

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to York County

Honorable J. Mark Hayes, Circuit Court Judge  
—————

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S.C. SUPREME COURT

JERRY LEE DICKEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001153  
—————

APPENDIX  
—————

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
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County of York	)	2015-GS-46-00891
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	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Jerry Lee Dickey	)	
	)	
	)	
	)	

May 20th, 2015  
York, South Carolina

BEFORE:

THE HONORABLE ROBIN STILWELL, JUDGE; and a  
jury.

APPEARANCES:

MATTHEW HOGGE, ASSISTANT SOLICITOR  
Attorney for the State

PHILLIP SMITH, ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

Reported by: AMINAH R. HARDY, CM  
Official Court Reporter

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## 1 P R O C E E D I N G S

2 The Court: We'll call the case of the State of South  
3 Carolina versus Jerry Lee Dickey. It's my understanding  
4 from the attorneys that were present in the courthouse  
5 yesterday that he is not here as of this morning; is that  
6 correct?

7 Mr. Hogge: That's correct, Your Honor.

8 The Court: All right. I know we have a Jackson v.  
9 Denno. So what we will do is we will go forward with the  
10 Jackson v. Denno. I'd like to be as surgical as possible  
11 as quickly as possible so the jury doesn't have to wait  
12 any longer than they have to. After we do the Jackson v.  
13 Denno, we'll select our jury. And then if Mr. Dickey is  
14 not here at this point, I'll entertain a motion to proceed  
15 in his absence. So you may call your first witness.

16 Mr. Hogge: The State calls David Dover from the  
17 Clover Police Department.

18 Charles David Dover, after being duly sworn,  
19 testified as follows:

20 Direct Examination

21 By Mr. Hogge:

22 Q Good morning, Officer Dover. Give us your full name  
23 for the record.

24 A Charles David Dover.

25 Q Where do you work?

David Dover - Jackson v. Denno hearingDirect Examination by Mr. Hogge

- 1 A For the Town of Clover Police Department.
- 2 Q What's your position there?
- 3 A I hold the rank of captain.
- 4 Q And what does that mean?
- 5 A I'm responsible for administrative day-to-day duties  
6 and also some patrol duties or enforcement action as  
7 necessary.
- 8 Q Okay. And do you supervise other officers with the  
9 Clover Police Department as part of that?
- 10 A Yes, sir.
- 11 Q And how many?
- 12 A Roughly 24 full-time patrol and reserve unit.
- 13 Q Were you involved at all in this case involving Jerry  
14 Dickey that took place August 28th, 2014?
- 15 A Yes, sir, I was.
- 16 Q What was your involvement?
- 17 A As a -- in a supervisor capacity, I monitored a  
18 pursuit that took place and made decisions based upon  
19 information learned, and then from an enforcement capacity  
20 when I switched roles, I went -- drove in to North  
21 Carolina where the pursuant was terminated in an attempt  
22 to locate the defendant or the suspect vehicle and the  
23 defendant and did so up in Gastonia, North Carolina.
- 24 Q Okay. And how was the defendant actually detained?  
25 Who detained him?

David Dover - Jackson v. Denno hearingDirect Examination by Mr. Hogge  
Gastonia City, North Carolina, Police.

- 1 A Gastonia City, North Carolina, Police.
- 2 Q It is right that they had pending charges on him and
- 3 they took him into custody in Gastonia?
- 4 A That is correct.
- 5 Q Okay. And at what point did you speak with him about
- 6 this case?
- 7 A With the defendant?
- 8 Q Yes.
- 9 A I located the defendant on a side street up in
- 10 Gastonia just off of U.S. Highway 321 and engaged him in
- 11 general conversation as we awaited Gastonia City Police to
- 12 arrive. And during that conversation initially the
- 13 defendant denied being in South Carolina but then later
- 14 came in another statement and indicated that he had been
- 15 in South Carolina, but he had not shoplifted any
- 16 merchandise while he was there.
- 17 Q Let's talk about when you went to the Gastonia jail
- 18 to speak with him.
- 19 A Okay.
- 20 Q When you went to speak with him in the jail, he was
- 21 in custody, I presume.
- 22 A That is correct.
- 23 Q And did you advise him of the nature of the
- 24 investigation?
- 25 A I did. I advised him of the nature of the

David Dover - Jackson v. Denno hearingDirect Examination by Mr. Hogge

1 investigation, and I also, both verbally and in writing,  
2 advised him of his Miranda rights, of his right not to  
3 speak with me without an attorney present if he so chose.

4 Q Okay. And describe -- you say you advised him in  
5 writing. How did do you that?

6 A At the Clover Police Department we have a standard  
7 form called a Miranda form that we utilize when we  
8 interview folks, and he was given a Miranda form to review  
9 while I read it to him, and he initialed each line of the  
10 Miranda and then signed the waiver at the bottom.

11 Q Okay. Do you still have that written form today?

12 A I do not; I apologize.

13 Q And why is that?

14 A Somewhere in preparation of the case file, that file  
15 -- that document has been lost.

16 Q Okay. And -- but did he verbally acknowledge to you  
17 that he understood his Miranda rights?

18 A He did, yes.

19 Q Did he verbally express to you that he wished to  
20 answer your questions?

21 A He did.

22 Q And what did he tell you?

23 A He -- in conversation, the defendant and I -- we  
24 spoke about a lot of things. He wanted to talk about some  
25 of his past and some of his problems as well as some

David Dover - Jackson v. Denno hearing

Direct Examination by Mr. Hogge

1 religion. So we spoke about a lot of things in that room,  
2 but getting to the gist of what I was there for,  
3 Mr. Dickey did admit to me that he was in the town of  
4 Clover, South Carolina. He did go into our Family Dollar  
5 on U.S. Highway 321. He did shoplift merchandise: Tank  
6 tops, tee shirts, other miscellaneous items along with  
7 some cleaning products and that he put those in his pants  
8 that he was wearing and walked out of the store. He  
9 advised me that he knew that the clerk -- he was  
10 suspicious that the clerk was on to what he was doing  
11 because they made eye contact as he was leaving the store,  
12 and then he got into his car and drove north on 321.

13 He spoke about observing a police car, Clover police  
14 car, coming toward him in the opposite direction. He was  
15 going north; the police car was coming south. He advised  
16 that he looked at the officer and the officer looked at  
17 him and at that point he sped up hoping to make it up to  
18 the North Carolina line as to avoid the officer, but he  
19 also talked about the police officer was able to catch up  
20 to him with blue lights and sirens activated and he  
21 continued to flee into North Carolina.

22 Q And back to the advisement, did you advise him that  
23 he had the right to remain silent?

24 A I did.

25 Q Did you advise him verbally and on that form that

David Dover - Jackson v. Denno hearingDirect Examination by Mr. Hogge

1 anything he said could and would be used against him in a  
2 court of law?

3 A I did.

4 Q Did you advise him that he had the right to talk to a  
5 lawyer and have him present with him while he was being  
6 questioned there at the jail?

7 A I did.

8 Q Did you advise him that if he could not afford a  
9 lawyer that one could be appointed to represent him before  
10 questioning?

11 A I did.

12 Q And did you advise him that -- well, let me back up.  
13 Did it seem that he understood all his rights?

14 A Yes. It was very clear to me that he understood  
15 those rights.

16 Q At any point did he assert his right to talk to an  
17 attorney?

18 A He did not.

19 Q And was his statement reduced to writing?

20 A He would not make a written statement. He only  
21 agreed to speak with me verbally about the accident.

22 Q Okay. And did you identify yourself as a police  
23 officer?

24 A I did, dressed in similar attire as you see me today.

25 Mr. Hogge: Okay. I have no further question.



David Dover - Jackson v. Denno hearing  
Cross-examination by Mr. Smith

1 and I advised him that I would like to speak with him  
2 about an accident that just occurred down in South  
3 Carolina.

4 Q The Tahoe that you described, is it -- is it equipped  
5 with recording equipment?

6 A It is not.

7 Q And did you have any sort of recording equipment with  
8 you?

9 A I did not.

10 Q How about with the subsequent conversation at the  
11 jail?

12 A There was no recording equipment there either.

13 Mr. Smith: No further questions.

14 The Court: Okay. Good enough. All right. Thank  
15 you, Officer. You may step down. Anything further?

16 Mr. Hogge: Nothing from the State.

17 The Court: Okay. All right. Motions from the  
18 defense?

19 Mr. Smith: Yes, Your Honor. At this time I would  
20 make a motion to suppress the statement based largely upon  
21 the first interview. He was not read his Miranda rights  
22 there. He gave a statement clearly in response to  
23 questioning concerning the actual offense. He should have  
24 been read his Miranda rights. He gave a statement then,  
25 and based upon that, I think it then becomes the

1 equivalent of a fruit of the poisonous tree. He then  
2 gives a later statement about something he thinks he's  
3 already given a statement about which was procured  
4 improperly. So I would ask that the subsequent statement  
5 be suppressed as well.

6 The Court: Okay. Was the initial statement -- did  
7 it take place in the State of North Carolina? Is that  
8 what I heard?

9 Mr. Smith: Yes, Your Honor.

10 The Court: I presume just over the line; is that  
11 correct?

12 Mr. Smith: Yes, Your Honor.

13 The Court: Okay. All right. I'm going to make a  
14 threshold determination of the admissibility of the  
15 statement. The question is whether, of course, it was  
16 voluntary and whether the -- his Miranda rights were  
17 complied with. In the first instance, the -- although it  
18 doesn't necessarily have to be a custodial interrogation,  
19 clearly he wasn't in custody and the officer didn't have  
20 jurisdiction to effect any type of arrest at that point,  
21 and he volunteered the information.

22 Thereafter, he was administered the Miranda warnings  
23 and was advised of his right to remain silent and of his  
24 right to have counsel present and chose to make  
25 statements. Of course, I find that it's by a

1 preponderance of the evidence. Ultimately, the weight and  
2 credibility of those statements and whether, in fact, they  
3 were voluntary will be an issue to be determined by the  
4 jury in the trial of the case. Okay? All right.

5 Mr. Smith: Thank you, Your Honor.

6 The Court: Anything before we bring the jury up?

7 Mr. Hogge: Nothing from the State.

8 The Court: Okay.

9 Mr. Smith: No, Your Honor.

10 The Court: Call the jury up.

11 (Whereupon, the jury panel was brought into the  
12 courtroom.)

13 The Court: Good morning, ladies and gentlemen. Good  
14 to see you again. Welcome up to the courtroom as opposed  
15 to jury qualification room. I'll remind you this morning  
16 that you remain under the oath that you took on Monday  
17 morning to tell the truth. Just as on Monday morning when  
18 we were qualifying the jury, I have certain questions I  
19 need to pose to you. Those questions relate specifically  
20 to the case that will be called to bar this morning.

21 We will proceed in much the same fashion that we did  
22 downstairs. That is, if any of the responses to the  
23 question that I pose to you are in the affirmative, then  
24 please stand up and state your name and your juror number,  
25 name and juror number, and then give whatever response is

1 appropriate when I call on you.

2 Ladies and gentlemen, we are calling to bar this  
3 morning the case of The State versus Jerry Lee Dickey. In  
4 this instance, the State has charged Mr. Dickey with  
5 failure to stop for a blue light and with shoplifting.

6 Now, ladies and gentlemen, before we get started I  
7 need to tell you something that is very important, and  
8 that is that the defendant, Mr. Dickey, is presumed  
9 innocent until the State proves each and every element of  
10 each offense beyond a reasonable doubt. Now, tell you  
11 that because it is a very important premise in our  
12 judicial system, in the United States of America, in the  
13 State of South Carolina, and in the County of York. As we  
14 sit here right now, Mr. Dickey is presumed innocent and he  
15 will retain that presumption of innocence until such time  
16 as 12 deliberating jurors decide -- unless and until 12  
17 deliberating jurors determine that the State has met its  
18 burden of proof of proving each and every element of each  
19 offense beyond a reasonable doubt.

20 Now, the reason I tell you that is because before we  
21 get started, I'm going to read portions of the indictment  
22 to you. I don't want you to think that because I am  
23 reading the indictment to you that I am suggesting that  
24 those are the facts in this case; I'm not. I'm simply  
25 reading the allegations so that when I ask you questions,

1 you can answer them intelligently and you will know what  
2 the allegations in the case are.

3 Ladies and gentlemen, the indictment is simply a  
4 charging paper. It is not something that you accept as  
5 fact. Twelve deliberating jurors will determine what the  
6 facts are in the case.

7 So, ladies and gentlemen, the first indictment that  
8 would be before the Court today is The State versus Jerry  
9 Lee Dickey, and that is indictment number 2015-GS-46-892  
10 for failure to stop for a blue light. The State would  
11 allege that Mr. Dickey did on or about August 28th, 2014,  
12 in York County while driving on a road, street or highway  
13 in the state failed to stop when signaled by a law  
14 enforcement vehicle by means of a siren or a flashing  
15 light.

16 Ladies and gentlemen, the next matter that we will  
17 take up is The State versus Jerry Lee Dickey, indictment  
18 number 2015-GS-46-891 for shoplifting. And the State  
19 would allege that Mr. Dickey did on or about August 28th,  
20 2014, in York County take possession of, carry away,  
21 transfer from one part of the store or to another or cause  
22 to be carried away merchandise valued at less than \$2,000  
23 at the Family Dollar in York County.

24 Now, ladies and gentlemen, the first question that I  
25 need to ask you: Is there anyone among you who has any

1 prior knowledge, any prior opinion, or any previous  
2 position regarding the parties or allegations in this  
3 case? All right. Let the record reflect no affirmative  
4 response.

5 Ladies and gentlemen, the defendant in this case is  
6 Mr. Jerry Lee Dickey. Is there anyone among you who has a  
7 personal, professional, or family relationship with the  
8 defendant, Mr. Dickey? All right. Let the record reflect  
9 no affirmative response.

10 Ladies and gentlemen, the defendant in the case is  
11 represented by Mr. Phil Smith of the York County Bar. Is  
12 there anyone among you who has any personal, professional,  
13 or family relationship with Mr. Smith? All right.

14 Ladies and gentlemen, the State of South Carolina is  
15 being represented by Mr. Matthew Hogge of the York County  
16 Solicitor's Office, the Sixteenth Circuit Solicitor's  
17 Office. Is there anyone among you who has any family,  
18 personal, or professional relationship with Mr. Hogge or  
19 with any employee or member of the Sixteenth Circuit  
20 Solicitor's Office?

21 All right. Ladies and gentlemen, potential witnesses  
22 in this case include David Dover of the Clover Police  
23 Department, Johnny Neelands of the Clover Police  
24 Department, Tanner Davis of the Clover Police Department,  
25 and Margaret Knight of the Family Dollar Store. Ladies

1 and gentlemen, is there anyone among you who has a  
2 personal, professional, or family relationship with any of  
3 those proposed witnesses? Yes, ma'am?

4 Juror Porter: Brittany Porter, juror number 19 --  
5 179.

6 The Court: Yes, ma'am.

7 Juror Porter: My mother is the -- an employee under  
8 Margaret at Family Dollar.

9 The Court: Okay. So she's employed at Family  
10 Dollar?

11 Juror Porter: Yes.

12 The Court: Okay. Knowing that, ma'am, do you  
13 believe that you could still be a fair and impartial juror  
14 in the trial of this case and enter a verdict in  
15 accordance with the law?

16 Juror Porter: Yes, sir.

17 The Court: Okay. Thank you for telling me; I do  
18 appreciate it. Anyone else? All right. Ladies and  
19 gentlemen, is there anyone among you who has been  
20 prosecuted by the Sixteenth Circuit Solicitor's Office or  
21 had a family member prosecuted by the Sixteenth Circuit  
22 Solicitor's Office? All right. Let the record reflect no  
23 affirmative response.

24 Is there anyone among you who has ever been  
25 prosecuted for shoplifting?

1 Juror Mayberry: I'm Tori Mayberry, juror number 137,  
2 and I have been charged with shoplifting.

3 The Court: Okay. Do you think, given that fact,  
4 that you could still be a fair and impartial juror in the  
5 trial of this case, ma'am?

6 Juror Mayberry: Yes, sir.

7 The Court: Okay. Thank you for telling me; I do  
8 appreciate that. Is there anyone among you who has been  
9 -- who has formerly been employed by law enforcement? All  
10 right. Let the record reflect no affirmative response.  
11 Is there anyone among you who has an immediate family  
12 member who is currently employed by law enforcement?

13 Juror Pigott: Mark Pigott, juror 176.

14 The Court: Yes, sir.

15 Juror Pigott: My son-in-law is a Rock Hill City  
16 police detective.

17 The Court: Okay. Do you think you could still be a  
18 fair and impartial juror in this case, sir?

19 Juror Pigott: I do.

20 The Court: Okay. Thank you for telling me; I  
21 appreciate it. Yes, ma'am?

22 Juror Steele: Jordan Steele, juror number 209. My  
23 cousin is the chief's assistant at the Rock Hill Police  
24 Department.

25 The Court: Okay. Do you think you can still be a

1 fair and impartial juror in this case?

2 Juror Steele: Yes, sir.

3 The Court: Okay. Yes, ma'am.

4 Juror Blanks: Anna Blanks, juror number 21. My  
5 brother-in-law is a policeman for Lancaster County.

6 The Court: Okay. Do you think you could be fair and  
7 impartial given that fact, ma'am?

8 Juror Blanks: Yes, sir.

9 The Court: Okay. Thank you. Yes, sir.

10 Juror Yost: Jimmie Yost, juror number 248. My  
11 cousin is a York County sheriff's deputy.

12 The Court: Okay. Do you think you could still be  
13 fair and impartial in this case, sir?

14 Juror Yost: Yes.

15 The Court: Okay. Yes, ma'am?

16 Juror Spearman: My son -- Janice Spearman, 203. My  
17 son is a Cleveland County, North Carolina, sheriff's  
18 deputy.

19 The Court: Okay. Do you think you could still be  
20 fair and impartial in the trial of this case?

21 Juror Spearman: Yes, sir.

22 The Court: All right. Thank you. Yes, sir?

23 Juror Nicastro: Ronald Nicastro, juror 162. My  
24 father is an N.Y.P.D. cop.

25 The Court: Okay. Do you think you can still be fair

1 and impartial in this case, sir?

2 Juror Nicastro: Yes, sir.

3 The Court: Okay. Thank you. Is there anyone  
4 among you who has been a member of or a -- has volunteered  
5 for or has financially contributed to an organization  
6 which advocates for either victims' rights or for criminal  
7 prosecution? Now, when I say that, I mean organizations  
8 like MADD, Mothers Against Drunk Driving, or SADD,  
9 Students Against Drunk Driving, or any other like  
10 organization that advocates for victims' rights or  
11 criminal prosecution. All right. Let the record reflect  
12 no affirmative response.

13 Is there anyone among you who has contributed monies  
14 or a member of the Fraternal Order of Police or the South  
15 Carolina Law Enforcement Officer Association, the trooper  
16 association or any other law enforcement? Yes, sir.

17 Juror Cullen: Matthew Cullen, 53.

18 The Court: Okay. All right. You contribute to  
19 which one?

20 Juror Cullen: Probably a couple of them.

21 The Court: Okay. Do you think, given that fact, you  
22 can be a fair and impartial juror in this case, sir?

23 Juror Cullen: Yes, sir.

24 The Court: All right. Thank you. Yes, sir?

25 Juror Faris: I'm Don Faris, number 77. I'd say the

1 same thing; I've given to them. I have a criminal justice  
2 degree, but that was many years ago.

3 The Court: Okay. Do you think you could still be  
4 fair and impartial in this trial, sir?

5 Juror Faris: Absolutely.

6 The Court: Okay. Thank you for telling me. Yes,  
7 sir?

8 Juror Moss: Scott Moss, juror 156.

9 The Court: Yes, sir.

10 Juror Moss: I've contributed to the Fraternal Order  
11 of Police.

12 The Court: Okay. Do you think you could still be  
13 fair and impartial in the case, sir?

14 Juror Moss: Yes, sir.

15 The Court: All right. Thank you for telling me; I  
16 do appreciate it. Is there anyone among you who currently  
17 owns or has ever owned a retail establishment or a retail  
18 business? Yes, sir?

19 Juror Faris: Yes, sir, juror number 77, Don Faris.

20 The Court: Yes, sir.

21 Juror Faris: My brother and I own a hobby stop in  
22 Rock Hill.

23 The Court: Okay. Do you think you can still be fair  
24 and impartial in this case, sir?

25 Juror Faris: Yes, sir.

1           The Court: Okay. Thank you. I appreciate that. Is  
2 there anyone among you who has been the victim of a  
3 shoplifting crime? Same response?

4           Juror: Same response.

5           The Court: I said: Do you think you can still be  
6 fair and impartial in the trial of this case, sir?

7           Juror: Yes, sir.

8           The Court: Okay. Thank you. Anyone among you who  
9 ever worked at or owned stock in Family Dollar? All  
10 right. Let the record reflect no affirmative response.  
11 Is anyone on the jury panel a frequent customer of the  
12 Family Dollar in Clover, South Carolina?

13          Juror Porter: I'm Brittany Porter, juror number 179.  
14 I go there frequently because my mother does work there.

15          The Court: Okay. Do you think you could still be  
16 fair and impartial in this case, ma'am?

17          Juror Porter: Yes, sir.

18          The Court: All right. Thank you very much. Is  
19 there anyone among you who, for whatever reason, feels  
20 that you could not be a fair and impartial juror in the  
21 trial of this case? Okay. Let the record reflect no  
22 affirmative response.

23          Counsel, any additional questions in voir dire?

24          Mr. Hogge: No, Your Honor.

25          Mr. Smith: None from the defense, Your Honor.

1           The Court: Okay. Good enough. All right. Ladies  
2 and gentlemen, at this point what we're going to do is  
3 we're going to select a jury. We'll select 12 jurors and  
4 we'll select one alternate juror. The reason we select an  
5 alternate is in many cases one of the original 12 jurors  
6 will not be able to fulfill his or her obligation because  
7 of sickness, because of family sickness or because of  
8 accident. And sometimes it's disclosed when a witness  
9 gets up. They may know the witness and didn't recognize  
10 it when we went through the qualifications in the  
11 beginning. So it's important that we have an alternate.  
12 An alternate's role on the jury is just as important as  
13 any of the 12 original jurors.

14           What I have in my hand is a strike sheet which is a  
15 strike sheet that was randomly generated by the Clerk of  
16 Court. You appeared -- your names appear in a list in a  
17 random order.

18           What will happen is the Clerk of Court will call your  
19 name in order as you appear on the list. What I would  
20 like for you to do, if you would, please, is just stand up  
21 right where you are. The attorneys will then make strikes  
22 or peremptory challenges. The attorneys have the  
23 discretion and the authority to make peremptory challenges  
24 or strikes for just about any reason. They have certain  
25 narrow limitations, but they can make a strike for just

1 about any reason.

2 If you are stricken, please don't take offense at it  
3 or if you're put on the jury, please don't take offense at  
4 it. I would also suggest to you not to try to divine why  
5 it is that an attorney may have stricken you or let you on  
6 the jury. If you try to get into a lawyer's head, you'll  
7 be as crazy as we are. So I encourage you to try to  
8 resist that temptation.

9 And what will happen is when you stand up, if you  
10 hear twice from each attorney either "please swear the  
11 juror" or "please seat the juror," then you will have been  
12 selected for the jury. If you'd bring all your stuff and  
13 come have a seat in the jury box... If you hear from  
14 either one of the two attorneys "please excuse the juror  
15 from the trial of this case" or "please strike the juror,"  
16 that means that you will have been stricken from the case  
17 and you can have a seat where you are.

18 Each side will have five strikes, so as we go  
19 through, I'll be counting, and each side will have the  
20 opportunity to give five, for a total of ten. Okay? Am I  
21 correct in the number of strikes, gentlemen?

22 Mr. Smith: Yes, Your Honor.

23 Mr. Hogge: Yes, Your Honor.

24 The Court: All right. So having said that, ladies  
25 and gentlemen, I will turn it over to the Clerk of Court

1 to begin calling the roster of names.

2 The Clerk: Number 23, Terrin Boddie. What say you  
3 for the State?

4 Mr. Hogge: Please present the juror.

5 The Clerk: And the defense?

6 Mr. Smith: Please seat Ms. Boddie.

7 The Clerk: Please have a seat in the jury box.

8 Number 49, Lisa Collins. What say you for the State?

9 Mr. Hogge: Please present the juror.

10 The Court: And the defense?

11 Mr. Smith: Please seat Ms. Collins.

12 The Court: Please have a seat in the jury box.

13 Number 17, Joy Benfield. What say you for the State?

14 Mr. Hogge: Please present Ms. Benfield.

15 The Clerk: And the defense?

16 Mr. Smith: Please excuse Ms. Benfield.

17 The Clerk: You're excused from this case. Number

18 124, Cynthia Lankford. What say you for the State?

19 Mr. Hogge: Please present Ms. Lankford.

20 The Court: And the defense?

21 Mr. Smith: Please seat Ms. Lankford.

22 The Clerk: Please have a seat in the jury box.

23 Number 146, McKenzie Miller. What say you for the State?

24 Mr. Hogge: I'm sorry. Could I have that juror  
25 number again?

1           The Clerk:     146.

2           Mr. Hogge:     Please present Ms. Miller.

3           The Clerk:     And the defense?

4           Mr. Smith:     Please seat Ms. Miller.

5           The Clerk:     Please have a seat in the jury box.

6   Number 209, Jordan Steele.  What say you for the State?

7           Mr. Hogge:     Please present this juror.

8           The Clerk:     And the defense?

9           Mr. Smith:     Please seat Ms. Steele.

10          The Clerk:     Please have a seat in the jury box.

11   Number 137, Tori Mayberry.  What say you for the State?

12          Mr. Hogge:     Please excuse Ms. Mayberry.

13          The Clerk:     You're excused from this case.

14   Number 38, Brian Carter.  What say you for the State?

15          Mr. Hogge:     Please present Mr. Carter.

16          The Clerk:     And the defense?

17          Mr. Smith:     Please seat Mr. Carter.

18          The Clerk:     Please have a seat in the jury box.

19   Number 203, Janice Spearman.  What say you for the State?

20          Mr. Hogge:     Please present Ms. Spearman.

21          The Clerk:     And the defense?

22          Mr. Smith:     Please excuse Ms. Spearman.

23          The Clerk:     You're excused from this case.

24   Number 16, Ellen Belk.  What say you for the State?

25          Mr. Hogge:     Please present Ms. Belk.

1           The Clerk:     And the defense?

2           Mr. Smith:     Please seat Ms. Belk.

3           The Clerk:     Please have a seat in the jury box.

4           Number 33, Michael Buff.

5           Mr. Hogge:     Your Honor, may we approach briefly?

6           The Court:     Sure.

7           (WHEREUPON, the following bench conference was held  
8           in the presence of the jury but not within the hearing of  
9           the jury.)

