

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

Alison Renee Lee, Circuit Court Judge

RECEIVED
OCT 10 2016
S.C. SUPREME COURT

DONALD ALTMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000413

APPENDIX

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State of South Carolina.,) In The General Sessions
) Court of York
)
)
) Case No.: 2011-GS-46-01973
)
 County of York.,)

State of South Carolina.,)
)
 Plaintiff,)
)
 -vs.-) Transcript of Record
) Trial
)
 Donald Ray Altman.,)
)
 Defendant.)
)

July 25, 2011
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge, and a jury.

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

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I-N-D-E-XWITNESS

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1		<u>E-X-H-I-B-I-T-S</u>		
2				
3	ST.1	SC License Plate	P.13	P.57
4	ST.2	SC DMV Registration	P.13	P.59
5	ST.3	Brown Cloth Shirt	P.13	P.152
6	ST.4	Lowe's Receipt (5/11/10)	P.13	P.70
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10	CT.2	Jury Note		P.152
11	CT.3	Jury Note		P.152

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23 Reporter's Note: All Exhibits were filed with the York
24 County Clerk of Court's Office.

25

1 ((ON THE RECORD TUESDAY, JULY 25, 2011 AT 09:40 AM.)

2 MR. SPRINGS: Good morning, Judge Hayes.

3 THE COURT: You ready to get started on the next
4 trial, our first trial for the week?

5 MR. SPRINGS: Yes, sir.

6 THE COURT: Is Mr. Altman preent?

7 MR. DELANEY: He's in the holding cell, Your Honor.

8 THE COURT: All right. We need to meet in chambers or
9 anything or are we ready to get on the record?

10 MR. SPRINGS: I think we're ready to do a few small
11 pretrial things.

12 THE COURT: All right. Let's get Mr. Altman out here.
13 Altman, A-l-t-m-a-n.

14 MR. SPRINGS: Donald Altman.

15 (DEFENDANT ENTERING COURTROOM.)

16 THE COURT: All right, Mr Springs?

17 MR. SPRINGS: Thank you, Your Honor.

18 THE COURT: You ready, Wanda?

19 MADAME COURT REPORTER: Yes, sir.

20 THE COURT: How are you this morning?

21 MADAME COURT REPORTER: Well, thank you.

22 MR. SPRINGS: May it please the Court?

23 THE COURT: Yes, sir.

24 MR. SPRINGS: Your Honor, the next matter for this
25 Honorable Court is the trial of Donald Ray Altman.

1 There are a number of indictments here which I believe
2 the originals are in the courtroom. Shoplifting a third or
3 more property offense 2010GS46-2900. Possession of stolen
4 goods on 2011GS46-1974 third or more property offense.
5 Another possession of stolen goods third or more property
6 offense on 2011GS46-1975. Another possession of stolen
7 goods on 2011GS46-1976 third or more property offense.
8 Another possession of stolen goods on 2011GS46-1977 a third
9 or more property offense. And last on 2011GS46-1973
10 altering or possessing an altered car license tag.

11 Mr. Altman is here in the courtroom represented by Mr.
12 Erik Delaney.

13 Mr. Delaney, how does Mr. Donald Ray Altman plead to
14 those charges, sir?

15 MR. DELANEY: Not guilty, Your Honor.

16 THE COURT: They've got one shoplifting, four
17 possessions, and one alter?

18 MR. SPRINGS: Yes, sir. That is correct.

19 I will hand up to the Court a witness list. Any
20 questions of voir dire at this time, we have a copy for the
21 defense of course.

22 THE COURT: All right.

23 MR. SPRINGS: I see the Defense has some motions in
24 limine and I have a couple of small ones. I think I'll let
25 the Defense lead off.

1 THE COURT: Well, we usually let the Prosecution lead
2 off.

3 MR. SPRINGS: All right. Very good.

4 THE COURT: Since you have the burden of proof, you go
5 first.

6 MR. SPRINGS: Our first motion would be that the
7 Defense be precluded from eliciting from any witness or
8 stating in opening or closing statement the potential
9 punishment for these crimes under the law of State versus
10 Mizell. It's irrelevant to guilty or not guilty and it's
11 prejudicial to the State and improper to do that. So we'd
12 ask that the Defense be precluded from pleading in front of
13 the jury a potential punishment.

14 THE COURT: What do you have to say about that, Mr.
15 Delaney?

16 MR. DELANEY: Never done it and don't intend to do it
17 in this trial, Judge.

18 THE COURT: All right. Thank you.

19 MR. SPRINGS: Our next motion would be the State is
20 not going to admit any statements from Mr. Donald Ray
21 Altman, no words to the police, or any layperson for Mr.
22 Donald Ray Altman of any kind. And we would ask that the
23 Defense be precluded from eliciting from any of our
24 witnesses or any of their witnesses other than Mr. Altman
25 himself, any words from his lips. It's hearsay and

1 inappropriate, and there is no exception for him.

2 MR. DELANEY: We don't intend on going there, Your
3 Honor.

4 THE COURT: All right.

5 MR. SPRINGS: I believe that's all we have.

6 THE COURT: All right let's see, we've got motions in
7 limine, discovery. Has the State complied with discovery?

8 MR. SPRINGS: Yes, Your Honor. We have and complied
9 with Brady.

10 THE COURT: All right. Does Mr. Altman -- Obviously
11 he's got some past experiences with the law since these are
12 third property crimes. Does he have a record which you
13 could introduce as impeachment or that the State plans to
14 impeach?

15 MR. SPRINGS: Yes, Your Honor. I have written those
16 up. Actually I'm going to give a copy to the Defense and a
17 copy to the Court. And I have forgotten something, and I'm
18 going to ask our nice Clerk.

19 Would you call 320 and ask them to send...

20 Your Honor, you have a copy in writing of the defenses
21 we think we're entitled to use to impeach Mr. Donald Ray
22 Altman should he elect to testify.

23 THE COURT: Challenging any of them?

24 MR. DELANEY: And Judge, we're not going to challenge
25 any of these impeachable offenses at this point.

1 THE COURT: All right. You've given the State as a
2 number three motions to in limine. The State has already
3 prepared -- provided a witness list. Is that correct?

4 MR. DELANEY: That's correct, Your Honor.

5 THE COURT: Are there any Lile evidence?

6 MR. SPRINGS: No, Your Honor.

7 THE COURT: Any records on any of your lay witnesses?

8 MR. SPRINGS: We need to get that. I've asked our
9 nice court clerk to call my paralegal. She's going to
10 come, and she's going to get all the folks from the stores
11 to write down their full names, date of birth, be happy to
12 run their record and my secretary Ms. McDaniel will do that
13 as soon as she gets here.

14 THE COURT: Well, after we get through the motions
15 we'll take a little short break so we can get that.

16 Sequestration, that will be reciprocal. Sequestration
17 with the exception of any victims and case agents. I just
18 briefly saw that apparently the victims are Walmart, Family
19 Dollar, Walmart, Lowe's and Big Lots. So I don't know
20 whether --

21 MR. SPRINGS: And CVS drugstore. They'll all here.

22 THE COURT: Okay. Well does the State contend that
23 somebody from each of those is entitled to sit in during
24 the trial?

