. Newkirk and  
9 then handed to the Court.)

10 MR. BOYD: And Your Honor, I know this is going to  
11 sound like I am asking for a lot, but I would ask the  
12 Court to consider a probationary sentence. I realize  
13 the record is extensive and not justified by just the  
14 record alone, but I would ask the Court to consider  
15 the mental health issue she has and construct a  
16 probationary sentence on the condition that she remain  
17 getting her medication and staying in a stable  
18 environment. I would ask the Court to consider that  
19 and extend that mercy to her.

20 Thank you.

21 THE COURT: Thank you.

22 All right. Miss Roberts, what would you like to  
23 say if anything?

24 THE DEFENDANT: No, sir. The only thing I would  
25 like to say, Your Honor, is in a year'S time I've come

1 a long, long ways. As Mr. Boyd said I know that does  
2 not just justify my record at all. I was in a really,  
3 really, really abusive relationship. I was beat every  
4 day. If not every day every other day. I finally got  
5 up enough courage, enough willpower, enough straight  
6 to walk away and its been downhill ever since until  
7 this year. And I have come a long ways. I have my  
8 own place. I am paying my own bills. I am struggling  
9 every day with health issues but as long as I can put  
10 my foot in front of the other I work. I had seven  
11 kidney stones this past month and I worked every day.  
12 Break my back to go to work and I just want to  
13 apologize. Like I said that does no justice for any  
14 of this, for my record. For any of this. But I am  
15 sorry, I apologize, I have come long ways. I have. I  
16 can honestly say as a woman I am proud of myself.

17 THE COURT: Let me ask you what kind of programs do  
18 you all have here as far as home incarceration is  
19 concerned?

20 MR. NEWKIRK: Your Honor, we --

21 THE COURT: Do you have any at all?

22 MR. NEWKIRK: Our home incarceration program is in  
23 it's infancy. People in this county have recently  
24 been sentenced to home incarceration. However, asking  
25 the details from me I wouldn't be able to tell you,

1 Your Honor.

2 THE COURT: I see a lot it a lot over in  
3 Greenville but some places where I ordered it they  
4 just have to have the program in place. I guess  
5 that's what I was asking. I'm giving it  
6 consideration. Not saying I'm doing it but I'm just  
7 thinking about it.

8 MR. NEWKIRK: Yes, sir, like I said it is in it's  
9 infancy and I don't have any specific answers for you.  
10 I know people have been sentenced to home  
11 incarceration before. I just can't give you the  
12 details.

13 THE CLERK: Your Honor, do you want probation here?

14 THE COURT: What was that?

15 MR. NEWKIRK: Our officers from probation  
16 department and parole are not present and they'd  
17 probably would be able to answer those questions  
18 better than me.

19 THE CLERK: Do you need me to get them over here?

20 THE COURT: Yes. How far are they away?

21 MR. NEWKIRK: They are directly behind this  
22 parking lot where you park.

23 THE COURT: Have a seat and lets have them come  
24 over here.

25 (Whereupon, there was a brief recess.)

1 THE COURT: Just for the record I spoke with the  
2 lady from probation and parole. She essentially said  
3 they don't really have any.

4 MR. NEWKIRK: My apologizes, Your Honor.

5 THE COURT: No. No. I appreciate you doing that  
6 for me.

7 All right. Come back around Mrs. Roberts. What  
8 is the longest time you ever been incarcerated Miss  
9 Roberts?

10 THE DEFENDANT: Two years and 11 months and eight  
11 days.

12 THE COURT: Two years, 11 months and eight days.  
13 Anything further?

14 MR. BOYD: No, sir.

15 THE COURT: Based on your record I'm going to  
16 sentence you to six years suspended on an active two  
17 years, probation for five years once you get out.  
18 Your probation will not begin until your period of  
19 incarceration has ended.

20 You are now today being placed on trespass notice  
21 as to any and all Walmart stores. You may not go  
22 there at any time. You may not have any contact with  
23 the stores once you get out. You will be required to  
24 undergo psychiatric treatment and adhere to all  
25 treatment recommendations including but not limited to

1 any prescription regiments ordered for you. Also  
2 you're to undergo mental health counseling in addition  
3 to that if the department of probation thinks it's  
4 appropriate for you to do.