10          The Court:     Yes, sir?

11          Mr. Hogge:     I move to strike. He's been convicted  
12          of possession of cocaine and some other charges.

13          The Court:     Do you have any objection to that?

14          Mr. Smith:     Do we know if it's the right...

15          The Court:     We can bring him up here and we can ask  
16          him and we can match Social Security numbers. The  
17          question is: Do we want to embarrass him and go through  
18          that whole thing? If you want to, I will.

19          Mr. Smith:     Can we just ask him if he has that  
20          charge?

21          The Court:     Yeah. We'll bring him up here and ask  
22          him.

23          Mr. Smith:     Thank you, Your Honor.

24          The Court:     Mr. Buff, will you come up, please?

25          (Juror Buff joins the bench conference.)

1           The Court:     Mr. Buff, there's a person of your like  
2 name who's been convicted of a cocaine possession. Is  
3 that you, sir?

4           Juror Buff:     Yes.

5           The Court:     Okay. All right. Well, then you're  
6 disqualified from service on the jury.

7           Juror Buff:     Okay.

8           The Court:     Thank you.

9           (This concluded the bench conference.)

10          The Court:     All right. Mr. Buff is stricken for  
11 cause by the State.

12          The Clerk:     Number 56, Bernice Davis. What say you  
13 for the State?

14          Mr. Hogge:     Please present Ms. Davis.

15          The Clerk:     And the defense?

16          Mr. Smith:     Please seat Ms. Davis.

17          The Clerk:     Please have a seat in the jury box.  
18 Number 162, Ronald Nicastro. What say you for the State?

19          Mr. Hogge:     Please present Mr. Nicastro.

20          The Clerk:     And the defense?

21          Mr. Smith:     Please excuse Mr. Nicastro.

22          The Clerk:     You're excused from this case.

23          Number 126, Larry Lee.

24          Mr. Hogge:     You said 126?

25          The Clerk:     126. What say you for the State?

1 Mr. Hogge: Please present Mr. Lee.

2 The Clerk: And the defense?

3 Mr. Hogge: Please seat Mr. Lee.

4 The Clerk: Please have a seat in the jury box.

5 Number 85, Rodney German. What say you for the State?

6 Mr. Hogge: Please excuse Mr. German.

7 The Clerk: You're excused from this case.

8 Number 51, Jacob Covington. What say you for the State?

9 Mr. Hogge: Please excuse Mr. Covington.

10 The Court: You're excused from this case.

11 Number 15, Christopher Beatty. What say you for the

12 State?

13 Mr. Hogge: Please present Mr. Beatty.

14 The Clerk: And the defense?

15 Mr. Smith: Please seat Mr. Beatty.

16 The Clerk: Please have a seat in the jury box.

17 Number 104, Kimberly Hughes. What say you for the State?

18 Mr. Hogge: Please present Ms. Hughes.

19 The Clerk: And the defense?

20 Mr. Smith: Please seat Ms. Hughes.

21 The Clerk: Please have a seat in the jury box.

22 Number 244, Shannon Williamson. What say you for the

23 State?

24 Mr. Hogge: Please present Ms. Williamson.

25 The Clerk: And the defense?

1 Mr. Smith: Please seat Ms. Williamson.

2 The Clerk: Please have a seat in jury box. And  
3 this will be for the alternate?

4 The Court: Yes, ma'am.

5 The Clerk: Number 250, Paul Ziegler.

6 Mr. Hogge: Your Honor, may we approach?

7 The Court: Sure.

8 (Whereupon, a bench conference was held.)

9 The Court: We'll allow strike for cause in this  
10 case without objection. You can have a seat, Mr. Ziegler.

11 The Clerk: Number 173, Brenda Perrill. What say  
12 you for the State?

13 Mr. Hogge: Please present Ms. Perrill.

14 The Clerk: And the defense?

15 Mr. Smith: Please seat Ms. Perrill.

16 The Clerk: Please have a seat in the jury box.

17 The Court: All right. Counsel, any matters of law  
18 or motions to take up with respect to the qualification  
19 and/or selection of this jury panel?

20 Mr. Hogge: None from the State.

21 Mr. Smith: None from the defense, Your Honor.

22 The Court: Okay. All right. All right. Ladies and  
23 gentlemen, for those of you who were not selected, either  
24 congratulations or condolences are in order, depending on  
25 your disposition.

1           (Whereupon, the remainder of the jury panel was  
2 excused from the courtroom.)

3           The Court:     All right.  Ladies and gentlemen,  
4 congratulations.  You are the lucky ones.  We will begin  
5 the trial of this case shortly.  It is my understanding  
6 from the attorneys that this should be a fairly short  
7 trial.  I hope that we can finish it by close of business  
8 today; We shall see.

9           There are a few matters of law that I need to take up  
10 with the attorneys before we begin the trial of this case.  
11 So what I'm going to ask you to do is if you will retire  
12 to your jury room, the bailiff will take you to -- show  
13 you where your jury room is and give you some general  
14 instructions, and I'll take up some matters of law with  
15 the attorneys and we'll come back in and we'll start the  
16 trial of this case.  And when we start, I'll give you an  
17 explanation of what we're going to do, the process we're  
18 going to follow and what your role is as jurors.

19           So please -- as of right now, you don't know anything  
20 about the case, but don't begin any discussions or  
21 deliberations about the case.  It's not appropriate for  
22 you to discuss it yet, And I'll tell you precisely when  
23 it's appropriate to begin discussing it.  So bear with us  
24 for a few minutes and we'll come back in and we'll start  
25 -- begin the trial of the case.

1 (Whereupon, the jury left open court at 10:35 a.m.)

2 The Court: All right. Counsel, it's now 10:36. It  
3 would appear that the defendant, Mr. Dickey, has not yet  
4 arrived. So let's take up the matter of whether it's  
5 appropriate to proceed in his absence this morning.

6 Mr. Hogge: Yes, Your Honor. I would like to mark as  
7 a Court exhibit an e-mail that I emailed Mr. Smith. I  
8 emailed him this on May the 6th. I will call Jerry -- the  
9 subject of the e-mail is the Jerry Dickey trial. I wrote  
10 him that I will call the case to trial the week of May the  
11 18th. If he doesn't show, I will seek to try him in his  
12 absence. If I could mark this as a Court exhibit.

13 The Court: Seen that, Mr. Smith?

14 Mr. Smith: I have, Your Honor.

15 The Court: Okay.

16 (Court's Exhibit 1 was marked for identification.)

17 Mr. Hogge: And also, Your Honor, I would like to  
18 mark as a Court's exhibit a bail proceeding form that was  
19 signed by the defendant. On that form -- on the back of  
20 the form it states, "I understand and I am informed that I  
21 have a right and obligation to be present at trial, and  
22 should I fail to attend the court, the trial will proceed  
23 in my absence," and then right under that is the signature  
24 of the defendant dated November 13th, 2014.

25 The Court: Mr. Smith, you've had the opportunity to

1 review that, sir?

2 Mr. Smith: Yes, sir, Your Honor.

3 The Court: Okay.

4 (Court's Exhibit 2 was marked for identification.)

5 Mr. Hogge: And at this time, Your Honor, I would  
6 just ask that you make a factual finding that the  
7 defendant was notified to be the court today and also that  
8 he was further notified that if he should not show up that  
9 the trial would proceed in his absence. He was here in  
10 court yesterday; you might have seen him in the courtroom,  
11 Your Honor. He was wearing a black T-shirt. He was  
12 seated in this area. So he was here yesterday. He was  
13 told that the trial will start tomorrow, and he has  
14 elected not to be present here today.

15 The Court: Pass me the two exhibits, please, that  
16 you just introduced?

17 Mr. Hogge: Yes, Your Honor.

18 The Court: All right. Mr. Smith, I'd be happy to  
19 hear from you, sir.

20 Mr. Smith: I don't have anything on this issue,  
21 Your Honor.

22 The Court: Okay, sir. All right. Do you take any  
23 exception to the factual allegations that the State has  
24 made in this matter, sir?

25 Mr. Smith: I cannot take exception to them, Your

1 Honor.

2 The Court: Good enough. All right. I do find that  
3 Mr. Dickey was given notice of the date and time of  
4 today's trial by a jury with the e-mail transmission. I  
5 also note for the record that he was in court yesterday  
6 and was advised that the trial would begin this morning.

7 I also take notice of the bond paperwork which  
8 indicates clearly that he was advised of his rights, that  
9 if he elected not to show that the State could proceed  
10 with a trial in his absence. He indicated his  
11 acknowledgment of that fact by and through his signature  
12 on the bond paperwork on November 13th, 2014. Therefore,  
13 I do find that it's appropriate to proceed in his absence  
14 this morning.

15 Mr. Smith, I do intend to tell the jury that -- just  
16 go ahead and address it up front that he's not here, that  
17 we don't know why he's not here, but that's not relevant  
18 to their consideration and that it's not relevant to the  
19 ultimate decision that they make in the case.

20 Mr. Smith: Yes, Your Honor.

21 The Court: Anything further before we -- I'm going  
22 to take a very short break before we bring the jury back  
23 in. But is there anything further that we need to put on  
24 the record?

25 Mr. Hogge: Nothing from the State.

1           The Court:   Okay.

2           Mr. Smith:   Nothing from the defense.

3           The Court:   All right.  I'm not going to -- I'm not  
4 going to limit you in any way with respect to your opening  
5 statements.  Just -- just know that my expectation is that  
6 it will be short and it will be essentially an  
7 introduction of yourselves and your general case.  Okay?

8           Mr. Smith:   Yes, sir.

9           Mr. Hogge:   Yes, sir.

10          The Court:   Be back in in about five or ten minutes.

11          (A recess was taken from 10:41 a.m. to 10:51 a.m.)

12          The Court:   A bench warrant for the defendant's  
13 arrest, I'll execute that.  You don't have to do that now,  
14 just whenever you get around to it.

15          Mr. Hogge:   Yes, sir.

16          The Court:   Okay.  All right.  Ready for the jury?

17          Mr. Smith:   Defense is ready.

18          Mr. Hogge:   State is ready.

19          The Court:   Good enough.  If you'd bring them in.

20          (The jury entered the courtroom.)

21          The Court:   All right.  Ladies and gentlemen, we're  
22 about to begin the trial of this case.  Let me tell you  
23 before we get started, because it's fairly open and  
24 obvious to you, that the defendant, Mr. Dickey, is not  
25 here today.  I can't tell you why he's not here today

1 because honestly I don't know. I honestly don't know, but  
2 what I will tell you is that simply because he's not here  
3 doesn't mean he's not entitled to a fair trial in  
4 accordance with the Constitution and the rules of court.  
5 So the fact that he is not here will not be relevant to  
6 the way we try this case or to your ultimate determination  
7 in the case.

8 Now, as I told you when we first got started, in the  
9 State of South Carolina, in the County of York, and in the  
10 United States of America, a criminal defendant is presumed  
11 innocent until the State meets its burden of proving the  
12 offense beyond a reasonable doubt. Now, 12 deliberating  
13 jurors will determine whether the State has met that  
14 burden of proof.

15 Now, your role as jurors is to be the finders of  
16 fact, and you will, based upon the evidence that's  
17 presented in this case, determine what the facts are and  
18 then you will apply those facts to the law as I give it to  
19 you. Now, because you are the finders of fact, you have  
20 the sole and exclusive authority to determine what the  
21 facts are in this case as you determine them to be based  
22 on the evidence that's presented at trial.

23 During this trial, there will be evidence presented.  
24 Usually it takes the form of testimony from witnesses.  
25 However, by and through the testimony of witnesses, you

1 also may receive into evidence documents. You may receive  
2 physical objects. You could get audiotapes and  
3 videotapes, but all of that will be introduced in  
4 accordance with the rules of evidence into the record.

5 I can't tell you exactly what will be introduced as  
6 evidence because I'm in exactly the same posture that you  
7 are right now and, that is, I haven't heard the case  
8 either. So I don't know what evidence is going to be  
9 presented, but you'll take that evidence. You'll look at  
10 it and you'll determine what the facts are. Then you will  
11 apply the law to the facts and determine whether the State  
12 has met its burden of proof.

13 Now, I, by distinction from you as the judge of the  
14 facts, I'm the judge of the law which means I'll tell you  
15 what the law is as it applies to the evidence. I will  
16 give you a charge on the law at the end of this case. The  
17 reason I wait until the end of the case is because, just  
18 like you, I don't know what evidence is going to be  
19 presented, so I don't know what law will be applicable to  
20 the evidence that's presented in this trial.

21 So just like you, I will be listening and I will be  
22 determining what law applies, and then I will charge you  
23 on the law at the end. You will take that law back to the  
24 jury room with the evidence that's been presented,  
25 determine what the facts are, and then apply the law to it

1 and determine whether the State has met its burden of  
2 proving each and every element of each offense beyond a  
3 reasonable doubt.

4 So the way this case will proceed is after I've given  
5 you this short introductory charge to let you know where  
6 we're going, the attorneys will have the opportunity to  
7 make opening statements. Now, those opening statements  
8 are not evidence. It's simply the attorneys advocating  
9 their respective positions.

10 Opening statements generally are short, and it's the  
11 opportunity for the attorneys to introduce themselves and  
12 their theory of the case. After they introduce  
13 themselves, then the State will have the opportunity to  
14 begin its presentation of evidence. The State goes first  
15 because, as I told you, they have the burden of proof  
16 Therefore, they -- they proceed first.

17 They'll call a witness to testify. That witness will  
18 take an oath and then begin his testimony. The State will  
19 examine that witness, that is, ask the witness questions.  
20 Then the defense will have the opportunity to  
21 cross-examine that very State witness -- that very same  
22 witness. After that witness has testified, then the next  
23 witness will be called and so on until the State has  
24 presented all of its evidence.

25 Then when the State rests, the defense will have the

1 opportunity in its discretion to present witnesses and  
2 evidence as well, although it's not compelled to. When  
3 the defense has finished presenting all of its evidence,  
4 then we'll proceed to closing arguments. Now, closing  
5 arguments again are just like opening arguments; that is,  
6 it's not evidence to be considered by you. It's simply  
7 arguments based on the evidence that's been presented.  
8 They will be advocating their respective sides, trying to  
9 persuade you to their respective positions.

10 After you've heard closing arguments, then I will  
11 give you the charge on the law. After I've given you a  
12 charge on the law, then you'll retire to your jury room  
13 and you'll begin your deliberations.

14 Now, please don't begin any deliberations until I  
15 tell you to begin deliberations at the very end of the  
16 case, and the reason that is is very simple and I'm sure  
17 that by and through your own common sense you know it, but  
18 I'm going to tell you at the risk of insulting your  
19 intelligence. It's important that you not begin any  
20 deliberations until you've heard all of the evidence that  
21 bears upon the issue. It's just like in your own lives  
22 with your kids, your brothers, your sisters, your parents,  
23 your friends. If someone comes to you and they tell you a  
24 story and you think you've heard everything that bears  
25 upon the story -- and you may form an opinion based on

1 that one person's testimony. However, when you hear the  
2 other side, it may change your opinion. There may be  
3 additional factors that weigh -- that weigh upon your  
4 ultimate opinion in that situation.

5 Court is the same way. It's important that you hear  
6 all of the evidence that bears upon the issue before you  
7 begin deciding the matter, before you start making up your  
8 mind, before you begin your deliberation. So please don't  
9 discuss the case until I tell you to begin to discuss your  
10 case. You'll know when I've told you to begin to discuss  
11 the case because it will be very clear. It will be at the  
12 very end of the trial.

13 Now, during the course of this trial, the attorneys  
14 may make certain objections or motions, and I will -- I  
15 will rule on those motions as they come up. Please know  
16 that if I rule against one party and for one party that it  
17 does not indicate that I have a bias or a preference one  
18 way or the other. I'm the judge of the law which means  
19 I'm the umpire; I'm the objective referee. I'm just  
20 calling balls and strikes, and I'm going to make a  
21 decision based on what my opinion of the law and of the  
22 rules are. So don't take from my rulings that I have a  
23 preference one way or the other; I truly don't.

24 My only interest in the entire case is that this is a  
25 fair trial, fair for the State and the defense and for

1 y'all because you're going to commit some time to it. So  
2 -- also don't hold it against the attorneys when they make  
3 motions or objections; that's their job. And it's  
4 appropriate that they do so and it's appropriate that I  
5 will rule this way.

6 When -- during the course of the trial, we'll take  
7 certain breaks. We'll take a break for lunch. We're  
8 going to take breaks probably every -- about every hour  
9 and a half. That's about how long I can sit still, not  
10 always, but -- but understand that if at any point during  
11 this trial any one of you needs to take a break, I want  
12 you to either let me or the bailiffs know.

13 Right now you are the 13 most important people in  
14 this courtroom, and I want to make sure that y'all are  
15 focused on the testimony that's being presented. And if  
16 you at any point in time are thinking to yourself, "I wish  
17 they would all shut up so that we could take a break  
18 because I have something else that's bearing upon my  
19 conscience," then let me know. Okay? It doesn't matter  
20 if we've only been back in the courtroom five minutes.  
21 Let me know because I'd rather you be again focused on the  
22 testimony that's being presented.

23 Also, at any point during this trial if you hear me  
24 say anything that gives you the indication that I have an  
25 opinion about the facts in the case or that I have an

1 opinion about what you should ultimately do, please  
2 disregard that because I honestly have no opinion. I have  
3 no stake in the outcome whatsoever. Okay?

4 All right. Having said that, ladies and gentlemen,  
5 I'm going to ask the Clerk of Court to swear you in.  
6 You've taken an oath earlier this week to tell the truth.  
7 This is a different oath. This is an oath where you swear  
8 to try this case in accordance with the law. All right.  
9 Madam Clerk?

10 {Whereupon, the jury was sworn.}

11 The Court: All right. Mr. Hogge?

12 Mr. Hogge: May it please the Court? {

13 The Court: Yes, sir.

14 OPENING STATEMENT BY MR. HOGGE

15 When Jerry Dickey saw the police, he hit the gas. He  
16 tried to outrun the law, driving at speeds of a hundred  
17 miles an hour, but today he can't outrun justice. He  
18 can't outrun the evidence in this case.

19 Earlier that day on August 28th, 2014, he stuffed his  
20 pants full of stolen items at the Family Dollar in Clover  
21 and he then got in his green Dodge Neon and got onto  
22 Highway 321 which connects where we are now in York up to  
23 Clover and then on up to where he's from in Gastonia.  
24 When he got in that green Dodge Neon on Highway 321,  
25 Officer Neelands, who you will hear testify during this

1 trial, was on Highway 321 and he received word from  
2 dispatch that a green Dodge Neon was in the area, to be on  
3 the lookout. He saw that green Dodge Neon. He pulled in  
4 behind it. He turned on his lights. He turned on his  
5 siren, and Jerry Dickey hit the gas.

6 What ensued was a hundred-mile-an-hour chase at  
7 10:00 in the morning on Highway 321 while several other  
8 cars were out there, speeds of a hundred miles an hour.  
9 He has been charged with shoplifting and he's been charged  
10 with failure to stop for law enforcement when they  
11 signaled him to do so. It's my job in this trial to prove  
12 to you all beyond a reasonable doubt that he's guilty of  
13 those crimes and to do what I can to make sure that he  
14 doesn't outrun justice today.

15 Now, this will be a relatively simple trial. It  
16 should only last a day and it's relatively simple in part  
17 because the defendant was caught red-handed. At some  
18 point that chase with Officer Neelands on Highway 321 --  
19 Officer Dover, the supervisor, deemed that it was  
20 inappropriate to continue a chase at that speed, that it  
21 was way too dangerous for everybody else out on the road.  
22 So they called off the pursuit right around the time that  
23 the defendant made it into Gastonia, across the North  
24 Carolina line, and after that Officer Dover got into his  
25 car, an unmarked car, proceeded on into Gastonia.

1           He eventually apprehended the defendant, and in his  
2 possession he found shoplifted items from Family Dollar.  
3 And even more interesting than that was what Jerry Dickey  
4 was wearing when he pulled him over. Earlier I told you  
5 that he stuffed his pants full of stolen items; quite  
6 literally he did that. He had on him whenever they  
7 arrested him these specialized modified shoplifting pants  
8 that he had designed. He had on two pairs of pants - and  
9 it's in August - with pantyhose tied around the ankles.

10           Now, earlier that day in the Family Dollar in Clover  
11 Margaret Knight, whom you will hear testify during this  
12 trial - she's a manager at Family Dollar - saw an  
13 interesting sight when she saw the defendant walk out of  
14 her store with his pants bulging around the ankles with  
15 all the stuff that he had stuffed down into his pants. He  
16 was caught red-handed; that's what the evidence in this  
17 case will show. And even simpler than that, he confessed  
18 to this crime. He's already confessed to shoplifting and  
19 for failing to stop for the blue light of law enforcement.

20           He told Officer Dover, "Yeah, I shoplifted. Yeah, I  
21 didn't stop for the police. I should have, but I didn't."  
22 That's what the evidence in this case will show, someone  
23 who tried to outrun the law, a thief who cannot outrun  
24 justice today. Thank you.

25           The Court: Mr. Smith?

1 Mr. Smith: May it please the Court, Your Honor?

2 The Court: Yes, sir.

3 OPENING STATEMENT BY MR. SMITH

4 The type of doubt that would cause a reasonable  
5 person to hesitate to act. The type of doubt that would  
6 cause a reasonable person to hesitate to act. That's what  
7 we are talking about. That's one of the legal definitions  
8 for reasonable doubt. Judge Stilwell already told you  
9 that the State has to prove every element of the charges  
10 to each of you beyond all reasonable doubt.

11 Now, from what they say, it's going to be simple, but  
12 I think you'll find from the evidence Jerry Dickey in  
13 Gastonia had something tied around his legs. And I think  
14 they'll be able to show, based on some kind of evidence,  
15 that some things were taken from Family Dollar. But  
16 there's going to be something missing between how you say  
17 that was Jerry Lee Dickey. No doubt he's in Gastonia but  
18 not in South Carolina.

19 The solicitor told you this case would be short, this  
20 case would be simple. Well, part of the reason for that  
21 is lack of evidence. You notice he didn't tell you there  
22 will be any DNA. He didn't tell you there would be a  
23 single fingerprint. He didn't tell you there would be any  
24 audio recording of this alleged confession or anything  
25 that went on, didn't even tell you there would be a video

1 of this supposed shoplifting. The type of doubt that  
2 would cause a reasonable person to hesitate to act.

3 The Court: All right, sir.

4 Mr. Hogge: State would call Officer Neelands.

5 Charles Neelands, having been duly sworn, testified  
6 as follows:

7 Direct Examination

8 By Mr. Hogge:

9 Q Officer Neelands, good morning. Can you give us your  
10 name for the record?

11 A Charles Neelands.

12 Q Where do you work?

13 A Clover Police Department.

14 Q Are you on duty right now?

15 A Yes, sir.

16 Q After this you're going to go back out on duty?

17 A Yes, sir.

18 Q How long have you been working for the Clover Police  
19 Department?

20 A August will be five years.

21 Q What kind of work do you do for them?

22 A I patrol the city. I run traffic, catch speeders,  
23 catch shoplifters, catch pretty much anybody that does  
24 anything wrong, if I can.

25 Q Gotcha. Do you recall the events of August 28th,

Charles Neelands - Direct examination by Mr. Hogge

1 2014, with Jerry Lee Dickey?

2 A I do, sir.

3 Q How did you first become involved in this case?

4 A I was traveling south on North Highway 321.

5 Q Can you describe Highway 321 for those that might not  
6 be familiar with that road?

7 A It's a four-lane highway. You've got two lanes that  
8 go lanes north, two lanes that go south. It's got an  
9 unprotected grass median in the middle.

10 Q So, again, you were traveling on 321. Were you  
11 coming towards South Carolina or going towards North  
12 Carolina?

13 A I was coming towards South Carolina.

14 Q All right. And while you were traveling on that  
15 road, what happened?

16 A My dispatcher gave out a shoplifting in progress,  
17 gave out a green-in-color Dodge car being driven by a  
18 black male wearing windbreaker pants and a ball cap.

19 Q Okay.

20 A Traveling north on 321.

21 Q After you received that information from dispatch,  
22 did you eventually see that individual matching that  
23 description in that car?

24 A I did.

25 Q And what did you do at that point?

Charles Neelands - Direct examination by Mr. Hogge

1 A At the time I passed the green car, I had kind of  
2 made contact with the driver of the car. He looked at me  
3 as---

4 Q Let me pause you there so we're not confused.

5 A Okay.

6 Q Which way were you traveling and which way was he  
7 traveling?

8 A I was traveling south; he was traveling north.

9 Q So would he be traveling towards Gastonia, North  
10 Carolina?

11 A Yes, sir.

12 Q Okay. Continue on. Sorry about that.

13 A As we passed each other on 321, he kind of made eye  
14 contact with me as he passed me. They didn't give me a  
15 description of the shirt we was wearing, so I asked my  
16 dispatcher could they give me a description of his shirt.

17 Q Okay.

18 A They advised me that he was wearing a gray-in-color  
19 T-shirt.

20 Q Is that how you observed...

21 A That's exactly what I deserved (sic) -- I observed as  
22 I passed him.

23 Q Okay.

24 A So I turned around to get behind him. I activated my  
25 lights and my siren, tried to catch up with him. It took

Charles Neelands - Direct examination by Mr. Hogge

1 me a little while to catch up with him because when he saw  
2 me, he sped up as to try to get away from me.