25 MR. SPRINGS: We do. And Family Dollar store. Yes,

1 five stores or victims and we think the store
2 representative is in the shoes of a victim.

3 MR. DELANEY: I have no problem with that.

4 THE COURT: Okay, all right.

5 Then any other witnesses such as officers? And I
6 think there are some officers listed, other than the case
7 agent, will be sequestered, and any non-affiliated
8 witnesses.

9 MR. SPRINGS: Very good.

10 MR. DELANEY: And Judge, just one thing just for
11 clarification on my part. With this being an enhancement
12 charge shoplifting third offense or subsequent, we would
13 obviously stipulate to the Court and to the State that Mr.
14 Altman has these prior convictions on his record. So
15 obviously if the jury would hear --

16 THE COURT: Well no, the charges are the charges. The
17 property enhancement is a sentencing, if I'm reading what
18 you're saying. That has to do with sentencing. So the
19 issue for the jury would be whether or not he did one or
20 more or all of these six events. Guilty of one or more or
21 all of these six charges. So other than the enhanceable --
22 I mean the impeachable offenses, if he takes the stand,
23 then there should not be any evidence regarding prior
24 record. There is no Lyle so these are just straight-up
25 offenses.

1 MR. SPRINGS: Yes, I sort of detect what Mr. Delaney
2 is saying is he agrees we have jurisdiction here in this
3 Court. And we're not going to mention any --

4 THE COURT: Right, well of course if it were
5 shoplifting first we would --

6 MR. SPRINGS: And all possessions on property goods
7 would ordinarily --

8 THE COURT: Because of the value -- Okay, all right.
9 So you're just -- I got you. So you're admitting the
10 jurisdiction of the Court for all these in addition to
11 impact any prior offenses --

12 MR. DELANEY: That's correct, Your Honor.

13 MR. SPRINGS: All right. That's all we --

14 THE COURT: Looks like your guy -- While we get the
15 jury up you all can get that information. And I've gone
16 over -- Any voir dire from the State?

17 MR. SPRINGS: Yes, I've handed up our copy. We
18 requested voir dire.

19 THE COURT: May I see that. State just wants me to
20 ask about relationships to the Public Defender and this
21 philosophical question. Any objection?

22 MR. DELANEY: No objection, Judge.

23 THE COURT: And I've looked at the Defendants, and
24 they all look okay too.

25 MR. SPRINGS: And they look fine to the State.

1 THE COURT: Anything else before we get the jury up?

2 MR. SPRINGS: Nothing from the State.

3 MR. DELANEY: Nothing from the Defense.

4 THE COURT: We'll take a short break while we get the
5 jury up.

6 (COURT IN RECESS AT 09:45 AM.)

7 (COURT BACK ON THE RECORD AT 09:50 AM.)

8 THE BAILIFF: All rise. Please come to order.

9 THE COURT: Thank you. Take your seats.

10 Members of the jury panel, I'm John Hayes, and along
11 with Judge Alford who you met yesterday, I am one of the
12 resident judges here in York County, Sixteenth Circuit in
13 the State and assigned to hold with Judge Alford a term of
14 court this week.

15 We're starting our first trial in this courtroom today
16 and that is the case, *State versus Donald Ray Altman*. The
17 State is represented by Mr. E. B. Springs from the
18 Solicitor's office.

19 Mr. Altman, would you please stand?

20 MR. ALTMAN: Yes, sir.

21 THE COURT: Mr. Donald Ray Altman, he is represented
22 by Mr. Erik Delaney.

23 (DEFENDANT AND MR. DELANEY STOOD.)

24 THE COURT: You may be seated. Mr. Altman is charged
25 with six separate offenses, four of which are shoplifting.

1 These were alleged to have occurred -- I'm sorry. They are
2 -- Well I'll go through it like this. There's an
3 indictment for -- One was shoplifting. I apologize. And
4 it alleges on or about May 10th, 2010, Mr. Altman
5 shoplifted from The Family Dollar store here in York
6 County.

7 There are four charges of possession of stolen goods,
8 not shoplifting, but possession of stolen goods. It's
9 alleged that on that same date, May 10th, 2010, Mr. Altman
10 possessed goods that had been stolen from Walmart on Dave
11 Lyle Boulevard. The second possession of stolen goods
12 alleges that on that date he possessed stolen goods that
13 were stolen from Lowe's on Springdale Road in Rock Hill.
14 The third alleges that on that day May 10th, 2010, he
15 possessed stolen goods from the Big Lots store on Cherry
16 Road. It's alleged also on that date that he possessed
17 stolen goods from a CVS pharmacy, the one on Heckle
18 Boulevard in Rock Hill. And the indictments allege that
19 he, Mr. Altman, knew or should have known that the items he
20 possessed were stolen items.

21 The last indictment is for possession of an altered
22 license plate. It's alleged on that same date May 10th,
23 2010, Mr. Altman was in possession with an altered vehicle
24 license plate in violation of the law of this state.

25 To these indictments, Mr. Altman has entered pleas of

1 not guilty. These pleas of not guilty place on the State
2 the burden of proving he's guilty beyond a reasonable
3 doubt.

4 Now similarly to what happened yesterday when Judge
5 Alford asked you questions, I have some questions to go
6 over. I am going to ask if you need to address any of
7 these matters I bring up please stand and I will address
8 you from here rather than have you come up individually.

9 First, are any of you related by blood or marriage to
10 Mr. Springs, Mr. Delaney, or Mr. Altman. If so, please
11 stand. No one stands.

12 Are any of you friends of or associates with or work
13 with or have any connection with any of those -- either of
14 those three individuals? If so, please stand. No one
15 stands.

16 Do any of you have any interest in any of the stores
17 that I have mentioned? That is; do you work there? Do you
18 own stock there? Do you deliver paper products there? Do
19 you do landscaping? Do you have any business connection
20 with any of those stores? That was Big Lots, CVS, Lowe's,
21 and Walmart.

22 MR. SPRINGS: And Family Dollar store.

23 THE COURT: And Family Dollar.

24 Yes, sir, your name?

25 A. Jordan Meader.

1 THE COURT: And what's your situation?

2 MR. MEADER: My wife works at the Big Lots.

3 THE COURT: At Big Lots?

4 MR. MEADER: Yes, sir.

5 THE COURT: Would that affect your ability to be fair
6 and impartial in the trial of this case?

7 MR. MEADER: No, sir.

8 THE COURT: Your name and number again?

9 MR. MEADER: Jordan Meader, 141.

10 THE COURT: All right. I'll allow you to remain with
11 the jury then. Thank you for calling that to your
12 attention. You may be seated. Thank you.

13 Any of you know anything about this case? Any of you
14 heard about it from any source whatsoever, or have any of
15 you formed or expressed an opinion about any matter or
16 issue involved in this case? If so, please stand. No one
17 stands.

18 Are any of you members of the Grand Jury or juries
19 which passed on these indictments at an earlier time? If
20 so, please stand. No one stands.