5 You will have ten days to appeal this decision.  
6 Good luck to you.

7 MR. BOYD: Your Honor, would you be inclined to  
8 set an appeal bond at this time?

9 THE COURT: No, sir I will not. I will be glad to  
10 hear post trial motions within continue days.

11 MR. NEWKIRK: Thank you, Your Honor.

12 (END OF TRANSCRIPT)

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STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Warrant No.: 2016-GS-46-02642
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	MOTION FOR NEW TRIAL
	)	OR IN THE ALTERNATIVE
v.	)	FOR AN APPEAL BOND
	)	
Mary Helen Roberts,	)	
	)	
<u>Defendant.</u>	)	

The Defendant above named through her undersigned attorney, moves the Court to grant her a new trial on the above charge. The ground for this Motion is as follows:

1. That the defendant was convicted of Shoplifting (3rd Offense Subsequent) on a bench trial on December 14, 2016. The undisputed facts were that the defendant entered Wal-Mart, picked up two containers of oil from a shelf, took the containers to the customer service desk, claimed that she had purchased the oil and was returning it. The defendant was issued a gift cards for the containers of oil.

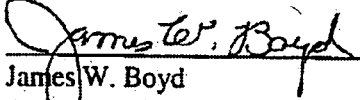
Section 16-13-110(A) provides as follows, "A person is guilty of shoplifting if he/she, (1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value;

In the present case the defendant did not intent to deprive the merchant of possession, use or benefit of the merchandise, the merchandise being the containers of oil. The defendant did not deprive the owner of the benefit of the containers of oil because the containers of oil remained with Wal-Mart. The defendant did deprive the merchant of gift cards but the gift cards were not

merchandise which the defendant had taken possession of or carried away. Therefore, the elements of shoplifting have not been met and the defendant requests a new trial be granted.

In the event that the defendant is not granted a new trial, then the defendant would move the Court to set an appeal bond pending an appeal of this case to the South Carolina Court of Appeals.

Respectfully submitted,

  
James W. Boyd  
Attorney at Law  
1544 Ebenezer Road  
Post Office Box 36425  
Rock Hill, SC 29732  
(803) 328-2600  
ATTORNEY FOR DEFENDANT

Rock Hill, South Carolina  
December 15, 2016

**WITNESSES**

RHPD

Witnessing Officer: Tripp

**ARREST WARRANT NUMBER**

2016A4620300190

**ACTION OF GRAND JURY**

Joseph F. [Signature]  
Foreperson of Grand Jury  
Date: 8-18-16

**TRUE BILL**

**VERDICT**

Seventy (70) to 100  
[Signature]  
Foreperson of Petit Jury  
Date: 12-14-16

DOCKET NO. 2016-GS46- 02642

**The State of South Carolina**  
**County of York**

**COURT OF GENERAL SESSIONS**

**AUGUST 18, TERM 2016**

**THE STATE**

**VS.**

**MARY HELEN ROBERTS**

**INDICTMENT FOR**

**SHOPLIFTING - ENHANCEMENT**

SC Code: § 16-13-0110(A) and 16-1-57  
CDR Code: 2877

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

**Defendant**

I  
hereby appear in my own proper person and plead guilty to the within indictment or to

**Defendant**

**Witness:**

**C.C.C. PLS. AND G.S.**

YORK COUNTY, SC  
CLERK OF COURT  
DAVID HAMILTON  
2017 FEB 13 AM 8:56  
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on August 18, 2016, the Grand Jurors of York County present upon their oath:

**SHOPLIFTING - ENHANCEMENT**

The defendant, Mary Helen Roberts, did on or about January 20, 2016, in York County, take possession of, carry away, transfer from one person to another or from one area of a store to another area, or cause to be carried away or transferred any merchandise valued at less than two thousand dollars (\$2,000) displayed, held, stored, or offered for sale by Walmart with intent to deprive Walmart of the possession, use, or benefit of the merchandise without paying full retail value, and said defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved, all in violation of Sections 16-13-0110(A) and 16-1-57, *Code of Laws of South Carolina* (1976, as amended).

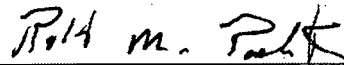
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
RYAN R. NEWKIRK  
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,



---

Robert M. Pachak  
Appellate Defender

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

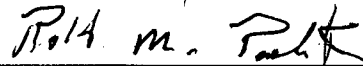
ATTORNEY FOR APPELLANT

This 28th day of September, 2017.

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,



---

Robert M. Pachak  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 28th day of September, 2017.

**RECEIVED**

SEP 28 2017

**SC Court of Appeals**