3 Q Okay. In your car is it equipped with a video  
4 recording camera?

5 A It is, sir.

6 Q How does that work?

7 A As soon as I activated my lights, the video camera  
8 backs up 30 seconds from the time the lights are  
9 activated.

10 Q Okay.

11 A Or if my car reaches a speed of 65 miles an hour, it  
12 will automatically activate itself.

13 Q Okay. How is that recording stored? Is it just data  
14 that gets into your computer in the car?

15 A Yes, sir. It's stored to like an onboard computer in  
16 the car, and then when I get close enough to the police  
17 department, it downloads it to the computer in the police  
18 department.

19 Q Okay. I would like to hand you what's been  
20 previously marked for identification purposes only as  
21 State's Exhibit 1.

22 Mr. Smith: We've seen it. No objection to  
23 introduction.

24 The Court: Okay.

25 By Mr. Hogge:

Charles Neelands - Direct examination by Mr. Hogge

1 Q Do you recognize that disk?

2 A Yes, sir, I do.

3 Q How do you recognize it?

4 A This is the video that's burned from the computer at  
5 the police department from my car.

6 Q Okay. And how did you know that that is on that  
7 disk?

8 A I put in a request to have it burned from the  
9 computer and they burn it, and this is my handwriting on  
10 it---

11 Q Okay.

12 A ---with the case number and Mr. Dickey's name on it.

13 Q Okay. And so you've watched this disk before trial  
14 today?

15 A I have, sir.

16 Q Is that fairly -- does that fairly and accurately  
17 depict what happened that day on August 28th?

18 A Yes, sir.

19 Mr. Hogge: Your Honor, at this time we seek to  
20 introduce State's Exhibit 1 into evidence and publish to  
21 the jury.

22 Mr. Smith: No objection.

23 The Court: All right. Without objection, the same  
24 is introduced into evidence. You may publish it.

25 (State's Exhibit 1 was received in evidence.)

Charles Neelands - Direct examination by Mr. Hogge

1 By Mr. Hogge:

2 Q Officer Neelands, if you'd join me in crossing your  
3 fingers that this actually works.

4 Officer Neelands, since the technology isn't working  
5 for me, I'll hold off on that video until my closing  
6 argument. If you could turn the lights back on. Well,  
7 we've got a video in evidence and we'll hopefully play it  
8 eventually.

9 A Yes, sir.

10 Q But tell us a little bit about the chase that ensued  
11 between you and the defendant.

12 A When I turned around on Mr. Dickey in the green Dodge  
13 car, I activated my lights and siren as to try to catch up  
14 with him. Like I said, he sped up severely. At one point  
15 we were running over a hundred miles an hour. As soon as  
16 I got close enough to the car, I called my dispatcher and  
17 gave him the license plate number off the car. This  
18 procedure, we have to tell our dispatcher at all times  
19 where we're at. So I have to give my dispatcher locations  
20 where I'm at, tell them that he's still refusing to yield  
21 to my sirens.

22 At the point we reached the North Carolina line, I  
23 was told by my captain to stop, not to chase him anymore  
24 because of my jurisdiction limits.

25 Q Was danger also an issue with continuing pursuit

Charles Neelands - Direct examination by Mr. Hogge

1 beyond the jurisdictional issues?

2 A Yes, sir. It's always an issue when you chase  
3 somebody in the public at any time, running a high rate of  
4 speed like that. He was not maintaining his lane. He was  
5 changing from one lane to the other the whole time that we  
6 were going down the road. At one point he tries to get  
7 over behind a car and the car is turning, and he has to go  
8 back to the other lane immediately to keep from striking  
9 the car that's turning in front of him.

10 Q Okay. Would you say that that chase was dangerous?

11 A Yes, sir.

12 Q When you saw him, you caught up. You testified that  
13 you had your lights on, your blue lights?

14 A Yes, sir, and my siren.

15 Q And you had your siren on? He did not stop.

16 A No, never.

17 Q Okay. And all this occurred within York County?

18 A Yes, sir.

19 Q Thank you, Officer Neelands. I've got no further  
20 questions. Please answer anything that Mr. Smith has for  
21 you.

22 A Okay.

23 Mr. Smith: May it please the Court, Your Honor?

24 The Court: Yes, sir.

25 Cross-Examination

Charles Neelands - Cross-examination by Mr. Smith

1 By Mr. Smith:

2 Q Officer Neelands, you indicated that you had gotten a  
3 description I guess via your in-car radio; is that  
4 correct?

5 A Yes, sir.

6 Q And that was of a black male? Did you get a car  
7 description? Green Neon?

8 A I did.

9 Q Okay. And you indicated windbreaker pants and some  
10 type hat; is that correct?

11 A Yes, sir, a ball cap.

12 Q And that was the extent of the description that you  
13 had gotten at that point.

14 A Yes, sir.

15 Q And then you asked for a color of shirt and you were  
16 given gray.

17 A Yes, sir.

18 Q Now, the individual that was in the vehicle, you  
19 never saw them outside the vehicle; is that right?

20 A No, sir.

21 Q And the closest you would have ever gotten to that  
22 individual would be how far?

23 A I don't know. I would say probably maybe 20,  
24 25 yards.

25 Q And was that as you approached behind the vehicle?

Charles Neelands - Cross-examination by Mr. Smith

1 A No, sir. That was as we were passing each other.

2 Q Okay. But you were on the other side of the median  
3 when you were passing?

4 A Yes, sir.

5 Mr. Smith: Okay. I have no further questions, Your  
6 Honor.

7 The Court: Redirect?

8 Mr. Hogge: Briefly, Your Honor.

9 Redirect Examination

10 By Mr. Hogge:

11 Q He asked about you identifying the suspect. Did you  
12 eventually go on into Gastonia?

13 A Yes, sir. As Gaston -- Gastonia police arrived on  
14 the scene with the -- my captain, they called me to come  
15 up to where they had him stopped at and to identify the  
16 car and him.

17 Q And did the car they had, did that match up to the  
18 car you saw earlier?

19 A Yes, sir.

20 Q Did the person that they had match up to the person  
21 that you could kind of make a glimpse of through the  
22 driver's window?

23 A Yes, sir.

24 Mr. Hogge: No further questions.

25 The Court: Recross?

Charles Neelands - Recross Examination by Mr. Smith

1 Mr. Smith: Thank you, Your Honor.

2 Recross-Examination

3 By Mr. Smith:

4 Q So you went -- you just testified that later you went  
5 into Gastonia.

6 A Yes, sir.

7 Q But at that time Captain Dover was already up in  
8 North Carolina?

9 A Yes, sir.

10 Q Now, your car is equipped with this camera that we  
11 hope to see a video from; is that correct?

12 A Yes, sir.

13 Q When you went up later into North Carolina when  
14 Captain Dover was present with James (sic) Dickey, was  
15 your car recording then?

16 A No, sir.

17 Q You did the incident report in this case; is that  
18 correct?

19 A That's correct.

20 Q And the general sessions case summary; is that right?

21 A Yes, sir.

22 Q And in both of those reports you talked about Captain  
23 Dover having gone up to North Carolina and spoken briefly  
24 with James Dickey; is that right?

25 A Yes, sir. I believe they made contact with him

Charles Neelands - Redirect Examination by Mr. Hogge

1 before Gastonia police arrived.

2 Q Okay. So before Gastonia police arrived, they made  
3 contact with him; that's in your report. There's nothing  
4 in your report about Captain Dover going to any jail in  
5 North Carolina and interviewing him, is there?

6 A No, sir.

7 Mr. Smith: No further questions.

8 Redirect Examination

9 By Mr. Hogge:

10 Q I might have the video ready now. I'm just going to  
11 play that at this time, if we could dim the lights.  
12 Before I hit play, what is all of this information here on  
13 the left side of the video?

14 A That's information from my car that feeds through the  
15 video system. It will tell you when the lights are  
16 activated on my car, when the siren is activated, the  
17 speed that my car travels. It will actually even tell you  
18 when I hit my brakes.

19 Q Okay. So right up here -- it might be hard to see.  
20 This box next to "lights" would light up when your lights  
21 come on.

22 A Yes, sir.

23 Q This box next to "siren" would turn red when your  
24 siren comes on.

25 A Yes, sir.

Charles Neelands - Redirect Examination by Mr. Hogge

1 Q And right here -- I'm sure it's hard to see, but  
2 right here it's got the speed listed?

3 A Yes, sir.

4 Q And can you read that from over there?

5 A I can't.

6 Q All right. It says 43 miles an hour.

7 Mr. Hogge: I'll just have to hold off and play the  
8 video later. I have no further questions for you.

9 The Court: You can step down, sir. I appreciate  
10 your being here.

11 The Witness: Yes, sir.

12 The Court: Okay. You may call your next witness,  
13 sir.

14 Mr. Hogge: State would next call Margaret Knight.  
15 We ask that the officer be excused.

16 The Court: Yes, sir. You may be excused.

17 Margaret C. Knight, after having been duly sworn,  
18 testified as follows:

19 Direct Examination

20 By Mr. Hogge:

21 Q Good morning, Ms. Knight.

22 A Good morning.

23 Q Would you please give your full name for the record?

24 A Margaret Colleen Knight.

25 Q And where do you work?

Margaret Knight - Direct Examination by Mr. Hogge

- 1 A At Family Dollar in Clover.
- 2 Q And where do you currently reside?
- 3 A In Clover.
- 4 Q And where does that accent come from?
- 5 A New Zealand.
- 6 Q How long have you lived here in the United States?
- 7 A On and off since 2010.
- 8 Q Okay. Do you recall the -- well, let me talk about  
9 being a manager at Family Dollar. How long have you been  
10 doing that?
- 11 A For one year.
- 12 Q And which Family Dollar are you the manager of?
- 13 A The Clover store.
- 14 Q Are there more than one Family Dollar in Clover?
- 15 A No.
- 16 Q And you said you've been working there one year? Is  
17 that correct?
- 18 A Yes, sir.
- 19 Q And at the time this happened, August 28th, how long  
20 had you been the manager there?
- 21 A Three months.
- 22 Q And what all does being a manager entail?
- 23 A Running the store.
- 24 Q Running the...
- 25 A Running the whole store.

Margaret Knight - Direct Examination by Mr. Hogge

1 Q I got you.

2 A Stock. Everything.

3 Q And on August 28th, can you recall the unusual thing  
4 that happened in the store that day?

5 A I was in the store doing my schedule on the portal  
6 when a gentleman came in.

7 Q You said you were doing your schedule?

8 A Yeah, I was putting in the portal our time schedule  
9 for the week.

10 Q You said the portal. Where is that?

11 A That's at the front of the store by the doors.

12 Q Okay. So if you're there and in your portal and  
13 somebody were to come through, you'd be able to see them?

14 A Yes, sir.

15 Q Okay. Continue on. You're in your portal and you're  
16 doing the schedule, and a gentleman comes in.

17 A And I had a gentleman come in, tall, dark. He came  
18 in. He walked around the store for awhile. He walked  
19 out. He said he was going to grab a buggy. I had a  
20 cashier at one of the registers at the front of the store.  
21 He said he was going to get a buggy. He came back in with  
22 a buggy and he stayed in the store for about half an hour,  
23 And he walked out and as he walked out he said to my  
24 cashier that he was going to go to Bi-Lo because we didn't  
25 have what he wanted. And I just happened to look down at

Margaret Knight - Direct Examination by Mr. Hogge

1 his pants and his leg was bulging, and I thought that's  
2 weird. So that's when I stood up and I looked at him. He  
3 made eye contact, and I called the police straight away.

4 Q Okay. You said you made eye contact with him?

5 A Yeah.

6 Q You said that you talked to him briefly or was that  
7 your---

8 A He said to both of us that he was walking out -- as  
9 he was walking out that he was going to go to Bi-Lo.

10 Q Okay. Can you describe him for us, his appearance?

11 A He was a tall, dark-skinned male, solid build. He  
12 was wearing a black cap. He had a baseball cap and he had  
13 a gray shirt on and he had windbreaker pants.

14 Q Okay. And you said he was in the store for 30  
15 minutes?

16 A Approximately, yes.

17 Q Did he make any purchases?

18 A No, not at all.

19 Q Describe -- you said you saw his pants bulging out?  
20 How did that look?

21 A Well, as he walked out the door, the bottom of his  
22 pants was bulging on one leg.

23 Q Kind of like bulging out like this?

24 A Yes, like this.

25 Q Did he have difficulty walking?

Margaret Knight - Direct Examination by Mr. Hogge

1 A Yes, he was walking funny, but he was holding the  
2 buggy at the same time.

3 Q He said, "You don't have what I need," and he walks  
4 to Bi-Lo or he says he walks to Bi-Lo.

5 A He said he was going to Bi-Lo, but he jumped in his  
6 car and he drove erratically out the drive.

7 Q Okay. You said -- you said he jumped in his car.  
8 Did you go out and look outside?

9 A I could see from the window, like the car was parked  
10 straight outside the window.

11 Q What kind of car was he driving?

12 A A green Dodge Neon. I didn't get the number for it,  
13 the license plate.

14 Q Describe his driving.

15 A He drove really fast through the car park. When I  
16 called the police, they said they'll send someone to talk  
17 to me. I said, "He's heading north," so...

18 Q Okay. So you provided that information to the law  
19 enforcement of the car.

20 A Yes, sir.

21 Q And you provided the information of how he looked.

22 A Yes, sir.

23 Q Okay. And just so we're clear, the Clover Family  
24 Dollar is in York County, South Carolina.

25 A Yes, sir.

Margaret Knight - Direct Examination by Mr. Hogge

1 Q Now, how far would you say it is from the North  
2 Carolina border?

3 A I don't know.

4 Q Is it -- is it in Clover? It's on Highway 321? Is  
5 that right?

6 A Yeah. You go down 321.

7 Q Okay.

8 A It's probably about a five-minute drive. I don't  
9 know. I don't know. We work in kilometers; you work in  
10 miles.

11 Q I hear you.

12 A Yeah.

13 Q But, anyway, your store is on Highway 321.

14 A Yes.

15 Q How far off of Highway 321 is it?

16 A It actually -- it's actually on 321.

17 Q It's right on 321?

18 A We've actually relocated, so we're around in Kings  
19 Mountain now.

20 Q Okay.

21 A We've relocated the store.

22 Q Okay. So you're in a different Family Dollar now?

23 A Yes. They built us a new store.

24 Q Okay. That old store, that's where this incident  
25 occurred?

Margaret Knight - Direct Examination by Mr. Hogge

- 1 A Yes, sir.
- 2 Q Did you have video surveillance in that Family  
3 Dollar?
- 4 A No, sir.
- 5 Q You did not?
- 6 A No.
- 7 Q Do you have it in the current store?
- 8 A Yes.
- 9 Q Okay. Did you have alarms by the doors where if  
10 someone were to leave an alarm would go off?
- 11 A No. They were getting set to put them in at the  
12 time. So we started tagging our clothing and stuff.
- 13 Q Okay. Now, at some point did you receive the  
14 shoplifted items back?
- 15 A Yes, we did.
- 16 Q How did you get those items back?
- 17 A They were delivered back from the policeman.
- 18 Q And what kind of items were they?
- 19 A There was clothing. There was like tank tops, kids'  
20 tank tops, T-shirts, underwear. There was Mr. Clean  
21 detergent stuff; there was motor oil.
- 22 Q Okay. How did you know that those items came from  
23 your store?
- 24 A Because of the Family Dollar tags on them.
- 25 Q Okay. Those Family Dollar tags, would they be---

Margaret Knight - Cross-examination by Mr. Smith

1 A It's the anti-theft stickers in the Family Dollar---

2 Q They would be small anti-theft stickers on the  
3 packaging?

4 A Uh-huh.

5 Q So would it have like a big Family Dollar logo  
6 sticker on there or anything?

7 A Nothing big, just a small one.

8 Q Okay. Okay. Those are items you commonly sell at  
9 Family Dollar?

10 A Yes.

11 Q The underwear, the Mr. Clean?

12 A Uh-huh.

13 Q And when you got those items back, did they appear to  
14 be new? Did they appear to be used at all?

15 A No. They were all still in the packaging.

16 Q Okay. Had any of the Mr. Clean been used?

17 A No.

18 Mr. Hogge: Okay. No further questions.

19 Cross-Examination

20 By Mr. Smith:

21 Q Ms. Knight, the individual that you saw leaving the  
22 store, did he have gloves on?

23 A No.

24 Mr. Hogge: No further questions, Your Honor.

25 The Court: Questions?

David Dover - Direct Examination by Mr. Hogge

1 Mr. Hogge: No further questions from the State. We  
2 ask that she be excused.

3 The Court: Yes, sir. Thank you for being here,  
4 ma'am. I appreciate it.

5 The Witness: Thank you.

6 Mr. Hogge: The State next calls Captain David Dover  
7 of the Clover Police Department.

8 David Dover, after having been duly sworn, testified  
9 as follows:

10 Direct Examination

11 By Mr. Hogge:

12 Q Good morning, Officer Dover. If you could give us  
13 your name for the record.

14 A Good morning. My name is Charles David Dover.

15 Q And where do you work?

16 A I work for the Town of Clover Police Department.

17 Q How long have you worked there?

18 A I have worked on the road for 12 years as a sworn  
19 police officer and worked a total of 15 years for the Town  
20 of Clover. I started out in dispatch communications.

21 Q And what is your position there at the Clover Police  
22 Department?

23 A Currently I serve the rank as captain, and I'm  
24 responsible for the day-to-day operations of our agency  
25 and some administrative issues within the agency and also

David Dover - Direct Examination by Mr. Hogge

1 some enforcement action as necessary to assist the patrol  
2 division which is the largest division within our agency.

3 Q So would you say you have a supervisor role over the  
4 other members of the Clover Police Department?

5 A Yes, sir.

6 Q You kind of just Officer Neelands' boss? He  
7 testified earlier.

8 A Yes, sir.

9 Q Okay. At what point did you become involved in this  
10 case involving Jerry Dickey?

11 A At any time that a patrol officer gets involved in a  
12 pursuit, a supervisor monitors that pursuit. At this  
13 particular time when I Officer Neelands became involved in  
14 the pursuit, his supervisor was not available to monitor  
15 that traffic via the radio or to engage with him, so that  
16 falls back to me. I began to monitor Officer Neelands'  
17 radio traffic about the pursuit. I obtained certain  
18 information from him about the pursuit and eventually  
19 terminated -- gave the order to terminate the pursuit, as  
20 we had a good license plate on the vehicle. We had a good  
21 description of the vehicle. We had a good description of  
22 the driver, both from the store clerk and from the officer  
23 himself and we were reaching some jurisdictional issues  
24 with the North Carolina state line. So I terminated -- I  
25 made the decision to terminate the pursuit at that point.

David Dover - Direct Examination by Mr. Hogge

1 Q When you said that you were supervising the pursuit,  
2 what do you mean? How were you supervising the pursuit?

3 A Monitoring it via radio -- via our radio system that  
4 we communicate on and soliciting answers from the officer  
5 that is involved in the pursuit, asking him questions via  
6 that radio to make a proper determination.

7 Q And you called off the pursuit. The car makes it  
8 into North Carolina. At some point did you drive into  
9 North Carolina to follow the defendant?

10 A I did. At the time that I terminated the pursuit, I  
11 gathered my lieutenant who works with me within the agency  
12 on the day-to-day basis. We got into my plain Chevrolet  
13 Tahoe, gray-in-color. It's not marked in any way. We  
14 proceeded north into Gaston County, North Carolina.

15 As -- it's commonly taught to us that when persons  
16 flee or they run on foot, they will only flee for a  
17 certain length and then they will usually lay down or sit  
18 down somewhere. So my lieutenant and I got into my  
19 unmarked vehicle and drove north on U.S. 321 into Gaston  
20 County.

21 Q Let me stop you there.

22 A Uh-huh.

23 Q How long between when the pursuit was called off did  
24 you get in your car and drive into North Carolina?

25 A As I was giving the order to terminate the pursuit, I

David Dover - Direct Examination by Mr. Hogge

1 was closing my office door and walking out to my vehicle  
2 to get into it with my lieutenant. It was -- it was  
3 seconds pretty much.

4 Q Okay. So as soon as you call off the pursuit, you  
5 get in your unmarked Chevy Tahoe? Is that correct?

6 A Yes.

7 Q And you drive up into Gastonia. How long did it take  
8 you to drive up that far?

9 A Approximately two to four minutes. If you know where  
10 the Town of Clover is, our border is Gaston County via  
11 U.S. 321. We're surrounded by North Carolina.

12 Q The Clover Police Department, how far is that from  
13 the Family Dollar or that -- where the Family Dollar was  
14 located?

15 A If you get on top of my building, you can see it  
16 diagonally from where we are to where the store is.

17 Q In the metropolis of Clover?

18 A Yes.

19 Q Just right across the way.

20 A It is.

21 Q Okay. So you drive into North Carolina in your  
22 unmarked car. Tell us what happens then. What do you  
23 observe?

24 A Again, my lieutenant and I -- I'm driving, and my  
25 lieutenant is in the passenger seat. We proceed up U.S.

David Dover - Direct Examination by Mr. Hogge

1 Highway 321 into Gaston County. As we reach approximately  
2 the 3300 block of U.S. 321, we noticed a vehicle matching  
3 the description, as provided by the dispatcher and  
4 confirmed by the officer, pulling out of a driveway to  
5 come back on to U.S. 321. As we got closer to that  
6 vehicle, we observed that the driver of the vehicle also  
7 matched the description that was provided by the store  
8 clerk who called and also by the officer who had visually  
9 seen the driver of the vehicle.

10 We drove past, because we didn't want to stop in the  
11 middle of the road -- we were in another state. We had no  
12 jurisdiction and no authority to take any enforcement  
13 action. So we drove past. The vehicle came out of the  
14 driveway and was behind us, a couple of car lengths  
15 behind, and I kept him in sight in my rearview mirror. I  
16 made a telephone call to Gaston County Communications  
17 which dispatches police in Gaston County and asked that  
18 they send an officer our way in an attempt to stop and  
19 identify the person in this vehicle.

20 So we kept that vehicle in sight of our rearview  
21 mirror. As we proceeded down U.S. Highway 321, if you're  
22 familiar with where Liberty Lanes Bowling Alley is in  
23 Gaston County and there's a restaurant there called Market  
24 Street, a car was turning left into Market Street, so we  
25 had to stop because we were in the left lane. The suspect

David Dover - Direct Examination by Mr. Hogge

1 vehicle traveled by us on the right, and at that point we  
2 were able to get behind the vehicle.

3 The vehicle went up into a gas station and turned  
4 around. So we went up and turned around as well. The  
5 vehicle came back to a Dollar Tree or a Mighty Dollar,  
6 some type of Dollar Tree store right there near the  
7 Liberty Lanes Bowling Center. We went down to Liberty  
8 Lanes Bowling Alley in my unmarked vehicle and parked  
9 adjacent to the sidewalk, and we could see the suspect  
10 vehicle and we could see that the suspect, the driver, had  
11 gotten out of the vehicle and he was---

12 Q Let me stop you there.

13 A Sure.

14 Q You saw him get out of the car by the dollar --  
15 Mighty Dollar Tree.

16 A Yes, sir.

17 Q Did you ever see him go into that store?

18 A He did not.

19 Q Okay.

20 A He stayed right there by the car.

21 Q Okay. Continue with your story, please.

22 A He was making movements. Of course, there was some  
23 distance -- if you're familiar with that area at all,  
24 there's some distance between where we were on the side of  
25 the road and where he is, but he was standing outside of

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1 the car making some type of movement and then he opened  
2 the rear door to the passenger car, shut it, got back in  
3 the car and drove away.

4 As he drove back out onto 321, we came back out onto  
5 321 as well and stayed some car lengths behind him and  
6 followed him until he took a left at a convenience store  
7 further up on 321. And, granted, we have Gaston County  
8 Communications on the phone and they are sending units our  
9 way to assist us.

10 Q Let me pause you there.

11 A Okay.

12 Q You're with the Clover Police Department in South  
13 Carolina.

14 A Yes.

15 Q Would you have had the jurisdictional ability to pull  
16 over the defendant in North Carolina?

17 A No, sir.

18 Q So you had no real authority out there.

19 A That is correct.

20 Q And is that why you called Gastonia for assistance?

21 A That is exactly... I'm merely a citizen of that  
22 state at that time.

23 Q Okay. Continue on, please.

24 A So we -- we were speaking -- I was speaking with  
25 Gaston County Communications. They were dispatching their

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1 units to us. The vehicle makes a left; I think it's  
2 Gilmer, G-I-L-M-E-R, Street. It's right beside a gas  
3 station. And it was going into a residential  
4 neighborhood, and not having any police authority, we made  
5 the decision to stop in the parking lot of that gas  
6 station and await Gaston County, North Carolina, police to  
7 arrive.

8 So we waited there less than a minute before the  
9 police side of me got the best and said, "Okay. I can't  
10 let this keep going and let him get away. I need to keep  
11 him in sight." So I drove my vehicle out of that gas  
12 station parking lot, and as we proceeded slowly down the  
13 road beside the gas station, we were looking streets left  
14 and right to make sure we wasn't passing him.

15 As I got to Gilmer Street - that was the actual  
16 street he was on - I seen the top of a green vehicle. It  
17 was kind of an incline, and I seen the top of the green  
18 vehicle stopped in the road and there was a black male  
19 standing beside the vehicle. I could see the top of his  
20 head.

21 So I stopped my vehicle, backed up, and we pulled  
22 onto Gilmer Street and came to where this vehicle was  
23 parked on the side of the road and the black male was  
24 standing beside the vehicle. I got out of my vehicle and  
25 made casual contact with the guy. I introduced myself as

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1 to who I was and why I was there.

2 Q Let me stop you there. Describe that a little  
3 better, how you made contact with him. Did you pull him  
4 over at all?