21 Do any of you have any strongly felt convictions, any
22 religious, philosophical, or other reasons why you cannot
23 sit as a fair juror on this particular case? If so, please
24 stand. No one stands.

25 Are any of you or members of your family involved in

1 law enforcement or in the prosecution of criminal cases at
2 any level? That is anything from Judge Advocate General to
3 District Attorney to U.S. Marshall, Sheriff, anything like
4 that? If so, please stand. No one stands.

5 Yes, sir, your name and number?

6 A. Ian Young, Number 249.

7 THE COURT: All right.

8 MR. YOUNG: My father is a law enforcement officer
9 with the Department of Natural Resources.

10 THE COURT: Would that affect your ability to be fair
11 and impartial in this trial?

12 MR. YOUNG: No, sir.

13 THE COURT: All right, thank you.

14 No one else? Yes, ma'am?

15 A. My grandson is a police officer in Arizona. He works
16 for the K-9 Unit.

17 THE COURT: Your name and number?

18 A. Carol Danner, 50.

19 THE COURT: Would that affect your ability to be fair
20 and impartial?

21 MS. DANNER: No it would not.

22 THE COURT: Thank you, I appreciate that.

23 Are any of you members of or contributors to
24 organizations such as Mothers Against Drunk Drivers,
25 Students Against Drunk Drivers, Citizens Against Violence,

1 Troupers Association, Sheriffs Association, Internal Order
2 of Police? If so, please stand.

3 All right. Yes ma'am, you're name and Number?

4 A. Carla Clarke, Number 38, Mothers Against Drunk Drivers
5 member.

6 THE COURT: All right. And yes, sir, your name and
7 Number?

8 A. Hayes Thomas, Number is 218. And I've contributed to
9 Troopers from time to time.

10 THE COURT: Would either of you be unable --

11 Yes, ma'am. Your name, ma'am?

12 A. My name is Mary Brown, and I volunteered at the
13 sheriff's prison.

14 THE COURT: At the where?

15 MS. BROWN: Here at the sheriff's, Moss Justice.

16 THE COURT: At the Moss Justice? What do you do with
17 them?

18 MS. BROWN: Just minister.

19 THE COURT: Okay, you're down in the cell blocks?

20 MS. BROWN: Yeah, with the ladies.

21 THE COURT: Okay. Would the fact that you're standing,
22 if that would prevent any of the three of you from being
23 fair and impartial, please raise your right hand? No one
24 does. You may be seated. Thank you.

25 Have any of you been a victim of a theft that you or a

1 personal friend had something stolen from you? If so,
2 please stand.

3 (NUMEROUS JURORS STOOD.)

4 All right, I figured we might get a lot. Anyway, what
5 we'll do is we'll go back and ask each of you starting from
6 here in a good, loud voice to give me your name and number.
7 And then I'll ask you all jointly about whether you can be
8 fair and impartial. So, let's just start. We'll start
9 with this gentlemen with the blue shirt and work our way
10 kind of back like that.

11 A. Mike Roberts, Number 182.

12 A. Amy Hilton-Schuler, Number 253.

13 A. Hayes Thomas, 218.

14 A. Mary Brown, 25.

15 A. Carol Danner, 50.

16 A. Douglas Addison, Number 3.

17 A. Roxanne Barron, Number 8.

18 A. Kirsten Leong, Number 117.

19 A. (INDISCERNIBLE.)

20 MADAME COURT REPORTER: I'm sorry, I could not hear
21 that.

22 A. Holly Johnson, 100.

23 A. Robbin Taylor, 215.

24 A. Ian Young, 249.

25 A. Benjamin Felton, 64.

1 A. Jordan Meader, 141.

2 THE COURT: If any of you would be, because of that,
3 unable to be fair and impartial, please raise your right
4 hand? No one does. You may be seated. Thank you.

5 The following are possible witnesses in this case. I
6 do not know whether all of them will testify or not but
7 they are listed as potential witnesses. If any of you are
8 related by blood or marriage, or if you're a close personal
9 friend or acquaintance of any of these individuals, please
10 stand.

11 We have two officers Ryan Thomas and Daniel Popov.
12 Then we have individuals who are not associated with law
13 enforcement Jennifer Hardin, Jane Adams, Michelle Williams,
14 Jonathan Garrett, and Mary Ann Gomulinski. Any of you know
15 any of these individuals?

16 Yes, sir?

17 A. The lady from Big Lots.

18 THE COURT: Okay. I think -- Your name again?

19 A. Jordan Meader.

20 THE COURT: All right. I'm going to excuse you.
21 Don't leave, but I'm going to excuse you from sitting on
22 this particular jury since you have that relationship with
23 that store. Thank you. You can be seated, but you will be
24 not in the mix.

25 Nobody else stands.

1 Any further requests from the State?

2 MR. SPRINGS: No, sir. Nothing from the State.

3 THE COURT: From the Defense?

4 MR. DELANEY: No, Your Honor.

5 THE COURT: Do any of you on the panel know of any
6 reason whatsoever why you could not or should not serve as
7 a fair and impartial juror in the trial of this case? If
8 so, please stand. No one stands.

9 (STRIKING OF JURY AT 10:00 AM.)

10 THE COURT: Now the way we draw juries in this court
11 is as follows: Names will be drawn at random. Each side
12 has a right to strike, excuse up to five individuals. If
13 you hear your name called, please come forward and bring
14 with you any personal belongings you have. Stand next to
15 the Bailiff, turn around. You'll be facing first the table
16 where Mr. Springs is seated. He will say either "Present
17 the juror," or "Excuse the juror." If he says, "Excuse the
18 juror," you may return to your seat. If he says, "Present
19 the juror," turn and face the table where Mr. Altman and
20 Mr. Delaney is seated. Mr. Delaney will say either,
21 "Excuse the juror," again that means you may return to your
22 seat, or he will say, "Swear the juror." If you hear those
23 words, step over to the jury box, and the Bailiff will tell
24 you where to be seated.

25 Madame Clerk.

1 MADAME CLERK: Number 64, Benjamin Felton.
2 (WHITE MALE COMING FORWARD.)
3 MADAME CLERK: What say you for the State?
4 MR. SPRINGS: Please excuse the juror.
5 MADAME CLERK: You've been excused from this case.
6 Number 179, Carole Reynolds.
7 (WHITE FEMALE COMING FORWARD.)
8 MADAME CLERK: What say you for the State?
9 MR. SPRINGS: Please present the juror.
10 MADAME CLERK: Defense?
11 MR. DELANEY: Please swear the juror.
12 MADAME CLERK: Please have a seat in the jury box.
13 Number 38, Carla Clarke.
14 (WHITE FEMALE COMING FORWARD.)
15 MADAME CLERK: What say you for the State?
16 MR. SPRINGS: Please present the juror.
17 MADAME CLERK: Defense?
18 MR. DELANEY: Please excuse the juror.
19 MADAME CLERK: You've been excused from this case.
20 Number 4, Caster Anderson.
21 (BLACK MALE COMING FORWARD.)
22 THE CLERK: What say the State?
23 MR. SPRINGS: Please present the juror.
24 MADAME CLERK: Defense?
25 MR. DELANEY: Please swear the juror.

1 MADAME CLERK: Please have a seat in the jury box.

2 Number 253, Amy Hilton-Schuler.

3 (WHITE FEMALE COMING FORWARD.)

4 MADAME CLERK: What say you for the State?

5 MR. SPRINGS: Please present the juror.

6 MADAME CLERK: Defense?

7 MR. DELANEY: Please excuse the juror.

8 MADAME CLERK: You've been excused from this case.

9 Number 3, Douglas Addison.

10 (WHITE MALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 MR. SPRINGS: Please present the juror.

13 MADAME CLERK: Defense?

14 MR. DELANEY: Please swear the juror.

15 MADAME CLERK: Please have a seat in the jury box.

16 Number 83, Patricia Hamilton.

17 (WHITE FEMALE COMING FORWARD.)

18 What say you for the State?

19 MR. SPRINGS: Please present the juror.

20 MADAME CLERK: Defense?

21 MR. DELANEY: Please swear the juror.

22 MADAME CLERK: Please have a seat in the jury box.

23 Number 218, Hayes Thomas.

24 (WHITE MALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

1 MR. SPRINGS: Please present the juror.

2 MADAME CLERK: Defense?

3 MR. DELANEY: Please excuse the juror.

4 MADAME CLERK: You've been excused from this case.

5 Number 249, Jesse Young.

6 (WHITE MALE COMING FORWARD.)

7 MADAME CLERK: What say you for the State?

8 MR. SPRINGS: Please present the juror.

9 MADAME CLERK: Defense?

10 MR. DELANEY: Please swear the juror.

11 MADAME CLERK: Please have a seat in the jury box.

12 Number 98, James Jackson.

13 (BLACK MALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 MR. SPRINGS: Please present the juror.

16 MADAME CLERK: Defense?

17 MR. DELANEY: Please swear the juror.

18 MADAME CLERK: Please have a seat in the jury box.

19 Number 100, Holly Johnson.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MR. SPRINGS: Please present the juror.

23 MADAME CLERK: Defense?

24 MR. DELANEY: Please swear the juror.

25 MADAME CLERK: Please have a seat in the jury box.

1 MADAME CLERK: Number 9, Patrice Baxter.

2 (BLACK FEMALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 MR. SPRINGS: Please present the juror.

5 MADAME CLERK: Defense?

6 MR. DELANEY: Please swear the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 Number 2-0-9, Heather Suskin.

9 (WHITE FEMALE COMING FORWARD.)

10 MADAME CLERK: What say you for the State?

11 MR. SPRINGS: Please present the juror.

12 MADAME CLERK: Defense?

13 MR. DELANEY: Please swear the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number 50, Carol Danner.

16 (WHITE FEMALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 MR. SPRINGS: Please present the juror.

19 MADAME CLERK: Defense?

20 MR. DELANEY: Please excuse the juror.

21 MADAME CLERK: You've been excused from this case.

22 Number 117, Kirsten Leong.

23 (WHITE FEMALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 MR. SPRINGS: Please present the juror.

1 MADAME CLERK: Defense?

2 MR. DELANEY: Please swear the juror.

3 MADAME CLERK: Please have a seat in the jury box.

4 Number 97, Eric Hughett.

5 (WHITE MALE COMING FORWARD.)

6 MADAME CLERK: What sayeth the State?

7 MR. SPRINGS: Please present the juror.

8 MADAME CLERK: Defense?

9 MR. DELANEY: Please excuse the juror.

10 MADAME CLERK: You've been excused from this case.

11 Strikes are one for the State and five for the
12 Defense.

13 Number 66, Arleen Fincher.

14 (WHITE FEMALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 MR. SPRINGS: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. DELANEY: Please swear the juror.

19 MADAME CLERK: Please have a seat in the jury box.

20 Number 25, Mary Brown.

21 (BLACK FEMALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 MR. SPRINGS: Excuse the juror.

24 MADAME CLERK: You've been excused from this case.

25 Number 215, Robbin Taylor.

1 (WHITE MALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 MR. SPRINGS: Please present the juror.

4 MADAME CLERK: Defense?

5 MR. DELANEY: Please swear the juror.

6 MADAME CLERK: Please have a seat in the jury box.

7 THE COURT: Draw one alternate, strikes will be one
8 and two.

9 MADAME CLERK: Number 252, Kamilah Cannon.

10 (WHITE FEMALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 MR. SPRINGS: Please present the juror.

13 MADAME CLERK: Defense?

14 MR. DELANEY: Please swear the juror.

15 MADAME CLERK: Please have a seat in the jury box.

16 THE COURT: Anything from the State involving the
17 striking of the panel?

18 MR. SPRINGS: No, sir.

19 THE COURT: Anything from the Defense?

20 MR. DELANEY: No, Your Honor.

21 THE COURT: Those of you who were not chosen, I'm
22 going to allow you to leave at this time but call back at
23 One and follow whatever instructions you receive whether
24 it's to call back or whether it's to return at a certain
25 time. It's very important that you follow those

1 instructions. So please leave quietly so I can start
2 working with this panel.

3 (JURY DISMISSED AT 10:20 AM.)

4 THE COURT: Those of you who were chosen, I'm going to
5 ask you to stand and raise your right hand. And the clerk
6 will administer the oath.

7 When you sit down, Mr. Anderson, I'm going to ask you
8 to be Foreman of this jury so when you get ready to sit
9 down, you four will slide down and let Mr. Anderson come up
10 and take that seat.

11 (WHEREUPON: PETIT JURY SWORN AT 10:20 AM.)

12 (ALL AFFIRMED.)

13 THE COURT: You may be seated. You four slide down
14 and let Mr. Anderson...

15 THE COURT: Members of the jury panel, I'm going to
16 chat with you just a minute and then turn the case over to
17 the attorneys. They will have an opportunity to make for
18 you what I call opening statements in just a minute. They
19 are not required to and these are not arguments, they are
20 not trying to convince you of anything. And it is not
21 testimony by these attorneys because they're not witnesses.
22 At this point, they will give you a blueprint, an outline
23 of the trial.

24 At a later time, they will have the opportunity to
25 come before you and tell you why, based on the evidence and

1 the law and I'll charge you should reach a certain verdict.

2 To the charges Mr. Altman has entered pleas of not
3 guilty and these pleas of not guilty place on the State the
4 burden of proving those charges against Mr. Altman beyond a
5 reasonable doubt before you could convict him. He is by
6 law, Mr. Altman, presumed innocent of each and every one of
7 these charges, and is so presumed until the State can, if
8 it can, convinces the jury of his guilt to one or more of
9 the offenses beyond a reasonable doubt.

10 I have three jobs primarily in this case. One is I'm
11 the logistics person. I make sure we take breaks,
12 hopefully that you can hear, that you can see, that the
13 case is progressing in the matter it should progress. My
14 second job is that I rule on questions of evidence. That
15 is if one side believes that certain evidence should be
16 allowed in the record for your consideration and the other
17 based on some legal principle believes it should not. It
18 is up to me to make that determination as to what evidence
19 is excluded and what evidence is allowed.