5 A No. No blue lights were activated, no guns were  
6 drawn, no nothing.

7 Q Did your unmarked car have blue lights?

8 A It did have blue lights.

9 Q Okay. But you did not activate those?

10 A I did not. I realized that there's no jurisdictional  
11 authority for me in North Carolina.

12 Q Now, how did you initiate contact with him there on  
13 the side of the road?

14 A Got out of my vehicle and I approached him just as I  
15 would approach anyone else and started speaking with him  
16 and---

17 Q Now, where was he at that point? Was he in his car  
18 or outside his car?

19 A He was outside of his car standing at the rear of his  
20 car.

21 Q Okay. So if I understand correctly, you don't pull  
22 him over or anything like that. He's already standing  
23 outside of his car and you just walk up to him and say  
24 hello?

25 A That's right. Correct.

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1 Q And tell us about your conversation with him.

2 A Once I had myself identified as to who I was and why  
3 I was there, I asked him if he had any identification on  
4 him and would he be willing to show it to me. He, in  
5 fact, did have a North Carolina ID and he presented me  
6 with that ID upon request. I took a picture of the ID.  
7 Again, I'm out of my state and I have no authority, so I'm  
8 collecting some evidence as I'm there.

9 I take a picture of the photo ID that he presented  
10 which did identify him. It was issued by the State of  
11 North Carolina, and it identified him as Jerry Lee Dickey.  
12 I made further conversation with him and advised him why  
13 we were there.

14 Q Let me stop you there---

15 A Sure.

16 Q ---so I can just go ahead and get this to the jury.  
17 So you took photographs of the license, the driver's  
18 license.

19 A Correct.

20 Q And did you take other photographs at the scene?

21 A I did. I took photographs of the car as it was  
22 parked on the side of the road.

23 Q Okay. I'm going to hand you what's been previously  
24 marked for identification purposes as State's Exhibits 2  
25 through 14. Take all the time you need to look through

David Dover - Direct Examination by Mr. Hogge

1 those photos, and after you've looked through them, let me  
2 know if you recognize them.

3 A I do recognize the photos, sir.

4 Q What do you recognize those photographs to be?

5 A There's a photograph in there of the North Carolina  
6 ID card that Mr. Dickey presented me upon request.  
7 There's a photograph of the vehicle that he was standing  
8 beside. There's a photograph of the license plate on that  
9 vehicle that he was standing beside. There's photographs  
10 of merchandise: Tank tops, T-shirts, that kind of stuff,  
11 still newly packaged, laying in the back seat in plain  
12 view to anyone who would walk by the vehicle.

13 There's a photograph that shows the car doors open  
14 and there's some North Carolina police officers that are  
15 there at that point. It shows them standing beside the  
16 car as they're conducting an inventory of that vehicle.

17 Q Okay. And do these photographs fairly and accurately  
18 depict what you saw at that scene that day?

19 A Yes, sir, they do.

20 Mr. Hogge: Your Honor, at this time the State wishes  
21 to introduce into evidence State's Exhibits 2 through 14.

22 The Court: Any objection, sir?

23 Mr. Smith: No objection, Your Honor.

24 The Court: All right. Without objection, the same  
25 is introduced.

David Dover - Direct Examination by Mr. Hogge

1 (State's Exhibits 2 through 14 were received in  
2 evidence.)

3 By Mr. Hogge:

4 Q Now, since this is working out better for me than  
5 technology is, is this the driver's license you were  
6 talking about?

7 A That is the North Carolina ID.

8 Q Okay. And the person in that picture, did he match  
9 the description of the person that you were actually  
10 talking to?

11 A He did.

12 Q Looked like the guy in the license.

13 A The person in that picture matched the same subject  
14 that I was speaking with; yes, sir.

15 Q Okay. Now, can you tell us what State's Exhibit 3  
16 is?

17 A This is a picture of the front of the green Dodge  
18 Neon that he was standing beside when I got there.

19 Q Okay. Can you make out the people standing behind  
20 the car there in uniforms?

21 A The persons standing on both sides of the vehicle in  
22 uniform is Gaston -- Gastonia City Police. The person  
23 standing at the rear of the vehicle beside my gray  
24 Chevrolet Tahoe is a Gastonia City Police, and then the  
25 gentleman wearing the gray T-shirt with his hands behind

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1 his back is Mr. Dickey.

2 Q Okay. So all the people -- all the people in this  
3 picture, other than Mr. Dickey, are Gastonia police  
4 officers.

5 A They are.

6 Q Okay. And State's Exhibit 4, can you describe that  
7 for us?

8 A Yes. This is a photograph of the same green Dodge  
9 Neon just from a rear view that displays the license  
10 plate.

11 Q Okay. And the people in that photograph?

12 A Are Gastonia City police officers.

13 Q State's Exhibit 5, describe that for us.

14 A It's just another rear view of that car but closer up  
15 of the license plate that was on that car, and I took that  
16 because that license plate matched what the police officer  
17 of my jurisdiction had called out over the radio to  
18 dispatch.

19 Q And officer -- was that Officer Neelands who  
20 testified earlier?

21 A In fact, it was; yes, sir.

22 Q State's Exhibit 6?

23 A This is a photograph of the inside of the front of  
24 the green Dodge Neon and the passenger seat. There was a  
25 ball cap and some soap detergent of some type laying in

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1 plain view.

2 Q And when you first encountered Mr. Dickey, was he  
3 wearing a ball cap?

4 A No, he was not. The ball cap had been taken off at  
5 that point.

6 Q And could you -- and where -- in State's Exhibit 7  
7 can you tell us where that ball cap was in the car?

8 A The ball cap is laying in the front passenger seat  
9 directly beside the driver's seat.

10 Q Okay. And State's Exhibit 8, could you tell us what  
11 this is?

12 A This is a view from the inside rear passenger  
13 compartment of the vehicle, and it's just -- it shows some  
14 laundry detergent in the floorboard, a bottle of new  
15 laundry detergent, and then some unopened packages of  
16 T-shirts, underwear, that kind of stuff in the back seat.

17 Q And when you showed up in your -- someone was taking  
18 these photographs. Were the items moved initially or did  
19 you take the photographs as they appeared when you arrived  
20 on the scene?

21 A I took those photographs myself before the police got  
22 inside the vehicle because I wanted to photograph it as it  
23 was when I got there.

24 Q Got you. State's Exhibit 9?

25 A Another closer-up photo of the newly-packaged

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1 merchandise that was laying in the back seat.

2 Q State's Exhibit 10?

3 A Another shot of the same merchandise that was just in  
4 Exhibit 9 but from the passenger's side. Exhibit 9 was  
5 from the driver's side; Exhibit 10 is from the passenger's  
6 side.

7 Q And as you were there that day and you're looking at  
8 these packages, did any of them appear to be opened at  
9 all?

10 A No, they were all unopened.

11 Q Did they appear to you to be brand-new?

12 A They did.

13 Q Would you tell us about State's Exhibit 11?

14 A State's Exhibit 11 is some -- the cleaner that was  
15 inside the car at one point that Gastonia City Police had  
16 moved to the top of the car because they were itemizing  
17 the merchandise to return it back over to us to return  
18 back to the store. And then the gentleman standing behind  
19 the merchandise would be my lieutenant who got in the car  
20 with me and we both traveled to Gastonia.

21 Q State's Exhibit 12?

22 A State's Exhibit 12 is a photo of Mr. Jerry Lee Dickey  
23 who is standing in front of my Chevrolet Tahoe.

24 Q Okay. And did Mr. Dickey match the description that  
25 you received from Margaret Knight and from Officer

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1 Neelands?

2 A Mr. Dickey did match the description that was  
3 provided by my dispatcher via the radio and that of what  
4 Mr. -- Officer Neelands gave out as well.

5 Q It might be a little difficult to make out on that  
6 photo, but is there anything you were able to identify  
7 that was a little unusual about his hair?

8 A Mr. Dickey has a distinctive white patch of hair---

9 Q Okay.

10 A ---in the front of his hairline.

11 Q Okay. Did you see that in the driver's license as  
12 well?

13 A Yes.

14 Q Okay. State's Exhibit 13?

15 A This will be a photo of Mr. Dickey's pants legs that  
16 were tied at the bottom, and that was taken while he was  
17 standing there in front of my vehicle.

18 Q Okay. And 14, is that the other ankle?

19 A Yes, two different legs. One is one leg; one is the  
20 other.

21 Q Can you -- this is not that great a picture. Can you  
22 describe for us a little better the pants he had on?

23 A Windbreaker pants is the way that I would describe  
24 them, exercise pants on the outside, but on the inside  
25 there were your -- what we call jogging pants, more of a

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1 thicker cotton, flannel, whatever type of material it is.

2 Q And what else did you notice about the pants?

3 A They were tied with pantyhose at the bottom.

4 Q Okay. Did he have anything in his pants?

5 A At the time we encountered he did not.

6 Q Okay. And did you testify earlier that you saw him  
7 making strange movements by his car before you were able  
8 to speak with him?

9 A Yes. In the parking lot of the Dollar Tree again he  
10 stopped there for some reason and had movement and opened  
11 the rear passenger door to that vehicle.

12 Q And had you found items in the rear of the vehicle?

13 A On the passenger side, yes, sir.

14 Q Now, after all that transpired, after you caught up  
15 with Jerry Lee Dickey, and you took photos and you spoke  
16 with him briefly out there, what happened to Mr. Dickey  
17 next?

18 A Gaston County took Mr. Dickey into their custody,  
19 Gastonia City Police---

20 Q Okay.

21 A ---and he was transported to their facility and his  
22 car was towed away by a wrecker of their rotation.

23 Q Okay. And did you go and speak with him at the jail  
24 there where they took him?

25 A I did. I traveled to Gastonia City Jail at a later

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1 time and asked Mr. Dickey if he would be willing to speak  
2 with me; he agreed.

3 Q Now, did you advise him of his Miranda rights when  
4 you went and spoke with him?

5 A I did. I advised him both verbally of his Miranda  
6 rights and we have a standard form that we use at Clover  
7 Police called a Miranda form that has that in writing, and  
8 it has them initial beside each line as you read the  
9 standardized Miranda. And then at the bottom it has a  
10 waiver of rights and we read that; they initial it. And  
11 then below that is their signature, date, and time and my  
12 signature, date, and time.

13 Q So you verbally advised him.

14 A Correct.

15 Q And you had that in written form.

16 A I did. I provided him the form, but I read the form  
17 out loud to him as he reads the form that's in front of  
18 him.

19 Q Do you have that form with you in the courtroom  
20 today?

21 A I do not. Unfortunately that form -- I don't know  
22 where it is. Somewhere between the date that the form was  
23 received from Mr. Dickey and completed at the jail to  
24 preparation of transmitting the case to your office, I  
25 don't know where that form is today.

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1 Q Okay. So it's your testimony that he -- you verbally  
2 advised him of his Miranda rights?

3 A Absolutely.

4 Q And he verbally waived his rights?

5 A He did.

6 Q And tell us about your conversation with him.

7 Mr. Smith: Previous objection, Your Honor.

8 The Court: Good enough. You're protected on the  
9 record. I respectfully deny the same, and you may  
10 proceed, sir.

11 By Mr. Hogge

12 Q Please proceed, Mr. Dover.

13 A Sure. Mr. Dickey and I -- I introduced myself, told  
14 him who I was, why I was there. We went through the  
15 Miranda issue. Once that was clear and out of the way, he  
16 would only talk to me after he talked about religion.

17 That's what he wanted to talk about first.

18 He advised that he could tell by my demeanor and the  
19 way that I approached him that I came from a religious-  
20 type background. I informed him, in fact, that I did. My  
21 father was a Church of God minister for the first 17 years  
22 of my existence, so he was right on in his assumption.

23 We talked about some religion; we talked about divine  
24 intervention. We talked about things happen for a reason,  
25 and then he gave me some explanations and reasons as to

David Dover - Direct Examination by Mr. Hogge

1 why he made the decision that he made to---

2 Q Talking about the decision that he made---

3 A Uh-huh.

4 Q ---did he say that he did all this, that he  
5 shoplifted and failed to stop for law enforcement?

6 A He did. Once we got by the religion aspect of the  
7 conversation, we moved into the conversation about the  
8 event.

9 Q What did he -- what did he say about the event?

10 A He confirmed that he went into the Family Dollar  
11 store in Clover, that he stole the merchandise that was  
12 found in the back of his vehicle and he gave his -- his  
13 reasoning, his explanation was that he hadn't been working  
14 and he needed the merchandise. He needed it, so he went  
15 and stole it essentially, in a nutshell.

16 Q And did he admit to seeing the police officer and not  
17 stopping for him and driving 100 miles an hour?

18 A He did. Mr. Dickey spoke of the -- when he was  
19 driving north on U.S. Highway 321 that he seen the marked  
20 law enforcement vehicle. He seen the officer look at him,  
21 and he acknowledged that he made eye contact with that  
22 officer, and at that point Mr. Dickey seen the law  
23 enforcement officer, by his own statement to me, turn  
24 around and proceed behind him and activate his blue lights  
25 and his sirens.



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1 make phone contact with his aunt and notify her of where  
2 he was, and I did that. I made phone contact with the  
3 aunt and notified her that he was in the Gaston County  
4 jail and why he was in the Gaston County jail. The aunt  
5 wanted to address with me---

6 The Court: Okay. I would just ask you to stay away  
7 from any hearsay that she told you.

8 A Okay.

9 Q But it's your testimony today that you drove into  
10 Gastonia.

11 A Yes.

12 Q Correct? And the individual that you made contact  
13 with matched the description that you received.

14 A Yes.

15 Q And he confessed to you to committing shoplifting and  
16 also failing to stop for a law enforcement officer.

17 A He did.

18 Mr. Hogge: All right. Thank you, Your Honor. I  
19 have no further questions at this time.

20 The Court: Cross?

21 Mr. Smith: May it please the Court, Your Honor?

22 The Court: Yes, sir.

23 Cross-Examination

24 By Mr. Smith:

25 Q Sergeant Dover, when you went into Gastonia do you

David Dover - Cross-Examination by Mr. Smith

1 have any idea what time it was?

2 A I do not. I did not look at the time.

3 Q But at that point you had the description of an  
4 individual in a vehicle; is that right?

5 A Correct.

6 Q And the vehicle was a green Neon?

7 A Yes.

8 Q And the individual description that you had was black  
9 male.

10 A Correct.

11 Q And a gray shirt and windbreaker pants.

12 A And a ball cap.

13 Q And a ball cap.

14 A Yes.

15 Q Do you recall if it was blue or black, the  
16 description of the ball cap?

17 A No, sir. I have to be honest; I don't recall the  
18 color.

19 Q Okay. You didn't have any description as far as  
20 height; is that right?

21 A No.

22 Q You didn't have weight?

23 A Correct.

24 Q You didn't have skin tone?

25 A No.

David Dover - Cross-Examination by Mr. Smith

1 Q Didn't have hairstyle?

2 A No.

3 Q Okay. And you indicated that you saw a green car  
4 pull from I believe you said a driveway on 321; is that  
5 right?

6 A Yes, sir, in the 3300 block of U.S. 321 in Gastonia.

7 Q Okay. And the 3300 block -- in other words, what  
8 kind of place was he pulling out of? A house? A  
9 residence?

10 A It's a residential section of that stretch of  
11 roadway.

12 Q And the Neon that pulled out in Gastonia, was it  
13 acting evasively toward you?

14 A Not toward me. He did not realize -- I don't believe  
15 he realized who I was.

16 Q Okay.

17 A Because my vehicle was unmarked and any other Tahoe  
18 on the road essentially.

19 Q Okay. But as far as how you were dressed, you were  
20 dressed, I assume, similar to the way you're addressed  
21 today?

22 A In similar attire, yes, sir.

23 Q Are you familiar with the incident report in this  
24 case?

25 A I am.

David Dover - Cross-Examination by Mr. Smith

1 Q I show you the incident report. I ask you if you  
2 recognize it.

3 A I do. It's report number 748 of our agency.

4 Q And if I could get you to focus on that second page.

5 A Okay.

6 Q I believe there's a paragraph there that talks about  
7 you and the lieutenant seeing the vehicle in Gastonia---

8 A Uh-huh.

9 Q And I've marked an area. Does that line indicate  
10 that the car was acting evasive?

11 A It does. It says, "During this time, the suspect  
12 started driving erratically in what appeared to be an  
13 attempt to evade officers."

14 Q Okay.

15 A "The suspect then turned on to Clyde Street, and  
16 officers went and parked at a gas station at the corner of  
17 York Road and Clyde Street."

18 Q But as you recall it now or as you testified today,  
19 that green Neon wasn't driving erratically or wasn't  
20 appearing to evade you.

21 A I don't believe the vehicle was trying to evade me  
22 because he did not recognize -- in a marked law  
23 enforcement vehicle, but I do believe, based on what I  
24 seen, that the vehicle -- he was changing lanes. He was  
25 moving from one lane to the other to get around cars, but

David Dover - Cross-Examination by Mr. Smith

1 I don't believe that was because of me because he would  
2 not recognize my vehicle as law enforcement.

3 Q I understand. Do you wear a body cam?

4 A I do not.

5 Q And in the Tahoe that you're in, is it equipped with  
6 a camera?

7 A It is not.

8 Q Did you have any sort of recording device with you?

9 A None.

10 Q Now, did you have a camera with you? You indicated  
11 you took pictures.

12 A Yes, it's a camera-department-issued cell phone that  
13 I have, and I took the pictures with that cell phone  
14 camera.

15 Q Okay. And does that cell phone have video recording  
16 capabilities?

17 A It does.

18 Q Did you record any video that day?

19 A No, sir.

20 Q And you indicated that you saw -- I believe you  
21 turned down some other street and you saw at this point  
22 Mr. Dickey standing by a vehicle.

23 A Yes, sir.

24 Q And did you see where he was coming from or where he  
25 had gone or by the time you saw him he's just by the

David Dover - Cross-Examination by Mr. Smith

1 vehicle?

2 A By the time I saw him, he was standing at the rear of  
3 the vehicle on the driver's side.

4 Q But this is clearly in a residential area?

5 A It is.

6 Q And so he's stopped in front of a house?

7 A It is, a house in which he said he was going there to  
8 get a haircut. No, he was going to cut someone's hair.

9 Q Okay. Did you -- did you go up to that house or  
10 inquire of who was in that home?

11 A I personally did not, but my lieutenant who was with  
12 me did.

13 Q Okay. And you approached Mr. Dickey as he was on the  
14 street.

15 A I did.

16 Q And by that point when you were walking to him, he  
17 could clearly see that you're a police officer.

18 A Sure, with this and this.

19 Q And then you began to speak with him.

20 A Yes.

21 Q And he didn't run off, didn't -- didn't flee, didn't  
22 try to fight with you, didn't do anything of that nature.

23 A He did not.

24 Q And you asked him, in fact, if he had identification  
25 and he handed over his identification to you; is that

David Dover - Cross-Examination by Mr. Smith

1 right?

2 A He did.

3 Q And that's the identification that we see here  
4 pictured in State's Exhibit Number 2?

5 A Correct.

6 Q And he even allowed you to take a picture of him.

7 A (The witness nods his head.)

8 Q Now, at that point was he under arrest?

9 A He was not. He was free to leave at any time.

10 Q Then you also took pictures from items that were in  
11 the vehicle, and you indicated that those were ultimately  
12 returned to, I believe, Family Dollar. Is that right?

13 A Correct.

14 Q Did you at any point in time have them processed,  
15 fingerprinted, have any sort of analysis, DNA or anything  
16 of that nature done to them?

17 A No, sir.

18 Q Did you also take a picture that shows someone else's  
19 identification in that vehicle?

20 A Not that I can recall or that has been presented, no,  
21 sir.

22 Q Okay. I show you... I ask you if that refreshes  
23 your recollection.

24 A Yes, sir. This is the photographs that are attached  
25 to the incident report itself, and there is -- there's a

David Dover - Cross-Examination by Mr. Smith

1 North Carolina D.L., a Social Security card, and something  
2 that says "federal client," but I can't make out what --  
3 who it says or what it is.

4 Q Okay. But they're not -- it's not this ID. They're  
5 not Mr. Dickey's.

6 A The person in this ID here has something -- well, I  
7 would think it's red or that's pink. Again, I can't make  
8 out what name is on this ID versus that one.

9 Q Okay. Would you at least compare the two and see if  
10 they're similar?

11 A Looking at them on these pictures, they do look very  
12 similar. I can't tell if this redness here is ink  
13 coloration or what's causing the redness or is it a part  
14 of the photograph. I don't know.

15 Q Okay. But the -- who would have taken these  
16 pictures?

17 A I would have.

18 Q Okay. So you did take a picture of an ID with an  
19 individual with some type of redness on, a Social Security  
20 card, and then some other type ID; correct?

21 A Again, the redness, I don't know if it's a part of  
22 the driver's license photo or if it's ink in it being  
23 printed.

24 Q Okay. But what happened to these IDs?

25 A They were left in the car.

David Dover - Cross-Examination by Mr. Smith

1 Q But you took a picture of this one.

2 A Right, because he presented it to me and when he  
3 presented it, I took a photo of it right there at the hood  
4 of my car.

5 Q Okay. But if there were IDs that could have tied  
6 Mr. Dickey to that vehicle, you would have noted that and  
7 taken that into evidence; correct? Documented it.

8 A To me? No, sir, not necessarily. Photographs speak  
9 a lot.

10 Q Okay. And a Social Security card.

11 A Uh-huh.

12 Q You took a picture of it for a reason; is that  
13 correct?

14 A Yes, sir.

15 Q And when you prepared it, you said this is what was  
16 attached to the incident report. It was larger than this  
17 because it's attached to your copy of the incident report?

18 A Yes, it should be. When you print it out, it kind of  
19 shrinks it all down to get it to fit on one page.

20 Q Okay. And so having looked at it, you agree that's  
21 not Mr. Dickey.

22 A I will not agree to that, as I don't recall who that  
23 belonged to from that date. I don't know if it's his or  
24 not his.

25 Q Okay. Well, do you have the larger copies or have

David Dover - Cross-Examination by Mr. Smith

1 those disappeared as well?

2 A Those would be attached to the incident report within  
3 our R.M.S., our Report Management -- Records Management  
4 System.

5 Q You indicated sometime that afternoon you went to the  
6 Gaston County Jail or the Gastonia City Jail and -- to  
7 speak with Mr. Dickey; is that correct? Now, do they have  
8 recording devices there?

9 A I'm not familiar with their layout.

10 Q But the purpose for you going was to try to get a  
11 statement; is that correct?

12 A Correct.

13 Q And a statement of an alleged crime that you think he  
14 just committed.

15 A Correct.

16 Q And you had with you your cell phone.

17 A Yes.

18 Q Your department-issued cell phone.

19 A With me at the time, yes, but not in the jail itself  
20 because they're not permitted.

21 Q Did you ask the officers could you use it to record  
22 the statement?

23 A No, sir.

24 Q Did you ask them if they had some ability to record?

25 A No, sir.

David Dover - Cross-Examination by Mr. Smith

1 Q Did you take pencil and paper?

2 A I took a notepad, the black book that I always carry  
3 with me.

4 Q And it's your contention today that Mr. Dickey  
5 confessed during that interview with you.

6 A He did. In conversation with me, yes, sir.

7 Q And before you could ask him any questions, you're  
8 required to give him Miranda rights; is that correct?

9 A That is correct.

10 Q And you say today that you gave him those from a  
11 Miranda form.

12 A Both verbal and written.

13 Q And that he initialed this form.

14 A He did. And signed.

15 Q And signed.

16 A Yes.

17 Q But we don't have this form.

18 A I do not. I wish I could explain where it is, but I  
19 cannot.

20 Q And we don't have any recording.

21 A No, sir.

22 Q And this confession that occurs in the jail doesn't  
23 even show up in the incident report, does it?

24 A It is a supplement to the incident report. What is  
25 initially printed is what the reporting officer writes,

David Dover - Cross-Examination by Mr. Smith

1 and then any additional work goes in as a supplement to  
2 their report.

3 Q How about with the court summary, the case file  
4 summary? That's done after all the reports are gathered.

5 A It is.

6 Q Correct?

7 A Uh-huh.

8 Q And there is no mention even in that document of your  
9 having gotten this confession in the Gastonia jail, is  
10 there?

11 A I've personally not reviewed the general sessions  
12 summary, as I did not type it or write it. It's not mine.

13 Q Okay. Let me ask you this: When did you provide  
14 your edition to the prosecutor?

15 A We had a meeting, a pretrial meeting, at my office,  
16 and it was at that point that I was presented with the  
17 case folder. When I got to looking in the case folder,  
18 the incident report that was in the case folder which had  
19 ultimately been transmitted to his office did not include  
20 my written statement or the statement that I had put in  
21 there, the supplement. So at that point I went to my  
22 office, accessed the R.M.S. system, the Records Management  
23 System, and printed him off a complete incident report  
24 that included any supplements that had been made to the  
25 initial report.

David Dover - Redirect Examination by Mr. Hogge

1 Q Okay. And when this -- this crime happened in August  
2 of last year. When would this meeting have taken place?

3 A Sometime within the last two or three weeks.

4 Mr. Smith: No further questions.

5 Mr. Hogge: Briefly, Your Honor.

6 The Court: Yes, sir.

7 Redirect Examination

8 By Mr. Hogge:

9 Q This meeting that took place, why did I call that  
10 meeting?

11 Mr. Smith: Objection, Your Honor.

12 By Mr. Hogge:

13 Q Well, what was the purpose of our meeting?

14 A The purpose of a pretrial meeting is for the  
15 prosecuting attorney, witnesses - which would be myself,  
16 Officer Neelands, any other witnesses - to come together  
17 to make sure that all -- everybody is on the same page and  
18 that the facts of the case, as we know it, are known to  
19 all parties involved.

20 Q So it was a pretrial meeting? Is that your  
21 testimony, that you were meeting as the trial---

22 A Yes, in preparation for today.

23 Q Is that the first time I had sat and talked to you  
24 about this case?

25 A Yes.

David Dover - Redirect Examination by Mr. Hogge

1 Q And when -- so let's talk about these incident  
2 reports. There's the -- the first incident report, who  
3 filled that out?