20 My third job is I am the sole judge of the law in this
21 case. You must take, accept, and apply the law as I charge
22 it. This is true if you think I charge law in error, or
23 even if you think law should be different. Your oath
24 requires you to take, accept, and apply the law as I charge
25 it. I give you some legal principles now. I may during

1 the trial give you some legal principles. At the end of
2 the trial, I'll give you a concise and comprehensive charge
3 on the law that you are to apply to the facts as you
4 determine them to be. You are not to infer from anything I
5 say or do at anytime as being an indication of an opinion
6 of mine on the facts. Our law does not allow a trial judge
7 to formulate or express to a jury any opinion on the facts.

8 It is solely your job to examine the evidence, give to
9 the evidence the effect, the value, the weight, and the
10 truth you believe it should have. In doing this you may
11 believe one witness as opposed to several, several
12 witnesses as opposed to one. You may believe all, part, or
13 none of a witness' testimony. Use your common sense, your
14 sense of logic, your sense of reason. Use your experiences
15 in life as you analyze the evidence. As judges of the
16 facts you must judge the believability, the credibility of
17 the witnesses who testify. In assessing believability, you
18 can use those things I just talked to you about. You can
19 also look at certain evaluators, certain benchmarks: How a
20 witness acts on the stand; are they hesitant and
21 straightforward, that is, their demeanor; is their
22 testimony consistent or inconsistent; consider the
23 opportunity a witness had to know those things they testify
24 about; and you can examine, and look, and factor in whether
25 a witness has any wish, or desire, or reason to help or

1 hurt one side or the other, that is any bias or prejudice.

2 You are not to discuss this case with anyone outside
3 of the courtroom. If anyone tries to discuss this case
4 with you, tell them you cannot as you're serving as a juror
5 and report back to me if anyone tries to discuss this case
6 with you. You are not to discuss the case among yourselves
7 or try to make up your own mind until I instruct you to
8 jointly deliberate and return a unanimous verdict. Prior
9 to that time, you are not equipped with all the tools you
10 need to make a fair and reasonable decision. You're not to
11 go online or go to any source whatsoever outside of this
12 courtroom for information. In this modern day we can reach
13 the world with sitting at our desk. Well you cannot do
14 that in regard to this case. You cannot look up anything
15 about the law. You cannot look up anything about the
16 witnesses. You cannot look up anything about the lawyers.
17 You cannot look up anything about me. You must base your
18 verdict solely on the law and the evidence so it would be
19 improper, a violation of your oath, and unfair for you to
20 access any information through electronic or other means in
21 determining the verdict that should be rendered in this
22 case.

23 If you can't see or you can't hear, let me know. Cup
24 your ear or give me a voice-raising gesture, or a nudging
25 gesture and I will try to correct whatever the problem is.

OPENING STATEMENT: BY MR. SPRINGS

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1 We take breaks about every hour and a half. I find
2 that's a pretty good break time. But if any of you need a
3 break at any time, for any reason, just raise your right
4 hand, and with no questions asked we'll take a break. It's
5 hard to pay attention if you're not comfortable and we'll
6 take a break if we need one. And I extend that to counsel
7 and Mr. Altman. We do wish to move the case along. We're
8 not in such a hurry that we won't take a break if it's
9 needed.

10 Mr. Anderson, you are the foreman of this jury and you
11 will sit in that seat. You will be the liaison between the
12 jury and myself. You will preside over the jury's
13 deliberation, and ultimately sign the jury's unanimous
14 verdict.

15 You and the alternate are the only ones who have
16 assigned seating, you and Ms. Cannon. Everyone else, you
17 just sit where you happen to come in. But the alternate
18 always sits there. The foreman always sits there.

19 So at this time, I turn the matter over to the
20 attorneys for their opening statements.

21 MR. SPRINGS: Thank you, Judge Hayes. May it please
22 the Court.

23 Ladies and gentlemen of the jury, Mr. Foreman, this is
24 a simple case, it's about stealing. But it's an important
25 case to the community and to the Defendant. It's not a

OPENING STATEMENT: BY MR. SPRINGS

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1 fancy case. It's not about forensics, it's not about
2 movies, pictures, tape recordings, hair fibers, anything
3 like that. You're going to hear people get on this witness
4 stand, talk about just what they saw, and what happened.

5 Most of the week we're going to have a mixture of
6 direct evidence, people saying I saw this, I heard this, I
7 did this, he did this. And then you're going to have some
8 circumstantial evidence. I'll explain more about that in
9 just a second.

10 Let me tell you how it starts. This case is a little
11 over a year old. It starts on May 10th last year, 2010.
12 The Family Dollar store had a shoplifter. The manager Ms.
13 Michelle Williams sees a shoplifter, a guy she had seen
14 before, recognized him and the guy's putting beef jerky's
15 in his pockets, and then hitting the door and leaving
16 without paying for it. It's this guy Donald Altman.

17 She watches him go get into a white Ford Taurus with a
18 broken rear window. Ms. Williams gets close enough to the
19 car that she gets a tag number. And she sees some sort of
20 movement in the car as though somebody else might be down
21 low in the back of the car. And the Defendant, Donald Ray
22 Altman, drives away with the beef jerky's. He has
23 shoplifted.

24 Ms. Williams calls the police. The police respond.
25 Ms. Williams gives the description of the car, the

OPENING STATEMENT: BY MR. SPRINGS

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1 description of the man she saw. She didn't know this guy's
2 name. She'd seen him before but had never known his name,
3 white man wearing the tan hat. Describes the car, white
4 Ford Taurus, broken rear window, license tag so and so.

5 This officer, Brian Thomas, goes over to the Family
6 Dollar store, starts to talk to Ms. Williams to make the
7 report.

8 Another officer is waiting out in the hall, Daniel
9 Popov. He hears the description. He's going to be the
10 backup officer. But he sees the car. He sees the white
11 Ford Taurus. It's parked at a BP Station. Same tag, same
12 description. And Officer Popov pulls in, sees a white guy
13 by the driver's side of the car, white guy with a tan hat.
14 And he heads on out and goes into the BP store and then
15 exits from another side door. Popov tries to catch up with
16 him and does not. And the man gets away. Popov goes over
17 to the Ford Taurus. There's a woman asleep in the back.
18 Her name is Brenda Sims. She had just been released from
19 the hospital that day. She sort of out of it, groggy.

20 Then Officer Thomas drives over there. Officer Thomas
21 has probable cause to believe that white Ford Taurus might
22 have some stolen goods in it, the beef jerky's. And he
23 searches it. Under the driver's seat is a brown paper bag.
24 It had 13 pocket knives in it and 3 flashlights. And over
25 on the driver's side floorboard is a mountain of stuff

OPENING STATEMENT: BY MR. SPRINGS

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1 covered up with a brown shirt. All sorts of medicines,
2 over-the-counter things like you might take off the shelf
3 in a drugstore, all kinds of tools, razors, all sorts of
4 stuff. And he suspects he's found a mother load of stolen
5 goods, shoplifted goods. The officer -- He finds the beef
6 jerky's by the way.

7 The officer starts looking at the little bar code tabs
8 on these things, and it has the names of the stores. He's
9 got a bunch of stuff marked Walmart. He's got a bunch of
10 stuff marked CVS drugstore. He's got stuff marked for
11 Lowe's. And he's got stuff marked for Big Lots.

12 And he makes the rounds of these stores. He goes to
13 the closest stores. And all these stores have a
14 computerized inventory system.

15 The store, when they stock the shelf, they put in the
16 computer how many Gillette razors they put on the shelf,
17 how many small flashlights they put on the shelf and they
18 tell the computer how many are there. And in all these
19 stores, when somebody checks out and goes through the
20 checkout and buys something, if there were 10 flashlights
21 on the shelf, they go through the checkout, the checkout
22 computer talks to the inventory computer, and says 1
23 flashlights been sold, and the computer goes now there are
24 9 flashlights on the shelf. You see how it works. That
25 way the store automatically knows when they're getting low,

OPENING STATEMENT: BY MR. SPRINGS

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1 the computer can say you're getting ready to run out of
2 razors, you're getting ready to run out of flashlights.
3 It's time to order some more. They're controlling the
4 inventory. And it also has helps them evaluate how much is
5 getting stolen.

6 So he makes the rounds of the store. He gets up with
7 store personnel. They check the inventory. All these
8 things are bar coded. They run these things through the
9 bar code computer. And then they go check the shelves.
10 And for all these things, the shelf is short, guess what?
11 The number of things that he has recovered from the car.
12 This is the circumstantial evidence.

13 He goes to Big Lots. The three flashlights that were
14 in the brown paper bag under the seat -- He goes to Big
15 Lots. They're scanned. And the shelf is short 3
16 flashlights -- 3 flashlights from that store.

17 Now back at the car that this guy fled from, the white
18 Ford Taurus, the license tag has been altered. The numbers
19 have been changed, the letters and the numbers with a black
20 marker to make it read differently. You're not supposed to
21 alter the numbers on your license tag. And as we go
22 through this case, and you listen to the evidence, and you
23 deliberate, you'll be able to use your good common sense
24 and figure maybe he didn't want anyone to get an accurate
25 tag number as he's leaving the store, such that it could be

OPENING STATEMENT: BY MR. SPRINGS
BY MR. DELANEY

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1 run and come back with his name.

2 That's the case. It's a simple case. I believe we'll
3 finish it today. And when I get through you're not going
4 to have any problem finding Donald Ray Altman guilty beyond
5 a reasonable doubt. Thank you.

6 MR. DELANEY: May it please the Court.

7 Ladies and gentlemen, what you are collectively going
8 to have to ask yourselves at the end of this trial, in the
9 jury deliberation room, is this: Are you firmly
10 convinced, firmly convinced of Donald Altman's guilt --
11 firmly convinced? And what I contend, there's no way.

12 Your job as jurors is important. There's not a job
13 more important than yours in this courtroom. Your duty as
14 jurors are to be fact-finders in this case. You will
15 determine the facts in this case based upon the evidence
16 that is presented to you. You also take into consideration
17 what evidence has not been presented to you. And I can
18 expect the majority of evidence that you have in this case
19 will come from individuals sitting up in this chair and
20 testifying. And it's going to be your job to give the
21 appropriate weight to an individual's testimony.

22 You're going to have to determine an individual's
23 credibility when they are up here on the witness stand.
24 Pay close attention to any inconsistencies in individuals'
25 testimony. Are they changing their story? Is their story

OPENING STATEMENT: BY MR. DELANEY

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1 changing?

2 You've heard from Judge Hayes that in the end of this
3 case, he's going to charge you as to the law that you must
4 apply to the facts that you determine. And you're also
5 going to hear from the Judge some legal principals that are
6 applied in this case. You're going to hear Donald Altman
7 is presumed innocent. He is veiled in the cloak of
8 innocence throughout this trial until you twelve
9 collectively will remove that cloak.

10 Donald Altman has a constitutional right not to
11 testify. Why? That is because the State has the burden of
12 proof in this case. And you are going to have to hold them
13 to their burden, ladies and gentlemen. It is their burden
14 to present evidence to you in this case. Hold them to
15 their burden. The burden of proof in this system that we
16 have is beyond a reasonable doubt. The State must prove
17 the charges they have brought against Mr. Altman beyond a
18 reasonable doubt. Reasonable doubt is defined as the kind
19 of doubt that would leave a reasonable person not firmly
20 convinced. And this standard of proof, this burden of
21 proof, is so important to this process because if you're
22 not firmly convinced, ladies and gentlemen, you must find
23 Donald Altman not guilty.

24 Some of you may have been involved in the past in
25 civil court either as a party, as a juror. In civil court,

OPENING STATEMENT: BY MR. DELANEY

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1 the standard in burden of proof is much different than the
2 burden of proof we have here in criminal court. In civil
3 court, it's the mere preponderance of the evidence, what is
4 more likely than not. An example I can give you, if you
5 can picture an old set of scales. In the civil court, you
6 take all the evidence presented by one side the
7 complainant, put that on the scales. You do the same thing
8 for the defense in the civil case. You put it on the
9 scales. And if those scales tip ever so slightly in favor
10 of the plaintiff or complainant in civil court, they've met
11 their burden. Not the same here, ladies and gentlemen. In
12 criminal court, for the State to meet their burden, it's
13 not ever so slightly. These scales have to tilt.

14 We have the greatest legal system in the world. Power
15 to render a fair verdict is taken away from the State, is
16 taken away from the defense, is taken away from the judge,
17 and that power is given to you, ladies and gentlemen.

18 At the close of this trial, after all the evidence is
19 being presented, I contend with you, ladies and gentlemen,
20 you will not be firmly convinced. Thank you.

21 THE COURT: Do you want to call your first witness?

22 MR. SPRINGS: Yes, sir.

23 Would you please ask Officer Daniel Popov to come in,
24 sir?

25 Mr. Popov, step up to the Clerk, she'll swear you in

OFFICER DANIEL POPOV: DIRECT BY MR. SPRINGS

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1 this morning.

2 (WHEREUPON: OFFICER DANIEL
3 POPOV, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
4 FOLLOWS:)

5 THE WITNESS: Yes ma'am.

6 MADAME CLERK: You may have a seat.

7 MADAME COURT REPORTER: EB, I'm getting feed back.

8 It's your mic. Adjust your volume on your box.

9 Officer, speak up into that mic and speak loud enough
10 for that last juror in that jury box to hear you.

11 THE WITNESS: Yes, ma'am.

12 MADAME COURT REPORTER: Yes, sir.

13 DIRECT EXAMINATION

14 OFFICER DANIEL POPOV BY MR. SPRINGS:

15 Q. Officer, tell us all your name, sir.

16 A. Daniel Popov.

17 Q. Did you work last night?

18 A. Yes, sir.

19 Q. Are you tired?

20 A. A little bit.

21 Q. How long have you been a police officer?

22 A. Almost nine years now with the Rock Hill P.D..

23 Q. Were you on duty around 4:15 on the afternoon of May
24 the 10th of last year?

25 A. Yes, sir.

OFFICER DANIEL POPOV: DIRECT BY MR. SPRINGS

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1 Q. And were you out in a patrol car?