4 A That would be the reporting officer which was officer  
5 -- Patrol C. Neelands, Officer Neelands.

6 Q Officer Neelands.

7 A Uh-huh.

8 Q And the general sessions case file summary, who  
9 prepared that document?

10 A I know I did not.

11 Q If I showed that to you, would it refresh your  
12 recollection?

13 A I seen it in the case file. I don't know -- I don't  
14 know who typed it. I would -- based on what normally  
15 happens within cases and how they're prepared, the primary  
16 officer, which would be Neelands, would be the officer who  
17 prepared the court case summary.

18 Q But you didn't prepare the court case summary.

19 A I did not.

20 Q But the supplemental summary that mentions the  
21 confession, that was prepared by who?

22 A Solely by me.

23 Q Okay. And you -- so you did not prepare that initial  
24 incident report that didn't mention the confession. You  
25 didn't prepare that case file summary that did not mention

David Dover - Redirect Examination by Mr. Hogge

1 the confession; correct?

2 A Correct.

3 Q Okay. And the same time that you provided to me the  
4 supplemental report that mentioned the confession, that  
5 same meeting did you also provide me with these  
6 photographs?

7 A I did.

8 Q So that same time that I received the supplemental  
9 report, I received these photographs.

10 A Yes. At the date and time of our pretrial meeting,  
11 when I got the case file, I immediately recognized that  
12 the incident report that you had received was not complete  
13 because it lacked my supplement. The other thing that I  
14 also recognized from the case file is that the photographs  
15 that I had personally taken at the scene where Mr. Dickey  
16 was located was not present in that case file. So given  
17 this is the appropriate meeting for that to happen, I  
18 brought all of those items to your attention.

19 Q Okay. And as well as these photographs and the  
20 report.

21 A Yes.

22 Q You didn't go out and stage all these photographs,  
23 did you?

24 A No, sir.

25 Q Okay. Was Officer Neelands with you at the Gastonia

David Dover - Redirect Examination by Mr. Hogge

1 Jail when the defendant confessed to you?

2 A He was not. I was alone.

3 Mr. Hogge: Okay. No further questions.

4 The Court: Any recross?

5 Mr. Smith: No, Your Honor.

6 The Court: Thank you, sir. I appreciate you being  
7 here. You may step down.

8 The Witness: Thank you.

9 The Court: You may call your next witness, sir.

10 Mr. Hogge: Your Honor, the State rests.

11 The Court: Okay. All right. Ladies and gentlemen,  
12 at this point in time we are at a stopping place. It's  
13 necessary that at the close of the State's case I hear a  
14 few matters of law from the attorneys and discuss our way  
15 forward. So what I'm going to ask you to do is take a  
16 break for lunch, if you will, please.

17 Right now it is 12:16. I'm going to ask you to be  
18 back here at 1:30. We'll have a little bit of business to  
19 conduct and then we'll take a lunch break and we'll come  
20 back. We're going to do one of two things here. We're  
21 either going to hear testimony or evidence from the  
22 defense or we'll go into closing arguments and charge on  
23 the law, one of the two. I don't know that -- I don't  
24 know which one right now. So please don't discuss the  
25 case as of yet, and I will see you back here at 1:30.

1 Enjoy your lunch.

2 (The jury left open court at 12:17 p.m.)

3 The Court: All right. Motions?

4 Mr. Hogge: None from the State.

5 The Court: Defense?

6 Mr. Smith: May it please the Court, Your Honor? At  
7 this time the defense makes a motion for a directed  
8 verdict, incorporating my pretrial motions and trial  
9 objections. It's our contention that the State has not  
10 met the burden, even in the light most favorable to the  
11 State, of meeting all the elements of the two charges and  
12 requests a directed verdict.

13 The Court: Okay. All right. I'll respectfully deny  
14 the same. The standard for a directed verdict is to view  
15 the evidence in the light most favorable to the State. I  
16 will say also that this Court does not look to the weight  
17 or sufficiency of the evidence but to the existence of the  
18 same. In this instance there is evidence upon which a  
19 jury could determine that the State has met its burden of  
20 proof Therefore, I respectfully deny the same.

21 Okay. And then also I ask you: With regard to the  
22 statement, both in pretrial and on the stand, it would  
23 appear that the -- any and all statements that were  
24 offered from the defendant seem to me to be post Miranda.  
25 I know there was a question about voluntariness in North

1 Carolina, but as the evidence actually was fleshed out,  
2 any and all statements that were entered on the record I  
3 believe were post Miranda after those had been given, both  
4 in writing and orally. Was I mistaken in any -- in any  
5 regard?

6 Mr. Hogge: No, Your Honor. I believe that his  
7 initial encounter on the side of the road that he didn't  
8 really say anything of substance; he just spoke with him.  
9 But there was no real statements that we put in evidence  
10 that's evidence of guilt.

11 The Court: That's the way I heard it come out as  
12 well. Does that -- was that your understanding?

13 Mr. Smith: It's all in North Carolina.

14 The Court: Yeah.

15 Mr. Smith: My contention was the first statement  
16 that he gives that the officer described of him giving two  
17 different versions of, one, he had not been in South  
18 Carolina but, two, he had been there but hadn't stole  
19 anything.

20 The Court: Yeah.

21 Mr. Smith: Then -- then without Miranda. From there  
22 he had -- if that's to be believed, then he had put  
23 himself in South Carolina. Therefore, that would have led  
24 to...

25 The Court: I understand. Okay. All right. Good

1 enough. I am not changing my ruling. I just didn't -- it  
2 was just generally an open question. Okay. At this  
3 point, Mr. Smith, do you intend to put any evidence into  
4 the record?

5 Mr. Smith: I do not, Your Honor.

6 The Court: Okay.

7 Mr. Smith: My client will not testify.

8 The Court: Okay. Okay. Any requests for charge?

9 Mr. Hogge: No, Your Honor.

10 Mr. Smith: Your reasonable doubt, is this the  
11 blended version?

12 The Court: I usually just charge firmly convinced,  
13 the Victor v. Nebraska. I noted in the -- I noted in  
14 opening you talked about the type of doubt that would  
15 cause -- which would cause a reasonable person to hesitate  
16 to act. Inasmuch as you have addressed that, then I'll  
17 use that as well.

18 Mr. Smith: Thank you, Your Honor.

19 The Court: All right. So the only thing that will  
20 be different from a standard charge is the voluntariness  
21 of the statement and also the defendant's failure to  
22 testify. Otherwise, it's going to be just a very, very  
23 standard vanilla charge. Okay?

24 With respect to the verdict form, I have two separate  
25 verdict forms, one for the shoplifting and one for the

1 failure to stop for the blue light, and obviously I'll  
2 give them a charge that they consider those independent of  
3 one another and they have to determine that the State has  
4 met its burden of proof with respect to each of the  
5 charges, independent of one another. Okay?

6 So when we come back, we'll be ready to go straight  
7 to argument and then to charge. Does the State waive  
8 opening?

9 Mr. Hogge: Waive opening? Yes, Your Honor.

10 The Court: Okay. All right. Okay. Good enough.  
11 So, defense, you'll open and the State will close. Okay?

12 Mr. Hogge: I believe he would have the last  
13 argument, Judge.

14 The Court: That's right.

15 Mr. Hogge: I will open on the law.

16 The Court: Gotcha. Gotcha. You're exactly right.  
17 Okay. Good enough. The State will -- the State will have  
18 first argument, and the defense will close. Good enough.  
19 All right. I'll see y'all at 1:30.

20 (Whereupon, a recess was taken form 12:22 p.m. to  
21 1:32 p.m.)

22 The Court: Counsel, anything before we begin closing  
23 statements? Here are the verdict forms. Each one is  
24 very, very similar. Bring the jury in, please.

25 (The jury entered the courtroom.)

1           The Court: Okay. Thank y'all for being back on  
2 time; I do appreciate it. We are going to move to closing  
3 argument in this case. The defense has elected not to put  
4 any evidence into the record which is the defendant's  
5 prerogative.

6           Before we get started, just an administrative matter.  
7 Ms. Davis, I've appointed you foreperson of the jury -  
8 congratulations - because of your demonstrated excellence  
9 as a juror thus far in this case. Now, the duties of a  
10 jury foreperson are fairly ill-defined. All I can tell  
11 you is that when you are in the jury room and the jury is  
12 conducting deliberations, it's your responsibility just to  
13 make sure that everybody has the opportunity to be heard.  
14 Okay? That everybody has a voice.

15           Sometimes in a group of 12 people there will be  
16 people who are very vocal and very open and then there  
17 will be people who perhaps are not as open and vocal. So  
18 it's your job just to make sure that everybody has the  
19 opportunity to be heard, not that they must be heard, but  
20 they have the opportunity to say what they think is  
21 appropriate. Otherwise, I can't tell you how to conduct  
22 jury deliberations because frankly I've never been on a  
23 jury, and I'm not allowed to go into the jury room while  
24 y'all are in deliberations or it would be a mistrial. So  
25 you'll organize it and make sure everybody has the

1 opportunity to be heard.

2 In closing arguments, I'll remind you that these  
3 arguments are not evidence. This is arguments from the  
4 respective attorneys, intended to persuade you to their  
5 respective positions. You will -- you have already heard  
6 all of the arguments that you'll hear in this matter.

7 Having said that, ladies and gentlemen, I'm going to turn  
8 it over to the State for its argument. Then the defense  
9 will close with the final argument. Mr. Hogge?

10 Mr. Hogge: May it please the Court?

11 The Court: Yes, sir.

12 Mr. Hogge: Madame Clerk, would you please dim the  
13 lights?

14 (A videotape was played in open court.)

15 CLOSING ARGUMENT BY MR. HOGGE

16 Hundred miles an hour at 10:00 in the morning while  
17 several other people are on that road. He could have  
18 killed somebody that day, and by the grace of God he  
19 didn't. He tried to outrun justice. He tried to outrun  
20 the law, but he can't outrun it today. I ask that you  
21 find that justice catches up with him today.

22 At this point all the defense can do is grasp for  
23 straws. There's going to be a lot of talk of: Where's  
24 the DNA? Where are the fingerprints? Why didn't Clover  
25 CSI swoop in and take some DNA samples from this and that?

1 The evidence in the case is clear. He was caught  
2 red-handed.

3 He confessed to the crime. Justice catches up with  
4 Mr. Dickey today, and I ask you that you find him guilty,  
5 that you find him guilty of failure to stop for a blue  
6 light and that you find him guilty of shoplifting. Thank  
7 you.

8 Mr. Smith: May it please the Court, Your Honor?

9 The Court: Yes, sir.

10 CLOSING ARGUMENT BY MR. SMITH

11 The type of doubt that would cause a reasonable  
12 person to hesitate to act. I would submit to you you've  
13 heard the testimony of two different individuals, two  
14 different individuals, one individual who you've seen on  
15 this video, drives a hundred miles an hour at 10 a.m. down  
16 public streets, as the solicitor says, trying to outrun  
17 justice, willing to risk their own life or anybody's life  
18 not to be caught. And then you heard testimony about  
19 Jerry Lee Dickey who is standing out by a car in Gastonia,  
20 not under arrest, approached by a police officer, says:  
21 Here's my ID; here's who I am.

22 Why -- if that's the same person, why wouldn't he  
23 have run? It's not the same person. Let's think back  
24 through the case. Let's think what they've actually  
25 shown.

1           There's a description that starts the case, and I  
2 asked what the description is because, you remember,  
3 you've got testimony that the description matched. The  
4 description was a black male wearing windbreaker pants,  
5 hat, gray shirt. That's it. Nothing about hairstyle or  
6 hair color, nothing about height, nothing about weight,  
7 nothing about anything else. That could be hundreds of  
8 people. So who does that match? That matches a lot of  
9 different people.

10           Now, you've been given that video and you've been  
11 given these pictures from up in Gastonia where James  
12 Dickey was. But what have you given -- what have you been  
13 given that proves Mr. Dickey was ever in South Carolina?  
14 The solicitor says I'm going to get up here and say we  
15 could have called in CSI; well, maybe we should have. But  
16 we don't even have to have CSI. Look at all these  
17 bottles, these packages, little bit of fingerprint dust.  
18 Look at them. Dusted.

19           If James Dickey really touched these, his print would  
20 be on them. Easy. Case closed. Well, in this case we  
21 don't need to do that. How about these items? Where are  
22 they? They want you to convict somebody of shoplifting  
23 and they don't bring in the items? You say, well, why  
24 would they need to do that? Well, okay, we heard  
25 testimony that these match or some items somewhere match

1 Family Dollar; that's it. Or where is the accounting from  
2 Family Dollar to show us that those items were actually  
3 missing from their inventory?

4 This is criminal court. Surely we would require the  
5 same diligence and proof that you've got to have to  
6 balance your checkbook. We just show up and have somebody  
7 say, "Yeah, well, I don't have the items, but, yeah, they  
8 match." Yeah, he matched the description.

9 Ladies and gentlemen, you've sworn an oath, each of  
10 you, to hold the State to its burden of proving this case  
11 beyond any and all reasonable doubt. Think about what  
12 would you like to have. You might like to have the  
13 fingerprints. You might like to have the video from the  
14 store; they say that doesn't exist.

15 We've got this video. Officer Neelands' car responds  
16 to Gastonia. Remember the supposed interview is going on.  
17 Why don't we turn on his mike since we can't find any  
18 other recording devices? Turn on his mike. If there's  
19 really a confession, let's hear it.

20 How about the written form? It's waiver of rights  
21 that was signed. It's just lost, too? There was one  
22 important thing when he was looking at the ID, State's  
23 Exhibit 2, the ID that James Dickey willingly handed over.  
24 He said, oh, yeah, James Dickey has a very distinctive  
25 white spot on his hair. So as I looked at him, I saw it

1 on his ID. That's never in the description. And if James  
2 Dickey was really trying to hide from the police, wouldn't  
3 he have tried to cover that up? James Dickey, as he's  
4 standing out there in Gastonia, doesn't have any hat on.  
5 They'll say there's a hat in the car; maybe that's what it  
6 was. Where is the test to that? Show he's touched the  
7 hat. Show those items have anything to do with James  
8 Dickey. I submit to you that they don't because he's not  
9 that individual.

10 The final piece that they show you is here. This is  
11 strange, State's Exhibit 13 and 14. Strange thing: Pants  
12 are tied up and that matches the description that's been  
13 given. Think about that for a moment. For that to be  
14 true, what the State is saying is that James Dickey came  
15 up shoplifting, ran out of the store, thought he had been  
16 seen or noticed by somebody when he left the store, drove  
17 up to North Carolina, drove a hundred miles an hour  
18 escaping any and all police to get up there, and then  
19 drove around awhile, parked, got out, sees police officers  
20 walk up to him and knowing that he has telltale signs of  
21 some crime on him doesn't take one step away?

22 Now, he may not have a good explanation for why this  
23 is on his legs, but there is no way that he had just used  
24 that to commit a crime and wouldn't then try to run from  
25 the police. And those are the type questions you'll ask,

1 the things that just don't seem right, the reasonable  
2 doubt for me and the type doubt that causes reasonable  
3 people to hesitate to act and that requires you as jurors  
4 under your oath to find James Dickey not guilty.

5 JURY CHARGE

6 All right. Ladies and gentlemen, the time has come  
7 for me to give you a charge on the law. Now, let me state  
8 before I get started something that I've already stated  
9 and that is it's painfully obvious that Mr. Dickey isn't  
10 here. The fact that he doesn't appear does not change the  
11 standard of proof for the State. It doesn't change the  
12 nature of this proceeding. It doesn't change the  
13 constitutional rights of the defendant. Therefore, it's  
14 not relevant to your consideration and you can't hold it  
15 against him when you begin your deliberations.

16 Also, you note that the defendant has failed to  
17 testify. Now, under our constitution all of us have the  
18 right to remain silent, and Mr. Dickey has the right to  
19 remain silent as well. That is a constitutional right  
20 which we all enjoy. Therefore, you cannot hold it against  
21 him that he failed to testify in this proceeding. As a  
22 matter of fact, that right against self- incrimination,  
23 the right to remain silent, is so sacred that you can't  
24 even discuss it in your deliberations in this matter.

25 Now, ladies and gentlemen, I told you at the very

1 beginning that you are the finders of fact. So you'll  
2 look at all the evidence and you'll determine what the  
3 facts are in the case. You will look at all of the  
4 testimony, everything that was admitted, and you'll  
5 determine what has weight and value and what doesn't have  
6 weight or value.

7         You will look and determine whether witnesses were  
8 credible or whether they weren't credible. You know from  
9 your own personal experience and your common sense that  
10 you can determine when somebody is credible by listening  
11 to what they have to say, listening to how they say it,  
12 gaging their facial expressions, their body language, by  
13 determining if they have something to gain or lose by  
14 consequence of their testimony, and you take that and you  
15 determine whether witnesses are credible.

16         You can take part of a witness's testimony and decide  
17 that it has great value and it's very credible and  
18 disregard the remainder or you may take all of it and  
19 determine that it's valuable or discount it all as  
20 invaluable and having no credibility. That's entirely up  
21 to you. Likewise, you take whatever piece of evidence  
22 that you receive and you place whatever value you think is  
23 appropriate on it, and from all of that you determine what  
24 the facts are.

25         Now, as I've told you before, no one can tell you

1 what the facts are; that is your sole and exclusive  
2 authority to do so. If I've said anything during this  
3 trial that gives you the impression that I have an opinion  
4 one way or the other, I will tell you now: Discard it and  
5 discount it, because I don't have an opinion.

6         However, understand that under your oath you must  
7 accept the law as I give it to you. My role is as the  
8 judge of the law which means that if you come into this  
9 courtroom with any preconceived notion or opinion about  
10 what the law is or about what it should be, I charge you  
11 now under your oath that you need to disregard that and  
12 accept the law as I give it to you today.

13         Now, there are two charges that are outstanding in  
14 this case. You have the failure to stop for a blue light  
15 and you have the shoplifting. You consider those  
16 independent of one another. When I give you verdict  
17 forms, I'm going to give you two separate verdict forms.  
18 So what you're going to do is you're going to determine on  
19 each count whether the State has met its burden of proving  
20 the defendant guilty beyond a reasonable doubt, and you're  
21 going to -- you're going to consider those independent of  
22 one another.

23         So, for example, if you were to decide that the  
24 defendant was not guilty of one indictment, then that  
25 doesn't necessarily mean that you would find him not

1 guilty of the other. Again, if you found him guilty on  
2 one, it doesn't mean you have to find him guilty on the  
3 other. You can decide what you think is appropriate based  
4 on your determination of the facts as applied to the law  
5 as I give it to you.

6 Now, I've bandied around this term and we've talked  
7 about reasonable doubt, and I'll tell you once again that  
8 the State has the burden of proving the defendant guilty  
9 beyond a reasonable doubt, has the burden of proving each  
10 element of the offense beyond a reasonable doubt. Now,  
11 the Supreme Court has defined a reasonable doubt as that  
12 type of doubt which would cause a reasonable person to  
13 hesitate to act.

14 However, I would tell you that from my perspective I  
15 think a clearer definition of reasonable doubt is proof  
16 that would leave you firmly convinced of the defendant's  
17 guilt. Now, understand that there's nothing that you can  
18 know in this world with absolute certainty and the law  
19 does not require that the State prove its case beyond any  
20 possible doubt. If, however, after your review of the  
21 evidence you are firmly convinced of the defendant's  
22 guilt, then under your oath you would find him guilty.  
23 However, do understand that if you, after your review of  
24 the evidence, you think there's a real possibility that he  
25 is not guilty, then under your oath likewise you would

1 find him not guilty of the offense.

2 Now, when you review evidence, you will have received  
3 evidence in two different categories. Okay? Direct  
4 evidence and circumstantial evidence. All right. Direct  
5 and circumstantial. So you've received some of both in  
6 this case. Direct evidence is that evidence which  
7 immediately establishes the fact to be proven.  
8 Circumstantial evidence is proof of a chain of facts or a  
9 combination of facts which taken together prove the main  
10 fact to be proven. Now, that's a pretty simple  
11 definition, but it's not always the easiest thing in the  
12 world to conceptualize. So I'm going to give you an  
13 example.

14 Let's say that one January evening you go to bed and  
15 you pass by your front window and you look across your  
16 front yard and there's no precipitation on the pavement or  
17 on your lawn. The very next day you wake up and you walk  
18 past that same window and you see a blanket of snow on the  
19 ground and you see footsteps which lead to your doorstep  
20 in the snow and then lead away. Now, in that set of  
21 circumstances you've got direct evidence that it snowed  
22 last night because it's immediately established by and  
23 through the snow on the ground. You can pick it up and  
24 touch it and taste it and smell it. It's right there.

25 But you have circumstantial evidence that somebody

1 either early that morning or late that night came to your  
2 door and walked away. You don't see that person. You  
3 can't touch them. You can't smell them, but you know as a  
4 consequence of the timing of that precipitation and the  
5 existence of the footprints in the snow that someone must  
6 have come to your door and gone -- and left.

7 Now, again, that is circumstantial evidence. The law  
8 does not prefer direct evidence over circumstantial  
9 evidence or it doesn't prefer circumstantial over direct  
10 evidence. It's just like any other piece of evidence that  
11 you receive in the trial. You decide what's important;  
12 you decide what has weight.

13 However, do understand that to the extent the State  
14 relies upon circumstantial evidence in its case, all of  
15 the circumstances must be consistent with each other and  
16 when taken together must point conclusively to the guilt  
17 of the accused beyond a reasonable doubt. If the  
18 circumstances merely portray reason -- merely portray the  
19 defendant's behavior as suspicious, then the proof has  
20 failed.

21 Now, ladies and gentlemen, one of the issues that is  
22 outstanding in this case is one of identification. The  
23 State must prove the identity of the defendant beyond a  
24 reasonable doubt, just like every other element of the  
25 offense.

1           Now, there has been testimony with respect to the  
2 identification of the witness. You determine whether,  
3 based on the evidence that you have received and the  
4 testimony that you received, whether the State has  
5 identified the defendant beyond a reasonable doubt as the  
6 person who committed this crime.

7           You also heard, ladies and gentlemen, the State  
8 introduce evidence of a statement given by the defendant.  
9 I made a threshold determination because the Court makes a  
10 threshold determination as to whether that statement by  
11 the defendant is admissible. Then you will determine  
12 whether that statement was voluntary beyond a reasonable  
13 doubt. You determine whether the statement that was given  
14 by the defendant was voluntary based on the circumstances  
15 under which it was elicited. You'll determine whether it  
16 was coerced in any way, shape, or form, whether it was  
17 given under stress or duress, and you'll look at it and  
18 determine whether it was voluntary.

19           You look at the totality of the circumstances. You  
20 look and see whether -- what was going on at the time of  
21 the arrest and you look at that in context with the  
22 defendant himself where his perception -- what his  
23 educational level may have been, also his mental  
24 abilities, his IQ, his background and environment, the  
25 place and length of any detention that may have taken

1 place and the nature of the questioning.

2 Ladies and gentlemen, you also determine whether, in  
3 fact, he was administered the rights, that is, the right  
4 to remain silent, the right that he had or, excuse me, the  
5 information that he had a right to have an attorney  
6 appointed to represent him. You carefully consider all of  
7 the surrounding circumstances before you give any weight  
8 to the statement.

9 Now, ladies and gentlemen, I'm going to define for  
10 you the two charges that are before the Court. Again, two  
11 separate and distinct charges. You consider them  
12 separately. Let's look first at failure to stop for a  
13 blue light. In order to prove this crime, the State must  
14 prove beyond a reasonable doubt that the defendant was  
15 driving a motorcycle, that the defendant was driving the  
16 motorcycle on a road, street, or highway of this state,  
17 that the defendant -- that the defendant was signaled to  
18 stop by a law enforcement vehicle by means of a siren or  
19 flashing light and that the defendant did not stop.

20 An intent to increase the speed of a vehicle or in  
21 some other manner avoid the pursuing law enforcement  
22 vehicle when signaled by a siren or flashing light may be  
23 considered as evidence of failure to stop for a blue  
24 light. However, it is merely an evidentiary fact to be  
25 taken into consideration by you, along with all the other

1 evidence in the case, and to be given that weight that you  
2 decide it should receive.

3 Ladies and gentlemen, the next charge is shoplifting.  
4 The defendant is charged with shoplifting. The State must  
5 prove beyond a reasonable doubt that the defendant took  
6 possession of, carried away, transferred from one person  
7 to another or from one area of a store to another area or  
8 caused to be carried away or transferred merchandise with  
9 the intent to deprive the merchant of the possession, use,  
10 or benefit of the merchandise without paying the full  
11 retail value.

12 Ladies and gentlemen, I'm going to send back to you  
13 in your jury deliberation room two verdict forms. The  
14 verdict forms are very simple. They have the caption of  
15 the case and then they say: We, the jury, unanimously  
16 find the defendant, Jerry Lee Dickey, as to charge of  
17 shoplifting on one and then as to the charge of failure to  
18 stop for a blue light on the other. And then you have two  
19 options: Not guilty or guilty.

20 If you find that the State has not met its burden of  
21 proof with respect to the charge of shoplifting or if you  
22 find that they've not met their burden of proof with  
23 respect to failure to stop for a blue light, you would  
24 check not guilty. However, if you feel that the State has  
25 met its burden of proof, then you would check guilty.

1 Again, consider them independent of one another.

2 It's important to note on this form that it says,  
3 "We, the jury, unanimously find the defendant." Your  
4 verdict must be unanimous. It can't be ten to two or  
5 eleven to one. You must all agree on the unanimous  
6 verdict that's handed down in this matter.

7 Also, recognize that your verdict must be based upon  
8 the evidence that was presented in trial and upon the law  
9 as I have charged it to you. It cannot be based on any  
10 bias, prejudice, any caprice, any emotion or anything  
11 outside of the trial of this case. It must be based on  
12 the evidence and the law as I've charged it to you.

13 Now, ladies and gentlemen, at this point what I'm  
14 going to ask you to do is return to your jury room. I  
15 don't want you to start deliberating yet because this is  
16 -- at this point the lawyers are going to have the  
17 opportunity to correct a misstatement of law that I may  
18 have made or ask me to add something in addition to what  
19 I've already charged. So if you would just give me a few  
20 minutes, I'm either going to send back to you these  
21 verdict forms, along with the evidence, and tell you to  
22 begin your deliberations or I'm going to bring you back  
23 out here and correct my charge. All right? You may  
24 retire to your jury room.

25 (The jury left open court at 2:02 p.m.)

1 Bailiff: The alternate?

2 The Court: I'm going to bring her back to chambers  
3 when and if we have to regroup. Any exceptions to the  
4 charge?

5 Mr. Hogge: None from the State.

6 Mr. Smith: None from the defense, Your Honor.

7 The Court: Okay. All right. Gentlemen, you tried  
8 an excellent case. Thank you very much. I do appreciate  
9 it. And what I will -- if y'all want to do an inventory  
10 of the evidence, I'm going to go ahead and ask the bailiff  
11 if you will, sir, to take these verdict forms back.  
12 Instruct them to begin their deliberations. If you would  
13 have the alternate, Ms. Perrill, just to come back to my  
14 office and I'll release her in chambers.

15 (Whereupon, the jury began deliberating at 2:03 p.m.)

16 (The jury entered the courtroom at 2:42 p.m.)

17 The Court: I have been advised that the jury has  
18 come to a verdict. Are we prepared to receive the  
19 verdict?

20 Mr. Hogge: Yes, Your Honor.

21 The Court: Bring the jury in, please, sir.

22 (The jury entered the courtroom at 2:43 p.m.)

23 The Court: All right. Ms. Davis, has the jury  
24 reached a unanimous verdict, ma'am?

25 Forelady: Yes, we have.



1 Mr. Hogge: No, Your Honor.

2 Mr. Smith: No, Your Honor.

3 The Court: Inasmuch as Mr. Dickey is not present, if  
4 we have the sentence sheets, if you would like to be heard  
5 with regard to sentencing I will sentence him and I will  
6 seal the same so that at a later date and time when he is  
7 picked up on a bench warrant the sentence can be published  
8 in his presence. So, Mr. Hogge, does the State have  
9 anything additional that bears -- to put on the record  
10 bearing upon sentencing?

11 Mr. Hogge: Yes, Your Honor. First of all, I'd like  
12 to make a Court's exhibit as to his prior convictions. He  
13 was -- a multitude of prior convictions out of North  
14 Carolina that were contingent upon the value of the  
15 property. In North Carolina he had a misdemeanor larceny  
16 and felony larceny. The determining factor is the amount  
17 of property. I just want to put that in as a Court's  
18 exhibit to note that this is his third or subsequent  
19 property crime.

20 (Court's Exhibit Number 3 was marked.)

21 The Court: Okay.

22 Mr. Hogge: At the appropriate time I would like to  
23 read his record and have Margaret Knight from Family  
24 Dollar speak.

25 The Court: Happy to hear his record now.

1 Mr. Hogge: Your Honor, Mr. Dickey is a convicted  
2 murderer. In 1992 he was convicted of murder in Gaston  
3 County. He was sentenced to 15 years. He was also  
4 convicted of larceny of a motor vehicle that same date.  
5 That happened May 13, 1992. And then in 1995 his rap  
6 sheet out of North Carolina notes that he escaped. About  
7 two years after that, the North Carolina Probation and  
8 Parole Department decided to parole him.

9 Then in 1999 he was convicted of misdemeanor larceny.  
10 2001 he was convicted of possession of a firearm by a  
11 felon. 2008, attempted larceny. 2009, felony larceny.  
12 2009, probation violation. 2009, common law robbery.  
13 2009, misdemeanor larceny. 2009, misdemeanor larceny.  
14 2010, misdemeanor larceny. 2011, attempted breaking and  
15 entering; misdemeanor larceny. 2013, trespass. Going out  
16 of order: 2009, misdemeanor larceny. 2010, misdemeanor  
17 larceny. Then in 2010 another misdemeanor larceny. 2013,  
18 misdemeanor larceny. 2007, attempted common law robbery.  
19 All these convictions came out of North Carolina.

20 The State in this case did not make an offer to  
21 Mr. Dickey. I felt that I could not give him the benefit  
22 of an offer being that he is a convicted murderer and he  
23 continues to do this with impunity. In North Carolina I  
24 believe they can step up, as we can, the sentence if he  
25 continues to do this again. I did not read what he was

1 charged with, only the disposition. He has other things  
2 that he was also charged with.

3 In this case he was taken into custody by a Gastonia  
4 police just because they had pending charges on him in  
5 that time. He fought extradition here in South Carolina.  
6 We had to get a governor's warrant on him, and eventually  
7 Gastonia dismissed their charges against him in Gastonia  
8 that they took him into custody for, and after that he  
9 committed another misdemeanor larceny in Gaston County.

10 I would also like the Court to hear from Ms. Knight  
11 from Family Dollar. She deals with Mr. Dickey very often.

12 The Court: Okay. Yes, ma'am. Ms. Knight, I'd be  
13 happy to hear from you.

14 Ms. Knight: Prior to him coming in and shoplifting  
15 in our store, we had issues with a gentleman and a woman,  
16 both with gray patches on their heads, stealing from both  
17 our store and the York store. I didn't know about putting  
18 the two and two together until he came on the news and my  
19 assistant manager said: These are the people that come  
20 into our store and have shoplifted continuously. At the  
21 York store, the York store manager tried to get his tag  
22 plate number and he tried to run over him.

23 The Court: Okay. Thank you, Ms. Knight. I  
24 appreciate it and I appreciate you being here. I'm sorry  
25 this happened to you.

1           Mr. Hogge: Your Honor, I would only add, in addition  
2 -- I have never asked for a consecutive sentence before.  
3 I would ask for a consecutive sentence of 13 years in this  
4 case.

5           The Court: All right. And just to be clear, for  
6 shoplifting third or greater property offense, that's a  
7 maximum of ten years and for failure to stop for a blue  
8 light is up to three years. Does everybody agree with  
9 that sentencing range?

10          Mr. Hogge: Yes, Your Honor.

11          Mr. Smith: I do, Your Honor.

12          The Court: Anything further from the State?

13          Mr. Hogge: Nothing further from the State.

14          The Court: Okay. Mr. Smith, anything you'd like to  
15 be heard on behalf of the defense?

16          Mr. Smith: Your Honor is aware, Mr. Dickey was here  
17 yesterday. I cannot explain his absence today. I was in  
18 contact with his aunt who transported him. She certainly  
19 expected him to be here today as well.

20                 He looked forward, as he has for some time, to coming  
21 to trial. He indicated he had hoped to testify. It sort  
22 of disappoints me that he didn't show up, but I'm sure if  
23 he were here he would tell Your Honor that given the first  
24 conviction that he got that he served time for that he's  
25 found extreme difficulty getting employed and that's led

1 him to some difficult choices and some difficult things  
2 that he had to do.

3 He does reside in North Carolina. The place he  
4 actually stays changes at times, but he did give me a  
5 contact, that he would show up any other time when I would  
6 send letters to him. He understood what he was facing  
7 today. He wanted the opportunity to have a trial. We're  
8 just appreciative -- we'd like to thank the Court for  
9 giving him that opportunity.

10 The Court: Appreciate that. I do want to mark the  
11 prior property record as a Court's exhibit. We'll do that  
12 afterwards just to make sure that it's in the record.

13 I do find that as a matter of fact that it is a third  
14 or greater property offense. Therefore, it is appropriate  
15 -- an appropriate enhancement under the law. I have  
16 executed the sentencing sheets and have indicated the  
17 sentence.

18 Madame Clerk, do you want me to seal the indictments  
19 as well as the sentence sheets?

20 The Clerk: Yes.

21 The Court: Okay. All right. I will do so. I have  
22 already issued a bench warrant for his arrest. I do not  
23 retain jurisdiction for the purposes of publishing the  
24 sentence. That can be done by the presiding circuit judge  
25 when he is brought back to trial. Thank you, gentlemen.

1 Good luck to you.

2 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF YORK ) SIXTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2015-GS-46-891, 892

STATE OF SOUTH CAROLINA )  
vs. ) TRANSCRIPT OF RECORD  
JERRY LEE DICKEY )

AUGUST 11, 2015  
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE PAUL BURCH

APPEARANCES:

MATTHEW HOGGE, ASSISTANT SOLICITOR  
YORK, SOUTH CAROLINA

ATTORNEY FOR THE STATE

PHILIP SMITH, ASSISTANT PUBLIC DEFENDER  
YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM  
16<sup>TH</sup> Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS

1 MR. HOGGE - May it please the Court. Before you  
2 is Jerry Dickey represented by Phil Smith. He's here  
3 before you; he was tried in his absence on May the 20<sup>th</sup> of  
4 this year in front of Judge Robin Stilwell. Judge Stilwell  
5 sentenced him and sealed that sentence. Today we're here  
6 just to unseal that sentence.

7 THE COURT - All right, Mr. Jerry Lee Dickey,  
8 sealed sentence on May the 20<sup>th</sup>, 2015. Indictment for  
9 failure to stop for a blue light, verdict guilty,  
10 Indictment for shoplifting, enhanced, verdict guilty, two  
11 sentencing sheets, failure to stop for a blue light  
12 sentence of Judge Stilwell, says that you be confined to  
13 State Department of Corrections for a period of three  
14 years; you will be given credit for time served, no  
15 specified amount; it's just checked. Department of  
16 Corrections will determine that. On the shoplifting  
17 enhancement, the sentence of the Court is that you be  
18 confined to the State Department of Corrections for a  
19 period of ten years. That's concurrent also with credit  
20 for time served.

21 MR. HOGGE - That's all from the State, Your  
22 Honor.

23 THE COURT - It's concurrent.

1           MR. SMITH - Your Honor, my client's inquiring, on  
2 the shoplifting, does it indicate credit for the time he's  
3 served as well?

4           THE COURT - It does, but there's no specified  
5 amount. So it'll be left up to Department of Corrections  
6 to analyze it and see what it's -- it may be helpful if  
7 you'll get that -- the documentation provided to the  
8 clerk's office.

9           MR. SMITH - Thank you, Your Honor.

10           (END OF TRANSCRIPT)

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## C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 6 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Jerry Lee Dickey, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on August 11, 2015 and provided by me this the 21<sup>st</sup> day of Sept., 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M  
Official Court Reporter,  
Certified Verbatim Reporter, In and  
for the State of South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 Jerry Lee Dickey #365050 )  
 Full name and prison number (if any) of Applicant. )  
 v. )  
 State of South Carolina )

IN THE COURT OF COMMON PLEAS  
 YORK COUNTY, SC  
 DAVID HAMILTON  
 S.C. C.P. & GS  
 2016 JUN 16 PM 2:00  
 FILED-RECEIVED  
 2016CP46-1813  
 APPLICATION FOR  
 POST-CONVICTION RELIEF  
 Submitted with 18 pages of  
 Documentations

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC WATEREE CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence York County, General Sessions
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Shoplifting enhancement # 2015GS4600891 (N/W: 2014A4620100203) Date of offense 08/28/2014 S.C. Code § 16-13-110) CDR Code # 2877
  - (b) Fail to stop for a blue light - # 2015GS4600892 (N/W 2014A4620100204 Date of offense 08/28/14 S.C. Code § 56-5-750) CDR# 0065
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 10 yrs Shoplifting Enhancement
  - (b) 3 yrs Concurrent Fail to stop for a blue light

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. court of appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. \_\_\_\_\_ I waived Direct appeal, Court  
ii. \_\_\_\_\_ Dismissed appeal

iii. \_\_\_\_\_

(c) the date of each such result:

i. 05/20/2016

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

"Double Jeopardy" see attached documents

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out

in (10):

- (a) SEE ATTACHED DOCUMENTS
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

\_\_\_\_\_

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO Arraignment Plea
- (b) your trial, if any? YES Assistant Public Defender "Phillip Smith"
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Mr. John Strom
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Phillip Smith Public Defender "York County S.C."
  - ii. John Strom "Columbia S.C."
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Phillip Smith "Trial"
  - ii. \_\_\_\_\_
  - iii. John Strom "Appeal"

19. State clearly the relief you seek in filing this application:

That Double Jeopardy be honored - See attached documents  
vacate of conviction on 10 yr sentence  
for shoplifting

20. Are you now under sentence from any other court that you have not challenged?

NO

PLEASE SEND A COPY OF ALL DOCUMENTATIONS BACK TO APPLICANT ALONG WITH COPY OF PCR APPLICATION

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

Jerry Dickey

I, Jerry Dickey, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jerry Dickey  
Applicant

SWORN or affirmed to and subscribed before me this  
13<sup>th</sup> day of June, 2016.

Pamela D Hatfield  
Notary Public

My Commission Expires: 3/15/2021

STATE OF SOUTH CAROLINA )  
County of Sumter )

VERIFICATION

I, Terry Dickey, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terry Dickey

SWORN to and subscribed before me this 13th day of June, 2014

Parmeda D. Hatfield (L.S.)  
Notary Public

My Commission Expires: 3/15/2021

**Double Jeopardy Issue:**

SC Conviction: Shoplifting (S.C. Code Ann. § 16-13-110)

- Elements:
- (1) carrying away/taking any merchandise
  - (2) with intent of depriving merchant of benefit
  - (3) without paying full retail value

Possible additional or supplemental element: larceny (taking away of someone else's property with the intent to steal)

NC Conviction: Possession of Stolen Goods (N.C.G.S.A. § 14-71.1)

- Elements:
- (1) defendant was in possession of personal property
  - (2) personal property has been stolen;
  - (3) possessor knew or had reasonable grounds to believe that property was stolen; and
  - (4) possessor acted with dishonest purpose.

**Defense Attorney did not preserve double jeopardy argument for appellate review:**

A claim of double jeopardy is not a question of subject matter jurisdiction and thus may not be raised for the first time on appeal. *See Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 322 S.C. 127, 132, 470 S.E.2d 373, 376 (1996) (double jeopardy claim may not be raised for the first time on appeal).

**Excerpt from unfinished initial brief:**

While admittedly unpreserved for this Court's review, Appellant appears to have suffered a double jeopardy violation. Possession of stolen goods in North Carolina is defined as:

If any person shall possess any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken, . . . and such possessor shall be punished as one convicted of larceny.

N.C.G.S.A. § 14-71.1. The elements of crime of possession of stolen property are: (1) possession of personal property; (2) personal property has been stolen; (3) possessor knew or had reasonable grounds to believe that property was stolen; and (4) possessor acted with dishonest purpose.. *State v. Wilson*, 1992, 416 S.E.2d 603 (NC Ct. App. 1992).

South Carolina's shoplifting statute holds that:

A person is guilty of shoplifting if he 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. . .

S.C. Code Ann. § 16-13-110(A)(1); see *State v. Shaw*, 328 S.C. 454, 456, 492 S.E.2d 402, 403-404 (Ct. App. 1997) (a person is guilty of shoplifting if the person - among other possible actions - takes, carries away any merchandise with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value)

“Larceny is implicit within the crime of shoplifting.” *State v. Moore*, 374 S.C. 468, 649 S.E.2d 84 (Ct. App. 2007). Larceny is the trespassory taking and carrying away of good of

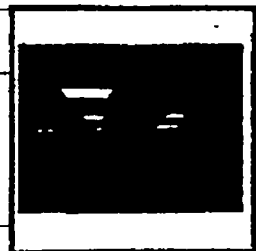
another against the owner's will and without the owner's consent. *State v. Al-Amin*, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003)

Under the "same elements" test for a double jeopardy violation, North Carolina's possession of stolen goods statute does not require proof of "an additional fact" beyond the elements necessary to prove the offense of shoplifting under South Carolina law. *Blockburger v. U.S.*, 248 U.S. 299, 52 S.Ct. 180 (1932); *see also State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997).

Thus, Appellant's North Carolina conviction for possession of stolen goods and later his conviction in our state for shoplifting constituted successive prosecutions and multiple punishments for the same offense in violation of double jeopardy protections.

0011000000

File No. <b>14CR 060013</b>		Law Enforcement Case No. 2014-63985 GASTONIA POLICE DEPARTMENT	LID No.	SID No.	FBI No. 59405NA9
<b>MAGISTRATE'S ORDER</b>		<b>STATE OF NORTH CAROLINA</b>		In The General Court Of Justice District Court Division	
Offense I F-POSS STOLEN GOODS/PROP (F)		GASTON County			
THE STATE OF NORTH CAROLINA VS.					
Name And Address Of Defendant JERRY LEE DICKEY					
GASTONIA GASTON COUNTY					
Race B	Sex M	Date Of Birth	Age		
Social Security No.		Drivers License No. & State			
Name Of Defendant's Employer					
Offense Code(s) I 2341		Offense In Violation Of G.S. I 14-71.1			
Date Of Offense 08/28/2014					
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) 08/28/2014 5578JPH					
Arresting Officer (Name, Address Or Department) S W MARTIN GASTONIA POLICE DEPARTMENT 200 EAST LONG AVE GASTONIA NC 28053 GASTON COUNTY (704) 866-6890					
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.) FAMILY DOLLAR STORES, INC Contact: MARGARET KNIGHT 132 S MAIN ST CLOVER SC 29710 YORK COUNTY (803) 222-7281					
This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.					
<input checked="" type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued 08/28/2014	Signature C M WEST		Location Of Court Gaston County Courthouse; 003A 325 NORTH MARJETTA ST GASTONIA, NC 28052
			<input checked="" type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Court Date 08/29/2014 Court Time 1:30 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM



02/28/2016 15:20 FAX

<b>STATE OF NORTH CAROLINA</b>	File No. <b>14CRS060013</b>
GASTON County	In The General Court Of Justice Superior Court Division

<b>STATE VERSUS</b>		<b>INDICTMENT</b>
Name And Address Of Defendant JERRY LEE DICKEY		
GASTONIA	NC 28052	
Race B	Sex M Date Of Birth	
<input type="checkbox"/> This is a superseding indictment.		

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. POSS STOLEN GOODS/PROP (F)	08/28/2014	14-71.1	H
II.			

I. The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did possess cleaning supplies, 2 quarts of motor oil, 3 packs of shirts, and 8 packs of underwear, the personal property of Family Dollar Stores, Inc., having a value less than \$50.00 in U.S. Currency which property was stolen property, knowing and having reasonable grounds to believe the property to have been feloniously stolen, taken, and carried away.

II. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

Signature Of Prosecutor  
*[Handwritten Signature]*

WITNESSES	
<input type="checkbox"/> S.W. MARTIN, GASTONIA POLICE DEPT.	<input type="checkbox"/> OCA#: 14-63985
<input type="checkbox"/> C. CLINCH, GASTONIA POLICE DEPT.	<input type="checkbox"/>
<input checked="" type="checkbox"/> T. KISTLER, GASTONIA POLICE DEPT.	<input type="checkbox"/>
<input type="checkbox"/> B. REESE, GASTONIA POLICE DEPT.	<input type="checkbox"/>

The Witnesses marked "X" were sworn by the undersigned Foreperson of the Grand Jury and, after hearing testimony, this Bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL.

Date <b>9/15/14</b>	Signature Of Grand Jury Foreperson <i>[Handwritten Signature]</i>
---------------------	--

STATE OF NORTH CAROLINA  
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION I  
FILE NO. 14CR560073

2014 SEP 26 P 3:53

GASTON COUNTY, C.S.C.

STATE OF NORTH CAROLINA )

BY..... )

versus )

MOTION TO DISMISS )

JERRY LEE DICKEY,  
Defendant, )

NOW COMES the Defendant, by and through his undersigned attorney, and respectfully moves this Honorable Court to direct that the above numbered indictment be dismissed.

In support of said Motion, the Defendant shows unto the Court the following:

1. On August 28, 2014, the Defendant was charged with the crime of felonious Possession of Stolen Goods. Said goods being items allegedly stolen from a Family Dollar Store located in Clover South Carolina, and valued at \$34.76;
2. That, at best, the items allegedly stolen in South Carolina were as the result of a potential misdemeanor offense;
3. That in order to support a charge of felonious Possession of Stolen Goods, the State must establish that the alleged stolen goods were felonious stolen;
4. That the Defendant was charged with shoplifting, a misdemeanor in North Carolina, as a result of the alleged larceny in South Carolina (see attached);
5. That under the circumstances, original jurisdiction for a misdemeanor is in the District Court, and not in the Superior Court.

WHEREFORE, the Defendant prays that an Order be issued dismissing the above numbered bill of indictment.

Respectfully submitted,

This the 26<sup>th</sup> day of September, 2014.

  
 Kellum Morris  
 Public Defender  
 325 N. Marietta Street  
 Gastonia, NC 28052  
 (704) 852-3220

STATE OF NORTH CAROLINA

File No.

14CRS060013

Gaston

County

In The General Court Of Justice

District

Superior Court Division

STATE VERSUS

Defendant Name

JERRY LEE DICKEY

2014 OCT 27 DISMISSAL  
NOTICE OF REINSTATEMENT  
(For Offenses Committed On Or After Dec. 1, 2013)

G.S. 15A-302(e), -831, -832

File Number	Count No.(s)	Offense(s)
14CRS060013	51	POSS STOLEN GOODS/PROP (F)

DISMISSAL

NOTE: Recall all outstanding Orders For Arrest in a dismissed case.

The undersigned prosecutor enters a dismissal to the above charge(s) and assigns the following reasons:

- 1. No crime is charged.
- 2. There is insufficient evidence to warrant prosecution for the following reasons:
- 3. Defendant has agreed to plead guilty to the following charges:

in exchange for a dismissal of the following charges:

- 4. Other. (specify)  See additional information on reverse.  
Plead guilty in 14CR8721

A jury has not been impaneled nor has evidence been introduced. (If a jury has been impaneled, or if evidence has been introduced, modify this sentence accordingly.)

DISMISSAL WITH LEAVE

The undersigned prosecutor enters a dismissal with leave to the above charge(s) and assigns the following reasons:

- 1. The defendant failed to appear for a criminal proceeding at which the defendant's attendance was required and the prosecutor believes that the defendant cannot readily be found.
- 2. The defendant has been indicted and cannot readily be found to be served with an Order For Arrest.
- 3. The defendant has entered into a deferred prosecution agreement with the prosecutor in accordance with the provisions of Article 82 of G.S. Chapter 15A.
- 4. Other. (specify)  See additional information on reverse.

NOTE: This form must be completed and signed by the prosecutor when the dismissal occurs out of court. The better practice is for the prosecutor to complete and sign the form when the charges are orally dismissed in open court.

Also, in accordance with G.S. 15A-831(a1), unless the defendant or the defendant's attorney has been otherwise notified by the prosecutor, a written dismissal of the charges against the defendant must be served in the same manner prescribed for motions under G.S. 15A-851. If the record reflects that the defendant is in custody, the written dismissal shall also be served by the prosecutor on the chief officer of the custodial facility where the defendant is in custody.

Date 10/27/2014	Name Of Prosecutor (Type Or Print) Beth Stockwell	Signature Of Prosecutor 
--------------------	--	---

REINSTATEMENT

This case, having previously been dismissed with leave as indicated above, is now reinstated for trial.

Date	Name Of Prosecutor (Type Or Print)	Signature Of Prosecutor
------	------------------------------------	-------------------------

(Over)

**STATE OF NORTH CAROLINA**  
 GASTON County  
 File No. 14 Q 8721  
 In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**  
 Name And Address Of Defendant  
 JERRY LEE DICKEY  
 GASTONIA NC 28052  
 Race B Sex M Date Of Birth

**MISDEMEANOR  
 STATEMENT OF CHARGES**  
 G.S. 18A-922

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
POSS STOLEN GOODS/PROP (M)	08/28/2014	14-71.1	1

I, the undersigned, upon information and belief allege that on or about the date(s) of offense shown and in the county named above, the defendant named above did unlawfully and willfully

possess cleaning supplies, 2 quarts of motor oil, 3 packs of shirts, and 8 packs of underwear, the personal property of Family Dollar Stores, Inc., having a value less than \$1,000.00 in U.S. Currency which property was stolen property, knowing and having reasonable grounds to believe the property to have been stolen, taken, and carried away.

*The defendant waives any and all notice requirements.*

*X Jerry Dickey*  
 Defendant

*10/27/14*  
 Date

Date 10/23/2014 Name Of Prosecutor (Print Or Type) Beth E. Stockwell Signature Of Prosecutor

**STATE OF NORTH CAROLINA** File No. 14CR8721

GASTON County In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**

Name Of Defendant: Cherry Dickey

Race: Black Sex: Male Date Of Birth: \_\_\_\_\_ Social Security No.: \_\_\_\_\_

**JUDGMENT/ORDER OR OTHER DISPOSITION**

Attorney For State: Beth Stockwell  Def. Found Not Indigent  Def. Waived Attorney  Appointed  Retained

Attorney For Defendant: Rocky Lutay

Offense: (m) possession stolen goods

NOTE: (For use in recording of criminal conviction records under S.S.A.)

**PLEA** **VERDICT** **PRIOR CONVICTIONS**

Guilty/Responsible  No Contest  Guilty/Responsible 10-27-14 MISD. CLASS:  1  2  3  
 Guilty/Responsible  No Contest  Guilty/Responsible \_\_\_\_\_ MISD. CLASS:  1  2  3  
 Not Guilty/Not Responsible  Not Guilty/Not Responsible \_\_\_\_\_

Pay a fine of \$ \_\_\_\_\_ and cost.

Be imprisoned for a term of 61 days in the custody of  Gaston County Jail  NC DAC  Mendenhall

Confinement Program. Credit for 61 days pretrial confinement.