2 A. Yes, sir. I ride patrol, I'm on the Foxtrot Team for
3 the Patrol Division.

4 Q. And about 4:15, did a shoplifting call go out?

5 A. Yes, sir.

6 Q. Was a suspect description and a vehicle description
7 given out over the police radio?

8 A. Yes, sir. We were called to Heckle Boulevard, the
9 Family Dollar. And dispatch gave us a description of a
10 white Ford Taurus with a white male wearing a beige
11 baseball cap.

12 Q. All right. Did you have a tag number?

13 A. We did receive a tag number at the time from our
14 dispatch as well.

15 Q. All right. And did you start looking for such a car?

16 A. Yes, sir.

17 Q. Did you see, find such a car that matched the color,
18 the make, and the tag number?

19 A. I did. At that time I was somewhere in the vicinity
20 on North Cherry. I knew I was traveling south on Cherry to
21 get to the Family Dollar where it's located at Heckle on
22 Cherry. And when I passed between Charlotte Avenue and
23 Oakland Avenue, I passed a white Ford Taurus with a white
24 male driver with a baseball cap, matching the description
25 that was given to us, in between College Ave extension and

OFFICER DANIEL POPOV: DIRECT BY MR. SPRINGS

1 Oakland. 4:15 in the afternoon's a busy time of
2 so I had to wait to turn around on it and saw the vehicle
3 pull into the BP gas station at Cherry and Charlotte.

4 Q And then what did you see happen at the white Ford
5 Taurus?

6 A. When I was able to turn around, and I had some cars in
7 front of me so I wasn't able to pull in right away, the
8 male driver of that vehicle was walking into the BP. He
9 had parked at the pumps closest to Charlotte Avenue on the
10 Charlotte Avenue side of the pump as well.

11 And he was walking in. I got in behind the car and
12 started walking in. As I was approaching in, he was
13 walking out the other side of the store going back outside
14 of the store.

15 Q. Okay. Did you ever see the man's face?

16 A. I never looked at him face to face, no. Just got a
17 passing glance as he's going by.

18 Q. Did you get enough of a look at him to identify him
19 later, that's what I want to know?

20 A. At the time, yes. I was able to pull up the tag of
21 the vehicle through DMV. And I have access to DMV and
22 pulled up the driver record showing his driver's license.
23 And to me it appeared to be -- The owner of the vehicle
24 appeared to be the subject that I saw driving the vehicle.

25 Q. Now, the man -- The man in the beige or tan hat. Did

1 you try to catch him?

2 A. I went through the store. And when I walked out to
3 the other side, there's a car wash, and it turns into the
4 Pub House going towards College Avenue extension. I don't
5 know which way he went at that point. When I got to the
6 other side I looked around the car wash area but I didn't
7 go running down College exit because I didn't know where he
8 went. I wanted to make sure he didn't double back and get
9 back in the vehicle. So I just went back to the vehicle,
10 sir.

11 Q. Could you tell whether he -- whether or not he knew a
12 police officer in a blue uniform was interested in him and
13 coming for him?

14 A. I can't say that for sure, sir.

15 Q. Now, so he got away?

16 A. Yes, sir.

17 Q. Did you go back to the car?

18 A. Yes, sir. I did.

19 Q. Was there anybody 'else in the car?

20 A. Yes, there was. There was a female -- a white female
21 in the back seat and her name was Brenda Sims. She was
22 laying down in the back.

23 Q. And what was she doing when you got back to the car?

24 A. She was pretty much asleep.

25 Q. Do you know where she'd been that day, of your own

OFFICER DANIEL POPOV: DIRECT BY MR. SPRINGS

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1 knowledge?

2 A. She had been to Piedmont Medical - -

3 MR. DELANEY: Your Honor, I'm going to object at this
4 time as to hearsay.

5 THE COURT: Re-ask the question once again.

6 Q. Do you know where Brenda Simmons -- Sims had been that
7 day?

8 A. She had a bracelet on her arm from Piedmont Medical
9 Center and also some discharge papers from Piedmont showing
10 that she had been there sometime that day.

11 Q. Now was she able to talk? .

12 A. Yes, she was.

13 Q. When she talked to you was she bright and alert or
14 something less?

15 A. She was able to understand our questions and
16 communicate with us. She appeared to me to be in a drowsy
17 kind of a way, almost like when you just wake up, to where
18 she knew -- She spoke English well. She knew what we were
19 asking her. I'm not going to say -- It was 12 o'clock in
20 the afternoon for her, in her mind, she appeared to be
21 drowsy.

22 Q. All right. But when you got back to the Ford Taurus
23 was she asleep?

24 A. Yes, sir. From what I remember, yes, sir. She was
25 asleep in the backseat.

OFFICER DANIEL POPOV: DIRECT BY MR. SPRINGS
CROSS BY MR. DELANEY

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1 Q. All right. And did Officer Ryan Thomas roll up a
2 little while later?

3 A. Yes, sir. Probably within five minutes or so, I would
4 -- I believe, after our initial contact Officer Thomas
5 responded to the BP as well.

6 Q. Officer Popov, answer any questions that the Defense
7 Attorney has for you, sir.

8 A. Yes, sir.

9 CROSS-EXAMINATION

10 OFFICER DANIEL POPOV BY MR. DELANEY:

11 Q. Officer, Ms. Brenda Sims, she was in the car with this
12 individual that was trying the car. Correct?

13 A. Yes, sir.

14 Q. She was in the back seat?

15 A. Yes, sir.

16 Q. And you stated that she was able to understand your
17 questions; is that right?

18 A. Yes, sir.

19 Q. And she knew what you were asking her. Correct?

20 A. Yes, sir.

21 Q. And Officer Popov, did you write any incident reports
22 in this case?

23 A. Sir, I don't believe I wrote the incident report. I'm
24 not one hundred percent if I did or Officer Thomas. I
25 would assume it was Officer Thomas. It was his zone of

OFFICER DANIEL POPOV: CROSS BY MR. DELANEY

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1 responsibility that the call came out to.

2 Q. Okay.

3 A. And he answers usually when it's in his zone, he's a
4 good officer and takes care of his calls.

5 MR. DELANEY: Okay. May I approach, Your Honor?

6 THE COURT: Yes.

7 Q. Just to clarify for myself, it appears on the bottom,
8 that report has your name listed on it, and also Thomas'
9 name; is that correct?

10 A. Yes, sir.

11 Q. Okay. I know this was close to fifteen months ago
12 but, I guess, looking at that, who would you say wrote
13 that report?

14 A. In the way that I write the report, I would say it's
15 Thomas. If I write the report, there's two names on the
16 bottom. And we don't have a standard operating procedure
17 saying you will put this name first. But most of us put
18 the officer who wrote it as the top officer on that line.
19 In this case, Officer Thomas' name is first.