The sentence shall run at the expiration of the sentence imposed in file number \_\_\_\_\_

Execution of the sentence is suspended and the defendant is placed on unsupervised probation for \_\_\_\_\_ months, subject to the following conditions:

- Pay a fine of \$ \_\_\_\_\_ and cost.  \$20 installment fee  \$60 appointment fee  Other: \_\_\_\_\_
- Pay restitution in the amount of \$ \_\_\_\_\_. See attached Restitution Worksheet, AOC-CR-611.
- All monies to be paid on or by \_\_\_\_\_
- Not operate a motor vehicle unless properly licensed by DMV.
- Complete \_\_\_\_\_ hours of community service within \_\_\_\_\_ days and pay the fee.
- Obtain a substance abuse assessment and comply with any recommended treatment.
- Not to consume, possess, control any controlled substance/alcohol unless prescribed by a licensed physician.
- Not to be found on or about the premises of \_\_\_\_\_
- Not to assault, threaten, harass, bother, communicate with and/or be in the presence of \_\_\_\_\_
- Violate no laws of the state.
- Other: Credit for time served. All monies are to be made a civil judgment (\$180 court costs, \$20 installment fee, and \$60 appointment fee)

It is ORDERED that this:  Judgment is continued upon payment of costs.  case be consolidated for judgment with \_\_\_\_\_

FILED  
 2016 FEB 29 PM 1:13  
 GASTON CO. C.S. CLERK

Date: 10-27-2014 Name Of Presiding Judge (Type Or Print): Pennie M. Thrower Signature Of Presiding Judge: [Signature]

**APPEAL ENTRIES**

The defendant gives notice of appeal from the judgment of the District Court to the Superior Court.

The current pretrial release order is modified as follows: .

The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

Date: \_\_\_\_\_ Name Of Presiding Judge (Type Or Print): \_\_\_\_\_ Signature Of Presiding Judge: \_\_\_\_\_

jail w/ 10/27/14



350 GASTON  
 101515 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--CONVICTED  
 CRITERIA- NAME: DICKEY, JER? R=RACE: S=SEX: DOB:

DICKEY, JERRY, LEE \* S=M R=B DOB= 12CR 060158  
 AKA DICKIE, JERRY, LEE @  
 OF:072712 (M) MISDEMEANOR LARCENY APPEALED TO S.C. 091412 CR  
 SPEC. COND: \*APPEAL 9/14/12\*; SERVE 120DAYS ACTIVE DAC, SENTENCE TO  
 OF:072712 (M) SECOND DEGREE TRESPASS APPEALED TO S.C. 091412 CR  
 CONSOLIDATED FOR JUDGMENT WITH 12CR 060158 01  
 SPEC. COND: \*APPEAL 9/14/12\*  
 OF:072712 (M) MISDEMEANOR LARCENY GUILTY 031813 CRS  
 FINE/COSTS\$ .00 REST\$ SENT:069- D TYPE:A PROB:NONE  
 SPEC. COND: CREDIT TIME SERVED; CIVIL JUDGMENT FOR ATTORNEY FEE O  
 OF:072712 (M) SECOND DEGREE TRESPASS GUILTY 031813 CRS  
 CONSOLIDATED FOR JUDGMENT WITH 12CRS060158 51  
 -+- -+- -+-  
 DICKEY, JERRY, LEE \* S=M R=B DOB= + 14CR 060035  
 AKA DICKIE, JERRY, LEE @  
 OF:082814 (F) EXTRADITION/FUGITIVE OTH STATE WAIVER EXTRADITION 092914 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

Solicitor Matthew Hogge stated  
 to the Honorable Judge Robin Stilwell  
 that I fought extradition according  
 to trial transcript page 126 line 5.  
 This document show that's far from the  
 truth. I signed waiver, South Carolina was  
 notified on the date of signing, but failed  
 to extradite me back. Which allowed  
 North Carolina to hand down the first  
 judgement.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2016-CP-46-1813
Jerry Lee Dickey,	)	
S.C.D.C. No. 356505,	)	
	)	
Applicant,	)	<b>RETURN</b>
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed June 16, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the March 2015 term of the York County Grand Jury for shoplifting (enhanced) (2015-GS-46-891) and failure to stop for a blue light (2015-GS-46-892). Applicant was represented by Phil Smith, Esquire. On May 20, 2015, Applicant was tried in his absence before the Honorable Robin Stilwell and a jury and was subsequently found guilty as indicted. Judge Stilwell sentenced Applicant and sealed the sentence. Applicant returned to York County and was brought before the Honorable Paul Burch on August 11, 2015 to have the sentence published. Applicant was sentenced to imprisonment for ten years for the shoplifting charge and for three years for failure to stop for a blue light. Both sentences were to run concurrently.

Applicant filed a notice of appeal. By an order filed May 20, 2016, Applicant moved to withdraw his appeal. The Remittitur was sent June 8, 2016.

## II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. Failure to object to and preserve double jeopardy issue

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the sentencing transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at

117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

*[Signature block on following page]*

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

December 29, 2016



State of South Carolina.,	)	In the Common Pleas
	)	Court of York
	)	
	)	Case No. 2016-CP-46-01813
County of York.	)	

Jerry Lee Dickey.,	)	
	)	
Applicant.,	)	Transcript of Record
	)	
State of South Carolina.,	)	
	)	
Respondent.	)	

January 31, 2017  
York, South Carolina

B E F O R E:

The Honorable Mark Hayes, judge.

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

Mr. Nathan James Sheldon  
The Law Office of Nathan J. Shelton, LLC  
PO Box 36682  
Rock Hill, South Carolina 29732  
nathan@nathansheldonlaw.com  
(803) 909-9343  
Attorney for the Applicant

Mr. Justin James Hunter  
South Carolina Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549  
jhunter2@scag.gov  
(803) 734-3737  
Attorney for the Respondent

Wanda S. Nelson, CVR-M  
Official Court Reporter  
To The Honorable John C. Hayes, III  
Sixteenth Judicial Circuit  
Union and York Counties

**ORIGINAL**

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Jerry Dickey	Mr. Shelton . . . . .	P.6-10
	Mr. Hunter . . . . .	P.11
Phillip Smith	Mr. Shelton . . . . .	P.12-17
	Mr. Hunter . . . . .	P.17-20
John Strom	Mr. Shelton . . . . .	P.21-23

Court Reporter's Certificate Page . . . . . P.32

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I N D E X

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

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1 (COURT IN SESSION, ON THE RECORD AT 09:47 AM.)

2 (JERRY LEE DICKEY, APPLICANT, ENTERS COURTROOM.)

3 MR. HUNTER: May it please the court, your Honor.

4 The next case is Jerry Lee Dickey versus state of  
5 South Carolina. It's 2016-CP-46-1813.

6 Your Honor, he was indicted in March, 2015 for  
7 shoplifting and failure to stop for a blue light. He was  
8 represented by Phil Smith. And, your Honor, you have in  
9 there some related North Carolina court documents, and I'm  
10 just gonna go ahead and give the procedural history for  
11 North Carolina and South Carolina just so you have a full  
12 picture.

13 He was arrested August 28th, 2014 in North Carolina  
14 after a car chase that started in South Carolina.  
15 September 15th, 2014 he was indicted in North Carolina for  
16 a possession of stolen goods. October 27th, 2014 he pled  
17 in North Carolina to possession of stolen goods; he  
18 received six-one days time served. On that same day an  
19 arrest warrant for shoplifting in South Carolina was  
20 delivered to him. Then on March 26th, 2015 he was True  
21 Billed indicated in South Carolina for shoplifting and  
22 failure to stop for a blue light.

23 May 20th, 2015 he was tried in his absence before  
24 Judge Stilwell for those two charges and found guilty and  
25 the shoplifting was an enhancement. On August 11th, 2015

1 he appeared back in this jurisdiction and the sentence was  
2 published by Judge Burch. He was sentenced to ten years on  
3 shoplifting enhanced; three years for failure to stop for a  
4 blue light.

5 He filed this current action on June 16th, 2016. He's  
6 present today represented by Mr. Nathan Shelton.

7 MR. SHELTON: Thank you, your Honor. May it please the  
8 Court. We are ready to proceed if the Court is.

9 THE COURT: Yes, sir.

10 MR. SHELTON: We would call Jerry Dickey to the stand.

11 MADAM CLERK: Mr. Dickey, if I can have you stop here  
12 to be sworn. If I can have you place your left hand on the  
13 Bible and raise your right as far as you can.

14 (WHEREUPON, JERRY LEE DICKEY,  
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 MADAM CLERK: Thank you. Have a seat. Watch your  
17 step up.

18 THE COURT: Sir, the lady right in front of you is a  
19 court reporter, she's taking down everything that's said so  
20 please speak up loud enough so that she can hear you and  
21 also your lawyer who is on the opposite side of the  
22 courtroom.

23 MR. DICKEY: Yes, your Honor.

24 THE COURT: Thank you.

25 MR. SHELTON: Thank you, your Honor. May it please

JERRY DICKEY: DIRECT BY MR. SHELDON

-6-

1 the Court.

2 DIRECT EXAMINATION

3 JERRY LEE DICKEY BY MR. SHELDON:

4 Q. Mr. Dickey, please state your name for the record.

5 A. Jerry Lee Dickey.

6 Q. And are you currently incarcerated in South Carolina  
7 Department of Corrections?

8 A. Yes, sir, I am.

9 Q. And you received a ten-year-sentence on a shoplifting  
10 enhanced; is that right?

11 A. Yes, sir.

12 Q. And you're here today for a PCR action?

13 A. Yes, sir.

14 Q. And do you understand that the court can't give any  
15 sentence reduction or anything; that the only remedy  
16 available to the court is to vacate your sentence and  
17 remand it back to trial?

18 A. Yes, sir.

19 Q. If he chooses. If your PCR is granted. Do you  
20 understand?

21 A. Yes, sir.

22 Q. And knowing all that you want to go forward, correct?

23 A. Yes, sir.

24 Q. All right, Mr. Dickey, describe just briefly the  
25 facts of this case that brought -- that brings you -- that

1 put you in SCDC. What happened?

2 A. I was tried in my absence and given ten years  
3 three years run concurrent and sent to SCDC.

4 Q. And the judge has the transcript. The underlying  
5 facts that bring you here, you're accused of shoplifting,  
6 where were you accused of shoplifting?

7 A. At Family Dollar.

8 Q. And where was the Family Dollar at?

9 A. It was located in Clover.

10 Q. And ultimately --

11 A. South Carolina.

12 Q. Ultimately where were you arrested?

13 A. In North Carolina.

14 Q. Okay. And were you charged criminally in North  
15 Carolina?

16 A. Yes, sir, I was.

17 Q. What were you charged with in North Carolina?

18 A. Possession of stolen goods.

19 Q. Okay. So you get a shoplifting charge from Clover,  
20 South Carolina; possession of stolen goods from North  
21 Carolina; is that right?

22 A. Yes, sir.

23 Q. Okay. Were you represented by Mr. Smith?

24 A. Yes, sir.

25 Q. And did he represent you throughout the entire

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1 process?

2 A. Yes, sir.

3 Q. Did you have ample time to meet with Mr. Smith?

4 A. Yes, sir.

5 Q. And were you in jail or were you out on bond?

6 A. I was out on bond.

7 Q. How would Mr. Smith go about getting in touch with  
8 you?

9 A. He would contact my aunt and she would contact me.

10 Q. Were you living with her throughout this process?

11 A. Yes, sir.

12 Q. Where were y'all living at?

13 A. Charlotte, North Carolina.

14 Q. Okay. So, ultimately you end up getting tried in  
15 your absence. Tell - Talk to us a little bit about the  
16 week of court. Were you noticed to be in trial that week?

17 A. Yes, I was and I came. He notified me and told me to  
18 be in court May the 19th, 2014 -- 2015 and I appeared in  
19 court.

20 Q. And when was -- Was that -- That was a Tuesday?

21 A. I believe so, sir.

22 Q. When were you -- So if May 19th you appeared in court  
23 what conversation did you have with Mr. -- Were you tried  
24 on May 19th?

25 A. No, sir.

1 Q. What conversation did you have with Mr. Smith that  
2 day?

3 A. He instructed me that I can leave and he would  
4 contact me. He said he had - First he said he had to find  
5 out what was going on and then he instructed that I can  
6 leave and that he would contact.

7 Q. Ultimately when were you tried on the shoplifting  
8 charge?

9 A. On the 20th of May 2014.

10 Q. Is that the very next day?

11 A. The very next day.

12 Q. Why weren't you there on the 20th?

13 A. I wasn't contacted, sir.

14 Q. Was this case in a trial posture the entire time?

15 At any point in time did you go to your lawyer and say  
16 I want to plead guilty?

17 A. I ask him about a plea. I did ask him about a plea.  
18 He stated that the solicitor wasn't offering me a plea due  
19 to my record out of North Carolina.

20 Q. So, basically you wanted to go to trial?

21 A. Yeah, pretty much.

22 Q. And were you gonna testify at trial?

23 A. Yes I was, sir.

24 Q. And the week of trial you show for court but the day  
25 of trial you're not there; is that right?

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1 A. True.

2 Q. You said your trial was May 20th of 2015. When were  
3 you convicted on the possession of stolen goods from North  
4 Carolina?

5 A. October the 27 of 2014.

6 Q. So, essentially seven months prior to the trial in  
7 South Carolina you're convicted of possession of stolen  
8 goods in North Carolina; is that right?

9 A. Yes, sir.

10 Q. What goods were you convicted of possessing?

11 A. The same goods that was from the Family Dollar Store  
12 in Clover, South Carolina.

13 Q. So the goods from the shoplifting charge in Clover  
14 you end up pleading guilty to in North Carolina possessing  
15 those goods?

16 A. Yes, sir.

17 Q. Were you convicted of a misdemeanor?

18 A. Yes, sir.

19 Q. A North Carolina misdemeanor; is that right?

20 A. Yes, sir.

21 Q. Okay.

22 MR. SHELTON: Judge, I don't have any more questions  
23 for this witness.

24 MR. HUNTER: Just a few questions, your Honor.

25

CROSS-EXAMINATION

JERRY LEE DICKEY: CROSS BY MR. HUNTER

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1 JERRY LEE DICKEY BY MR. HUNTER:

2 A. Mr. Dickey, you showed up to court, I believe, Tuesday  
3 or Tuesday, May 19th?

4 A. Yes, sir.

5 Q. And Mr. Smith told you you could go home?

6 A. Yes, sir.

7 Q. Was your aunt there that day?

8 A. Yes, sir.

9 Q. Do you know if she was there the next day?

10 A. No, sir.

11 Q. So she wasn't there the day of your trial?

12 A. Not that I know of.

13 Q. Okay. Did Mr. Smith try to contact you after your  
14 trial had concluded?

15 A. To my understanding the bondsman contacted my aunt.

16 Q. After your trial?

17 A. After trial.

18 MR. HUNTER: That's all the questions I have.

19 THE COURT: Any redirect limited to what he went into?

20 MR. SHELTON: No. No, sir, your Honor.

21 THE COURT: Let me ask you a question.

22 Do I have it correct that he pled in North Carolina or  
23 he was convicted in North Carolina?

24 MR. SHELTON: It was a -

25 THE WITNESS: It was a plea.

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1 MR. SHELTON: --- a -- Yeah. Yes, your Honor.  
2 Plead, I think, sixty-one days to time served is what the  
3 plea was.

4 THE COURT: All right. Thank you, sir, you have step  
5 down. Watch your step please.

6 (WITNESS LEAVES WITNESS STAND.)

7 MR. SHELTON: Your Honor, we would call Phil Smith  
8 to the stand.

9 THE COURT: Come on around, sir, let the Clerk of  
10 Court swear you in.

11 MR. SMITH: Yes, your Honor.

12 (WHEREUPON, PHILLIP SMITH,  
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MR. SHELTON: May it please the court, your Honor.

15 DIRECT EXAMINATION

16 PHILLIP SMITH BY MR. SHELTON:

17 Q. Mr. Smith, please state your name for the record.

18 A. Phillip Lee Smith.

19 Q. And you represented Mr. Dickey in this case; is that  
20 right?

21 A. I did. That's correct.

22 Q. I want to just briefly touch on this trial and in  
23 absence. Would you agree that he was in fact present the  
24 day before trial?

25 A. Yes.

1 Q. What -- Typically how would you go about getting a  
2 hold of him?

3 A. I would both call or send letters.

4 Q. Was he noticed for that week of trial?

5 A. Yes. We were preparing to go to trial and had come  
6 in and seen Judge Stilwell the day before and we were ready  
7 to go the next day.

8 Q. The day before he showed up or -- So, and I'm sorry,  
9 it appears that he was basically tried on Wednesday, May  
10 20th.

11 A. Okay.

12 Q. And that he shows up the day before, right?

13 A. Yes.

14 Q. On a Tuesday?

15 A. Yes.

16 Q. Would the conversation with Judge Stilwell have been  
17 on the Monday or the day he showed up on that Tuesday?

18 A. No. We may have spoken with the judge in court. I  
19 can't recall that but we thought we were up on Tuesday is  
20 why he was here and we knew we were up that week and then  
21 it looked like it wasn't going until the next day so he  
22 went home that evening to return the next day.

23 Q. So he showed up on the day he thought he was going  
24 to trial?

25 A. That's correct.

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1 Q. When you were in the -- When you were talking with him  
2 about dismissing him for that day because it wasn't going  
3 forward, did you specifically tell him to be there the next  
4 day?

5 A. Yes.

6 Q. And did you attempt to get a hold of him?

7 A. Yes.

8 Q. What -- Obviously you didn't send a letter. How did  
9 you try to get a hold of him?

10 A. Calling any and all numbers I had, speaking with his  
11 aunt who he referred to; calling and notifying bondsmen,  
12 doing anything I could.

13 Q. And, Mr. Smith, so the case ends up going to trial in  
14 Mr. Dickey's absence; is that right?

15 A. That's correct.

16 Q. And at that trial though there were still pretrial  
17 motions made and things like that, right?

18 A. That's correct. And as I recall Judge Stilwell gave  
19 us some period of time delay to attempt to get him here.

20 Q. And in those pretrial -- At no point in those pretrial  
21 motions though did you ever raise an issue of double  
22 jeopardy; is that right?

23 A. That's my recollection, yes.

24 Q. Okay. But you were familiar with the entire  
25 procedural history of this case weren't you?

1 A. Yes.

2 Q. And the fact, the underlying facts obviously?

3 A. Yes.

4 Q. Were you familiar with the fact that he was charged  
5 in North Carolina?

6 A. Yes, I knew he had a charge there. He described it  
7 per my notes to me as a shoplifting charge there and I  
8 don't know that I was ever clear if it were just the items  
9 from South Carolina or if there were some other items that  
10 were in the vehicle. But I was aware that something  
11 involving items from down here got him in trouble in North  
12 Carolina.

13 Q. Did you know -- I mean did you research -- Did you  
14 ever bother to call North Carolina and figure out what was  
15 going on?

16 A. I did not.

17 Q. Did you know that he had pled guilty to possession of  
18 stolen goods in North Carolina?

19 A. He told me that he had entered a plea and the  
20 Solicitor and I discussed it as well.

21 Q. And what -- What did you and the Solicitor discuss?

22 A. I attempted to have the -- I said he's pled up there  
23 why don't you let his charge go down here. In other words,  
24 dismiss it. And the solicitor as Mr. Dickey indicates  
25 largely because of his prior record, I believe, did not

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1 indicate a willingness to do that.

2 Q. Was the conversation you had with the solicitor to  
3 dismiss it just out of the goodness of his heart or because  
4 there was a potential legal problem in the case?

5 A. I did not file a brief or make a large issue. It was  
6 just a sort of generic it's been prosecuted somewhere can  
7 we let it go.

8 Q. Okay. So you didn't see any need to raise any sort  
9 of double jeopardy issue; is that right?

10 A. I did not. That's correct.

11 Q. But it's fair to say that you agree that one cannot  
12 steal goods and then possess those same goods; that there  
13 is a jeopardy problem if both of these charges had  
14 originated in the same state. Would you agree to that?

15 A. If it had been South Carolina I would agree, yes.

16 Q. So do you think that North -- the fact that South  
17 Carolina prosecutes the shoplifting charge and North  
18 Carolina prosecutes the possession charge, possession of  
19 stolen goods charge, that that's a distinguishing feature?

20 A. I do as separate sovereigns and the practical effect  
21 that with the enhancements if Mr. Dickey's current view of  
22 the law were correct we could have a person shoplift, run  
23 straight over the line and say hey, I've got these stolen  
24 goods, plea up there to a misdemeanor and never be able to  
25 prosecute under our enhancement statute so I don't believe

PHILLIP SMITH: DIRECT BY MR. SHELDON  
CROSS BY MR. HUNTER

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1 that's the intent of our statute.

2 Q. But without even arguing it you would agree that its  
3 impossible to preserve that issue for appeal?

4 A. Sure. That's correct.

5 Q. And in this case that particular issue was not  
6 argued at the lower court?

7 A. Was not. Correct. Nor did I make any objections  
8 concerning it.

9 MR. SHELTON: Thank you, your Honor. No more  
10 questions for this witness.

11 MR. HUNTER: May it please the court.

12 CROSS-EXAMINATION

13 PHILLIP SMITH BY MR. HUNTER?

14 Q. Good morning, Mr. Smith. How are you doing?

15 A. Good morning. Doing well.

16 Q. So were you the first attorney appointed on this  
17 case?

18 A. Yes.

19 Q. And do you remember when, I guess, you began your  
20 representation? Was it after North Carolina had already  
21 been finished?

22 A. It would have -- Yes, because we don't show an arrest  
23 date until October 27th which would have started the  
24 process for our paperwork.

25 Q. And you testified that you didn't talk to North

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1 Carolina or did you receive any documents or anything like  
2 that from their office?

3 A. Not from North Carolina. I would have received a rap  
4 sheet at some point but nothing specifically from North  
5 Carolina.

6 Q. Right.

7 A. I spoke to some law enforcement members up there but  
8 nothing.

9 Q. Okay. So other than his information you received some  
10 outside sources, I guess, that told you about or informed  
11 you of his North Carolina plea?

12 A. That's correct.

13 Q. Okay. Now at trial that day you testified that you  
14 called him. Earliest call I believe you said any and all  
15 numbers. Did you have several numbers for him?

16 A. I did. I had a number and a number for his aunt and  
17 then I called the bondsman as well. Of course I expected  
18 him to be here because I had spoken to him just the day  
19 before and he was a large portion of our defense. He was  
20 going to testify as he indicates.

21 Q. And when you talked to him that day, I guess Tuesday,  
22 do you know around what time it was that y'all were  
23 dismissed?

24 A. Off hand I cannot recall.

25 Q. Was it late in the day?

1 A. I'm not certain.

2 Q. Okay.

3 A. I just remember it became apparent we weren't going  
4 to trial that day and so we were going to go that next day.

5 Q. Okay. And you believe that you conveyed that  
6 information to him that he would be going the next day?

7 A. Oh, I did. I know he was aware because when he came  
8 back for sentencing I ask him why he didn't show up.

9 Q. Okay. Did he - And I guess before we get to that, did  
10 you have any contact with him after his TIA before his  
11 sentencing?

12 A. No.

13 Q. Do you know how he was brought back to York County?

14 A. I seem to recall he was arrested up there on a warrant  
15 but I'm not positive of that.

16 Q. Okay. And did he convey to you at all that he didn't  
17 understand that he had to be there on Wednesday?

18 A. Oh, no.

19 Q. Okay. Was his aunt there on Wednesday?

20 A. I remember talking to her in the process. I can't  
21 say which day. I don't know if there's a reference in the  
22 transcript of me referring to her but I was - I certainly  
23 had contact with her.

24 Q. Okay. And I believe you testified you didn't make  
25 an argument about double jeopardy concerning the North

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1 Carolina statutes; is that correct?

2 A. That's correct.

3 Q. Did that even occur to you at the time?

4 A. Day of trial, no. I mentioned bringing it up in  
5 passing with the prosecutor early on but I can't say that I  
6 contemplated it as the trial was proceeding.

7 Q. So when you talked to -- When you brought it up in  
8 passing to the solicitor, did you specifically discuss  
9 jeopardy or just getting his charge dismissed due to him  
10 already having been sentenced for this action?

11 A. I would not have done it in a double jeopardy ar - I  
12 did not tell the solicitor I did not think they could  
13 proceed. I simply said it's been handled in North Carolina  
14 can't we let it go down here.

15 Q. Okay. And I believe that you testified that -- and  
16 correct me if I'm wrong -- that you didn't think it was a  
17 double jeopardy argument because North Carolina and South  
18 Carolina are separate sovereigns?

19 A. Right. Still today I do not believe that that would  
20 be a valid argument.

21 Q. Okay. So you believe if you had raised it it would  
22 not have been meritorious. Is that what you're saying?

23 A. That is.

24 Q. Okay.

25 MR. HUNTER: That's all I have.

1 Thank you, Mr. Smith.

2 THE COURT: Any redirect other than what he went into?

3 MR. SHELTON: No, sir, your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 MR. SMITH: Thank you, your Honor.

6 (WITNESS LEAVES WITNESS STAND.)

7 MR. SHELTON: Your Honor, we would call John Strom  
8 to the stand.

9 THE COURT: Sir, just come on up here and let the  
10 Clerk of Court swear you in.

11 MADAM CLERK: I'll have you place your left hand on  
12 the Bible and raise your right.

13 (WHEREUPON, JOHN STROM, BEING  
14 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 MADAM CLERK: Thank you. Have a seat and just watch  
16 your step up.

17 MR. SHELTON: May it please the court, your Honor.

18 DIRECT EXAMINATION

19 JOHN STROM BY MR. SHELTON:

20 Q. Mr. Strom, please state your name for the record.

21 A. John Strom.

22 Q. And by whom are you employed?

23 A. Division of Appellate Defense.

24 Q. Here in South Carolina?

25 A. Yeah, in Columbia.

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1 Q. And were you assigned the direct appeal of Mr. Jerry  
2 Dickey?

3 A. I was.

4 Q. And so have you had an opportunity to review the  
5 transcript and the file and all those things?

6 A. I have.

7 Q. What - Initially what - Were there any issues that  
8 were appealable in this case?

9 A. My recollection is that there were not a great many  
10 appealable issues. I think at the time that Mr. Dickey  
11 dropped the appeal I was looking to raise an issue  
12 regarding him not having been marandized prior to  
13 questioning when he was first, I guess, put under arrest in  
14 North Carolina. But as far as objections and then  
15 preserved issues it just -- it wasn't a long trial and  
16 there weren't many.

17 Q. Ultimately does a direct appeal get filed in this  
18 case?

19 A. It did not, no.

20 Q. And why not?

21 A. Mr. Dickey, I believe it would a been back in maybe  
22 April of 2016, we had discussed a potential double jeopardy  
23 issue regarding as Mr. Smith talked about the North  
24 Carolina conviction and the South Carolina conviction. It  
25 wasn't brought up on the record and so given that the

1 *Miranda* issue was not a particularly strong appellate issue  
2 Mr. Dickey had decided that it was - that he was going to  
3 waive direct appeal and attempt to challenge it on PCR.

4 Q. Do you agree that a double jeopardy issue was not  
5 preserved in the lower court?

6 A. Yes.

7 Q. From your reading of the transcript is there even  
8 any mention of that on the record?

9 A. It's not in the transcript.

10 Q. Did you have conversations with Mr. Dickey about  
11 the jeopardy issue?

12 A. My recollection is that we did have some conversations  
13 about it. My initial plan was writing the brief was to  
14 mention pointing out in a footnote but it wasn't a major  
15 area of research for me at that time because it just hadn't  
16 made an appearance on the transcript.

17 Q. Were there -- What would be the -- So, would the only  
18 remedy for Mr. Dickey on the jeopardy issue essentially be  
19 in the PCR stage?

20 A. That's correct.

21 MR. SHELTON: Your Honor, I don't think I have any  
22 more questions for Mr. Strom at this time.

23 MR. HUNTER: I don't have any questions, your Honor.

24 THE COURT: Thank you, sir, you may step down.

25 MR. STROM: Thank you, Judge.

1 (WITNESS LEAVES WITNESS STAND.)

2 THE COURT: Any reason why the witness can't be  
3 excused?

4 MR. SHELTON: No, your Honor.

5 THE COURT: Thank you, sir. You can be excused.

6 MR. SHELTON: Your Honor, that's our case.

7 MR. HUNTER: Your Honor, the State has no witnesses.

8 THE COURT: All right. Any - Do y'all want to present  
9 arguments at this time or?

10 MR. SHELTON: I'll be happy to, if the Court wants  
11 to hear arguments.

12 Your Honor, as to the TIA issue and the notice, we'll  
13 leave that in the Court's discretion.

14 I do want to talk briefly about this failure to raise  
15 the issue of jeopardy at trial. We certainly understand,  
16 your Honor, that *Heath v. Alabama* is out there. We  
17 understand that that is the controlling law on the dual  
18 sovereignty doctrine which I believe Mr. Smith raised. And  
19 that there are certainly a lot of instances where the  
20 state's arguable severance; however, in this particular  
21 case we -- I think we can raise a statutory scheme  
22 argument that can distinguish this from the *Heath v.*  
23 *Alabama* case.

24 Essentially, your Honor, pointing specifically to  
25 17-23-20 of our South Carolina Code which says double

1 jeopardy at the trial municipal or magistrate's courts, and  
2 I'm just gonna read the code.

3 "Whenever a municipal court or a magistrate court  
4 shall have acquired jurisdiction by reason of a person  
5 committing an act which is alleged to be in violation of a  
6 municipal ordinance and which is in violation of the  
7 criminal law in this state a conviction or an acquittal by  
8 the first court acquiring jurisdiction shall be a complete  
9 part of the trial by another court for the same alleged  
10 unlawful act."

11 So we know that we can't have a conviction in  
12 Magistrate Court in this state, a municipal court in this  
13 state, and not be happy with the sentence so then  
14 subsequently bring the action in General Sessions Court.

15 The statute is ambiguous as to whether or not that  
16 applies solely to a magistrate or municipal court  
17 conviction in this state or if it also extends to another  
18 state and essentially that's where we can draw the  
19 distinction. I mean had the legislature intended this  
20 statute to only apply to the magistrate and municipal  
21 courts' of this state then they certainly could have said  
22 that in the statute. It's silent on that issue and we  
23 think the ambiguity in the statute should be decided in  
24 favor of the defendant.

25 I point the court to 17-21-10 which is venue where

1 person causes injury within limits of state and death  
2 occurs elsewhere. I think this essentially is a  
3 codification of the *Heath v. Alabama* case. In that case we  
4 have a kidnapping and a murder that occurs in either  
5 Alabama or Georgia. The defendant ends up being prosecuted  
6 for the murder and kidnaping of the same person in both  
7 states and convicted in both states and I think our statute  
8 allows for that.

9 However, that is -- only applies to essentially serious  
10 crimes against the person. So 17-21-10 allows for this  
11 venue where there are serious crimes against the person.  
12 17-23-20 seems to kind of for less for magistrate level  
13 offense type things seems to restrict that right of the  
14 states to be able to try that.

15 And, your Honor, the last statute I would draw your  
16 attention to is 44-53-410 which is prosecution in another  
17 jurisdiction shall be barred of prosecution and this is a  
18 drug statute. If a violation of this article is a  
19 violation of a federal law, or the law of another state,  
20 the conviction or acquittal under federal law, or the law  
21 of another state for the same act, is barred of prosecution  
22 in this state.

23 So in 44-53-410 the legislature has clearly stated  
24 that there -- even though this dual sovereign doctrine exist  
25 that if you're convicted of federal law -- of a violation

1 of federal law for the drugs or of another state law for  
2 the drugs that you are barred from being prosecuted in this  
3 state for those same drugs. There is no dispute that - and  
4 I think 44-53-410 comes after 17-23-20, so, in 17-23-20,  
5 the one would be the municipal magistrate courts it's  
6 ambiguous. In 44-53-410 they spell it out.

7 Your Honor, the question becomes I think in this case  
8 there's no dispute that if you shoplift and possess stolen  
9 goods in this state you can't be convicted of both.

10 I don't think there is any dispute amongst the  
11 solicitor -- amongst the Attorney General and I that the  
12 possession of stolen goods statute in North Carolina  
13 essentially mirrors that of South Carolina in terms of the  
14 element so had this offense both - had these charges both  
15 arisen in South Carolina it would be jeopardy. The issue  
16 is simply that of this dual sovereignty doctrine.

17 Your Honor, we argue that our position is basically  
18 that 17-23-20 gets around the dual sovereignty doctrine,  
19 that our statutes are -- *Heath v. Alabama* lays out the  
20 minimum for jeopardy and the dual sovereignty doctrine but  
21 there's nothing that prevents the state's from creating  
22 stricter statutes in terms of who is protected by double  
23 jeopardy. And we believe that the South Carolina  
24 legislature in 17-23-20 has done just that for this  
25 offense.

1           Your Honor, we would ask that this court remand this  
2 case back to trial accordingly on the jeopardy issue.

3           Thank you.

4           MR. HUNTER: May it please the court, your Honor.

5           As far as the State's concerned obviously it looks to  
6 *Heath versus Alabama*. Specifically though I want to point  
7 out some language at the end of that case talking about, I  
8 guess, the state's and their powers. One thing I think is  
9 pretty analogous of this case this opinion says "To deny a  
10 State its power to enforce its criminal laws because  
11 another State has won the race to the courthouse would be a  
12 shocking and untoward deprivation of the historic right and  
13 obligation of the States to maintain peace and order within  
14 their confines."

15           I think we can just use that language to make it clear  
16 that a state can prosecute for violation of it's own crimes  
17 regardless of what another state does. That's the state's  
18 sovereign argument we're talking about.

19           Of course there's only one case that even cites *Heath*  
20 *versus Alabama* in South Carolina is *State versus Rice* 348  
21 S.C., 417. And although that deals with I believe drug  
22 charges as well, it does have a footnote citing to *Heath*  
23 *versus Alabama* saying under the dual sovereignty doctrine  
24 success of prosecution of the same conduct by separate  
25 sovereigns is not a violation of the federal Constitution

1 prohibition against double jeopardy.

2 I think we can just look at that sentence alone and  
3 say that he can still be convicted in South Carolina even  
4 though North Carolina did it first, your Honor. As far as  
5 those statutes go, your Honor, the state still believes  
6 that it's different because this was North Carolina first  
7 then South Carolina. We believe that the dual sovereignty  
8 doctrine that that's two different sovereigns whether it's  
9 federal versus state, state versus state, can still enforce  
10 their own laws and punish those who violate them.

11 That's the state's argument, your Honor.

12 THE COURT: Any reply?

13 MR. SHELTON: Your Honor, no, I'm just - I mean,  
14 again, this is simply that of statutory construction. And,  
15 your Honor, just in case, I think I inferred it, but  
16 essentially the PCR issue is, you know, was counsel  
17 ineffective and would the outcome have been different. The  
18 outcome certainly would have been different if the court  
19 finds that there is a jeopardy argument because it would --  
20 I mean the case would have been over. And we believe  
21 counsel was ineffective for not raising that issue.

22 Just to get that on the record, your Honor.

23 THE COURT: Okay. Let me ask a couple of questions.

24 The way I understand PCR's with counsel when the issue  
25 is failure to raise the issue to protect the record so that

1 it could have been done on review, that would -- when that  
2 is addressed for a PCR then as the PCR judge I actually  
3 have to decide that issue. Like you requested that your  
4 relief that you requested was that I remand it back on the  
5 double jeopardy issue. Are you asking me to recognize that  
6 this is an issue that should have been raised and was not;  
7 therefore, counsel was ineffective therefore send it back  
8 to have that issue addressed or are you asking me to say  
9 counsel was ineffective by not raising the issue and  
10 therefore you decide the issue?

11 MR. SHELTON: Your Honor, I'm asking -- And again, I  
12 think the Attorney General and I spoke kind of about this  
13 briefly the other day, I'm asking that you decide the issue  
14 so that what extent that I think that was not made clear I  
15 apologize, but I think it would be you decide the issue.  
16 But ultimately it's gonna end up I think on -- Its such a  
17 new direct appeal one way or the other.

18 THE COURT: Right. And that's what I understand. I  
19 decided a PCR once and said that issue should have been  
20 raised if that's significant and remanded it back for a new  
21 trial and they took me on appeal. They said, no, you're  
22 supposed to decide that issue not send it back to somebody  
23 else.

24 MR. SHELTON: I think ultimate -- The only thing then  
25 that I'm getting hung on is ultimately because it's

1       dispositive essentially of the case. On other legal issues  
2       the court has ruled on it and then remanded back because it  
3       wouldn't have been fatal to the state's case necessarily  
4       so, yes, in this case I think I'm asking you to rule on it  
5       which would then in turn probably be dispositive of the  
6       case.

7               THE COURT: All right. But it would only apply if it  
8       -- if I feel like that it should have raised and is  
9       dispositive to the state's case it would not apply to the  
10      driving charge would it?

11              MR. SHELTON: No, your Honor. That's correct. It  
12      would not. But that charge he has maxed out on that charge  
13      so the failure to -- the three years that he received on  
14      the failure to stop for a blue light is completely unaffected  
15      -- That conviction would be completely unaffected by the  
16      jeopardy issue, that's right.

17              THE COURT: I think I understand. Thank you very  
18      much.

19              MR. HUNTER: Thank you, your Honor.

20              THE COURT: I'll let you know.

21              MR. SHELTON: Thank you, your Honor.

22              THE COURT: Good luck to you, sir.

23              MR. DICKEY: Thank you, sir.

24              (APPLICANT, JERRY LEE DICKEY, EXITS COURTROOM.)

25              (COURT AT EASE AT 10:27 AM.)



STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
FILED RECEIVED )  
2017 MAY 10 PM 2:32 )  
IN THE COURT OF COMMON PLEAS )  
OF THE SIXTEENTH JUDICIAL CIRCUIT )

Jerry Lee Dickey, )  
S.C.D.C. No. 356505, YORK COUNTY, )  
DAVID HAMILTON )  
C.C.P. & G.S. )  
2016-CP-46-1813 )

Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 16,. Respondent made its Return on or about December 29, 2016. An evidentiary hearing into the matter was convened on January 31, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Phil Smith, Esquire, and appellate counsel John Strom, Esquire, also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial and sentencing transcripts, Applicant's PCR Application, and Respondent's Return.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the March 2015 term of the York County Grand Jury for shoplifting (enhanced) (2015-GS-46-891) and failure to stop for a blue light (2015-GS-46-892). Applicant was represented by Phil Smith,

Esquire. On May 20, 2015, Applicant was tried in his absence before the Honorable Robin Stilwell and a jury and was subsequently found guilty as indicted. Judge Stilwell sentenced Applicant and sealed the sentence. Applicant returned to York County and was brought before the Honorable Paul Burch on August 11, 2015 to have the sentence published. Applicant was sentenced to imprisonment for ten years for the shoplifting charge and for three years for failure to stop for a blue light. Both sentences were to run concurrently.

Applicant filed a notice of appeal. By an order filed May 20, 2016, Applicant moved to withdraw his appeal. The Remittitur was sent June 8, 2016.

On June 16, 2016, Applicant filed an application for post-conviction relief alleging the following grounds:

1. Ineffective Assistance of Counsel
  - a. Failure to object to and preserve double jeopardy issue.

## II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

### III. SUMMARY OF THE TESTIMONY

#### Applicant's Testimony.

Applicant testified that he was accused of shoplifting a Family Dollar in Clover, South Carolina. He testified that he met with Counsel enough times prior to the trial and that Counsel contacted Applicant's aunt in Charlotte to discuss the case.

Applicant testified that he asked about a plea but was told that the solicitor did not want to offer a plea deal. He testified that he was convicted in North Carolina on October 27, 2014 for a misdemeanor of possession of stolen goods. He testified that the stolen goods that he was accused of having in his possession in North Carolina were the same goods he was accused of stealing from the Family Dollar in Clover.

Applicant testified that he was noticed for trial on Tuesday, May 19, 2015 and was tried on Wednesday, May 20, 2015. He testified that Counsel told him on Tuesday, May 19, 2015 that he could leave. Applicant further testified that his aunt did not show up at the courthouse on either day.

### **Counsel Phil Smith's Testimony**

Counsel testified that his usual method of contact with Applicant was to call him or send letters. He testified that he was at the courthouse with Applicant ready for trial on Tuesday, May 19, 2015 but it looked like the trial was not going to be called until Wednesday, May 20, 2015. Counsel testified that he told Applicant that he needed to be at the courthouse on Wednesday for his trial. He testified that he called any and all phone numbers that he had for Applicant and also called Applicant's bondsman in attempts to get him for the trial. Counsel testified that the judge even gave him time to delay the case to make attempts to locate Applicant. Counsel testified that Applicant knew that he was supposed to be at the courthouse on Wednesday for his trial.

Counsel testified that he did not think there was any double jeopardy argument. He testified that Applicant told him that he pled in North Carolina to possessing the stolen goods he was accused of shoplifting in South Carolina. Counsel testified that he discussed this North Carolina plea with the solicitor and tried to get the South Carolina charges dismissed to no avail. Counsel admitted that any double jeopardy issue would not have been preserved because he did not object, however, he argued that there was no issue since North Carolina and South Carolina are separate sovereigns.

### **Appellate Defender John Strom's Testimony**

John Strom, of the South Carolina Office of Appellate Defense, testified that he handled Applicant's direct appeal. He testified that there were not many appealable issues except possibly a Miranda issue. He testified that he discussed the possibility of a double jeopardy argument but this issue was not preserved for direct appeal. He testified that the appeal was eventually withdrawn and he believed the appropriate remedy would be at the post-conviction relief stage.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

This matter came before the court as a post-conviction relief matter. Applicant was charged with shoplifting some items from Family Dollar. Since he had two or more other property crimes on his record, the State enhanced the charge. Applicant was convicted of shoplifting after a trial in his absence (he was also charged and convicted of failure to stop for a blue light). He appeared in court at the beginning of the week but for a reason not fully understood by this Court, he did not return for the trial. He was sentenced concurrently to three years for the Failure to Stop for a Blue Light charge and ten years on the Shoplifting charge.

The shoplifting occurred in South Carolina but Applicant was arrested in North Carolina after being chased by police. He was charged in North Carolina for possession of stolen goods (less than \$50.00), the stolen goods being the same items shoplifted in South Carolina from Family Dollar. It appears he waived extradition but was not immediately transported to South

Carolina. North Carolina proceeded to appoint a Public Defender for Applicant, after which, Applicant pled guilty to the North Carolina offense.

After he was sentenced on the South Carolina charge, he attempted to appeal his sentence but abandoned his appeal after receiving advice from his appellate attorney that the issue of the prior North Carolina sentence was not properly preserved by his trial attorney for appellate review.

At the present PCR hearing, the material facts are not disputed. The issue for this court is whether the North Carolina conviction precluded the South Carolina prosecution for the shopping lifting charge. After reviewing Heath v. Alabama, S.C. Code § 17-23-10, § 17-23-20, and § 44-53-410, this Court finds this application must be dismissed.

Heath v. Alabama, 474 U.S. 82, 106 S. Ct. 433, 88 L. Ed. 2d 387 (1985) explains double jeopardy and the application of the dual sovereignty doctrine. In that case, the United States Supreme Court held "[t]he dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of the government. When a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" Heath v. Alabama, 474 U.S. at 88, 106 S. Ct. at 437. The South Carolina Court of Appeals has reviewed this case in State v. Rice, where it held, "[u]nder the dual sovereignty doctrine, successive prosecution of the same conduct by separate sovereigns is not a violation of the federal constitutional prohibition against double jeopardy." 348 S.C. 417, 420, 559 S.E.2d 360, 362 (Ct. App. 2001) (citing Heath v. Alabama, 474 U.S. 82, 88, 106 S.Ct. 433 (1985)).

South Carolina Code §17-23-20 states "Whenever a municipal court or a magistrates court shall have acquired jurisdiction by reason of a person committing an act which is alleged to

be in violation of a municipal ordinance and which is in violation of the criminal law of this State a conviction or an acquittal by the first court acquiring jurisdiction shall be a complete bar to a trial by another court for the same alleged unlawful act or acts." This Court does not read § 17-23-20 to include municipal courts or magistrate courts in other states. This Court believes a reasonable interpretation to be that the legislature meant to bar subsequent prosecutions of criminal laws of this state when the prior conviction or acquittal was in South Carolina municipal or magistrate court. To support this reading, this court looks to § 44-53-410 where the legislature clearly set forth the bar of subsequent prosecution for Controlled Substances in South Carolina when the Federal Government of "another state" has already convicted or acquitted an accused. Similar language is not found in § 17-23-20. Without similar language being used, this Court is constrained to conclude that the South Carolina legislature has waived its right under Heath v. Alabama to forgo the prosecution of the shoplifting charge as a sovereign state. Accordingly, this Court finds that Applicant's allegation must be dismissed.

#### V. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

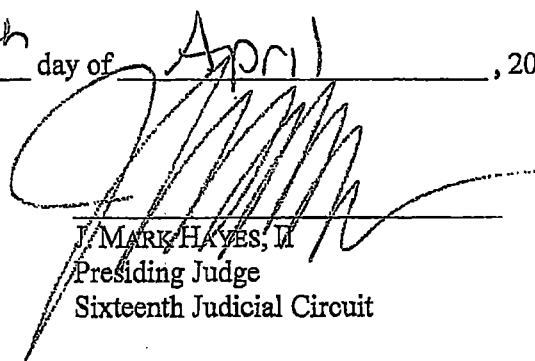
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26<sup>th</sup> day of April, 2017.

  
 J. MARK HAYES, II  
 Presiding Judge  
 Sixteenth Judicial Circuit

York, South Carolina

WITNESSES

CPD / Davis

ARREST WARRANT NUMBER

2014A4620100203

ACTION OF GRAND JURY

TRUE BILL

*Shulin Sanders*  
Foreperson of Grand Jury  
Date: 3/26/15

VERDICT

*Guilty*

*Beraine Davis 5-20-15*  
Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS-46-00891

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MARCH 26, TERM 2015

THE STATE

VS.

JERRY LEE DICKEY

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.

CERTIFIED TRUE COPY  
2015 AUG 14 4:30 PM J-30  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of York County present upon their oath:

**SHOPLIFTING - ENHANCEMENT**

The defendant, Jerry Lee Dickey, did on or about August 28, 2014, 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 Family Dollar with intent to deprive Family Dollar 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

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

  
\_\_\_\_\_  
T. MATTHEW HOGGE  
ASSISTANT SOLICITOR



STATE OF SOUTH CAROLINA

COUNTY OF YORK  
STATE VS.

JERRY LEE DICKEY

AKA: \_\_\_\_\_  
Race: Black Sex: M Age: 41  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: Charlotte, NC 28209  
DL# \_\_\_\_\_ SID# SC01311821

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4600891  
A/W: 2014A4620100203  
Date of Offense: 08/28/2014  
S.C. Code §: 16-13-110  
CDR Code #: 2877

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  
TO: Shoplifting - Enhancement

CONVICTED OF or  PLEADS

In violation of § 16-13-0110(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 2877

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lawd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

T. Matthew Hogge, Assistant Solicitor 100126  
SC Bar # \_\_\_\_\_ Defendant

\_\_\_\_\_ 66593  
Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which  
are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment  
Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weeks/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Paid

Other: \_\_\_\_\_

Recipient: _____		
*Fine: _____	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ _____
TOTAL		\$ <u>30</u>

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

Clerk of Court/Deputy Clerk: David Hamel  
Court Reporter: Amirah Hardy  
SCCA/217 (03/2011)

Presiding Judge: \_\_\_\_\_  
Judge Bar ID: \_\_\_\_\_ Judge Code: 2158  
Sentence Date: 5-20-15

2015 APR 30  
DAVID HAMEL  
CLERK OF COURT  
PH 4:31

WITNESSES

CPD / Davis

ARREST WARRANT NUMBER

2014A4620100204

ACTION OF GRAND JURY  
TRUE BILL

*Shirley Sanders*  
Foreperson of Grand Jury  
Date: 3/26/15

VERDICT  
*Guilty*

*Bernice Davis* 5-20-15  
Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS-46-00892

The State of South Carolina  
County of York

COURT OF GENERAL SESSIONS

MARCH 26, TERM 2015

THE STATE

VS.  
JERRY LEE DICKEY

INDICTMENT FOR  
FAIL TO STOP FOR A BLUE LIGHT

SC Code: § 56-05-0750(B)(1)  
CDR Code: 0085

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.

CERTIFIED TRUE COPY  
2015 APR 17 PM 4:30  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of York County present upon their oath:

**FAIL TO STOP FOR A BLUE LIGHT**

The defendant, Jerry Lee Dickey, did on or about August 28, 2014, in York County, while driving on a road, street, or highway of the state, fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light, all in violation of Section 56-05-0750(B)(1), *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.

  
\_\_\_\_\_  
T. MATTHEW HOGGE  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK  
STATE VS.

JERRY LEE DICKRY

INDICTMENT/CASE#: 2014GS4600822  
A/W: 2014A4620100204  
Date of Offense: 08/28/2014  
S.C. Code §: 16-9-750  
CDR Code #: 0065

AKA: \_\_\_\_\_  
Race: Black Sex: M Age: 41  
DOB: \_\_\_\_\_ SSN: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: Charlotte, NC 28209  
DL# \_\_\_\_\_ SID# SC01311821

SENTENCE IS FINAL

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Fall To Stop For A Blue Light

In violation of § 16-9-750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-35-45  
(CSC w/minor 1<sup>st</sup> or Lowd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

T. Matthew Hogge, Assistant Solicitor SC Bar# 100126 Defendant  
Attorney for Defendant SC Bar# 66593

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 3 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u> _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u> _____
3% to County (if paid in installments)	\$	\$ _____
<b>TOTAL</b>		<b>\$ <u>30</u> _____</b>

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
May serve W/B beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
Fines may be pd. in equal consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund \_\_\_\_\_  
Other: \_\_\_\_\_

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

Clerk of Court/Deputy Clerk: David Amultha  
Court Reporter: Annunah Hardy  
SCCAZ17 (03/2011)

Presiding Judge: \_\_\_\_\_ Judge Code: 2158  
Sentence Date: 5.20.15

RECEIVED  
CLERK OF COURT  
YORK COUNTY, SC  
MAY 17 2015

2014A4620100203

STATE OF SOUTH CAROLINA
County/ Municipality of
Clover

THE STATE against 14-00748

Jerry Lee Dickey
Address:

Phone: SSN:
Sex: M Race: B Height: 6 5 Weight: 230
DL State: NC DL#:
DOB: Agency ORI #: SC0460100

Prosecuting Agency: Clover Police Department
Prosecuting Officer: C J Neelands - N7643
Offense: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

Offense Code: 2877
Code/Ordinance Sec: 16-13-0110(A)

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)
Signature of Judge

Date:

RETURN
A copy of this arrest warrant was delivered to defendant Jerry Lee Dickey on 10-27-14

Signature of Court/Clerk/Enforcement Officer

RETURN WARRANT TO:
York County General Sessions
1675 York Hwy
York, SC 29745

ORIGINAL ORIGINAL

AFFIDAVIT
County/ Municipality of
Clover
Personally appeared before me the affiant C J Neelands who being duly sworn deposes and says that defendant Jerry Lee Dickey did within this county and state on or about 8/28/2014 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Clover) in the following particulars:

DESCRIPTION OF OFFENSE: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
On 08/28/2014 in the Town of Clover, County of York, one Jerry Lee Dickey did take and carry away property valued at \$79.45 from business known as Family Dollar located at 132 S. Main St. A review of the defendant's criminal history revealed this to be his third or subsequent property offense.

Based on the following facts
Police investigation
Witness statements
Recovery of evidence

Signature of Affiant
STATE OF SOUTH CAROLINA
County/ Municipality of
Clover
Affiant's Address: 112 Bethel Street
Clover, SC 29710-1127
Affiant's Telephone: (803)222-9494

ARREST WARRANT 14-23-14 PO4:17

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that on or about 8/28/2014 defendant Jerry Lee Dickey did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Clover) as set forth below:

DESCRIPTION OF OFFENSE: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me on 8/28/2014
Signature of Issuing Judge: Rochelle Anne Fleming (L.S.)
Judge's Address: 110 Bethel Street
Clover, SC 29710-1542
Judge's Telephone: (803)222-4084
Issuing Court: County/ Municipality of Clover

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