20 Q. Okay.

21 A. If that answers your question, sir?

22 Q. Thanks. It does.

23 Your -- I know you didn't write any reports in this
24 case, but you're trained as to write these reports.

25 Correct? If you have to. Right?

1 A. Yes, sir. We do receive training on report writing.

2 Q. And that training that you received, you trained to
3 be as accurate and detailed as possible when filling out
4 these reports. Right?

5 A. Yes and no at the same time, if I can explain that to
6 you.

7 Q. Uh-huh.

8 A. Usually when we have a General Sessions case which in
9 this case it is being the offense of a charge or a specific
10 charge, it's not held at magistrate level or city level
11 court, sometimes with the incident report itself, we will
12 put the basics in there, but leave the detailed, detail
13 stuff for our case summary which is what is read in General
14 Sessions Court, sir.

15 Q. Okay.

16 A. So yes we are trained to be detailed. But sometimes
17 the details for General Sessions case are saved for the
18 case summary.

19 Q. And is this the case summary that you're talking
20 about?

21 A. Yes, sir. This appears to be a copy of the case
22 summary, sir.

23 Q. And that case summary was not written by you; is that
24 right?

25 A. No, sir.

OFFICER DANIEL POPOV: CROSS BY MR. DELANEY

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1 Q. That's by Officer Thomas?

2 A. Yes, sir.

3 Q. And in preparation of today, did you have a chance to
4 review that case summary?

5 A. Yes, sir.

6 Q. Okay. In your training as an officer, like you said,
7 you want to be as detailed as you can and, I guess, try to
8 be more specific in these case summaries. Right?

9 A. Yes, sir. We try to be.

10 Q. And in a sense, you want to put in these reports, in
11 these case summaries the important information. What's
12 important to your case. Correct?

13 A. Yes, sir.

14 Q. Okay. You testified earlier that you were passing
15 this car, or you had a visual of this car. And it was a
16 car matching the description that you received from
17 dispatch. Right?

18 A. Yes, sir.

19 Q. A white Taurus, had the license plate number. Right?

20 A. Yes, sir.

21 Q. And also had a description from dispatch about a white
22 male in a tan -- I think you described a beige baseball
23 cap. Correct?

24 A. Yes, sir.

25 Q. And this was a -- And you saw this car and this

OFFICER DANIEL POPOV: CROSS BY MR. DELANEY

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1 individual driving, you thought this individual was driving
2 matched this description. Right?

3 A. Correct.

4 Q. And at that point, you saw the car and the car was
5 turning into the BiLo; is that right?

6 A. No. It was more then on Cherry. I was southbound on
7 Cherry. I was headed towards Heckle. He was headed
8 towards 77. And when I turned around, it pulled into the
9 BP gas station at Cherry and Charlotte. Not immediately
10 when I turned around because when I passed I was in between
11 college, that extension, and Oakland. So when I turned
12 around, started heading north to go initiate a stop on this
13 vehicle he had turned into the BP gas station.

14 Q. Okay. And then you were trying to get in there at
15 some point as well. Right?

16 A. Yes, sr.

17 Q. And you said you had to wait for some traffic to clear
18 out then you were able to turn in. Right?

19 A. Yes, sir.

20 Q. In the meantime, you saw the individual exiting this
21 Taurus and walking into the BP. Right?

22 A. When I was able to get up to, yes, sir, the gentlemen
23 was walking inside the BP.

24 Q. Okay. And is your testimony here today, Officer --
25 Let me just make sure I get this right. Its your testimony

OFFICER DANIEL POPOV: CROSS BY MR. DELANEY

1 here today fourteen and a half months later, that you
2 checked a Department of Motor Vehicles picture, and that
3 picture appeared to match this individual; is that correct?

4 A. Yes, sir.

5 Q. Okay. Why is that not anywhere in the General
6 Sessions case file summary that you reviewed in preparation
7 today?

8 A. I don't know, sir.

9 Q. Don't you think that's something that's kind of
10 important to this case?

11 A. Maybe.

12 Q. Because the only thing that's in the reports in this
13 case is that you saw a white male with a tan cap. Correct?

14 A. Could you --

15 Q. Correct?

16 A. Could you ask that again, please? The only thing that
17 I saw was a white male in a tan cap?

18 Q. That's the only thing that's in any report in the
19 General Session case file summary that you reviewed in
20 preparation of this case. That's what's in that report.
21 Correct?

22 A. There's a little more in it than that, sir, but, I
23 mean, as far as what I saw, that's all I saw. It says --

24 Q. That's all you saw was a white male with a tan cap.
25 Correct?

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That's what it says. Yes, sir.

But now fourteen and a half months later, you're

coming into court saying that you believe it's my client.

Correct?

A. Sir, at the time, like I said, I checked through DMV
and it appeared to be the subject that was driving the car.

Yes, sir.

Q. No further questions. Thank you.

THE COURT: Redirect.

MR. SPRINGS: Nothing further. Could the officer be
excused?

THE COURT: You can step down and be excused. We
appreciate your time.

THE WITNESS: Thank you.

(WITNESS LEAVING WITNESS STAND.)

MR. SPRINGS: Judge Hayes, I hate to ask, but could we
take a brief --

THE COURT: Sure, we'll take a five minute recess.
Let's make it about a ten minute recess so everybody can
have an opportunity to refresh.

(JURY EXITS COURTROOM AT 11:00 AM.)

(COURT IN RECESS AT 11:00 AM.)

(COURT BACK IN SESSION AT 11:15 AM.)

(STATE'S EXHIBITS ONE THROUGH THIRTEEN PREMARKED FOR
IDENTIFICATION.)

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 THE BAILIFF: Order in the Court.

2 THE COURT: Thank you. Take your seats.

3 Bring in Mr. Altman.

4 (DEFENDANT ENTERING COURTROOM.)

5 THE COURT: All right, bring in the jury.

6 (JURY REENTERS COURTROOM AT 11:17 AM.)

7 THE COURT: All right, call your next witness.

8 MR. SPRINGS: Thank you, Judge Hayes.

9 We call Officer Ryan Thomas. Mr. Thomas, if you could
10 step over to the clerk and take the oath, please, sir.

11 (WHEREUPON: OFFICER RYAN
12 THOMAS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
13 FOLLOWS:)

14 MADAME CLERK: You may have a seat.

15 MADAME COURT REPORTER: Officer, speak up loud enough
16 for that last juror to hear you.

17 THE WITNESS: Yes, ma'am.

18 MADAME COURT REPORTER: Yes, sir.

19 DIRECT EXAMINATION

20 OFFICER RYAN THOMAS BY MR. SPRINGS:

21 Q. Officer tell us your name, sir.

22 A. Ryan Thomas.

23 Q. What do you do for a living, sir?

24 A. I'm a police officer with the Rock Hill Police
25 Department.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. How long have you been a law enforcement officer in
2 Rock Hill or any other agency?

3 A. Four years.

4 Q. Officer, are you a patrol officer?

5 A. I -- I was until yesterday.

6 Q. What happened?

7 A. I moved to a different team.

8 Q. Okay. I want to talk to you about May 10th of last
9 year. Were you a patrol officer in unit in a marked police
10 car at about 4:15 in the afternoon?

11 A. I was.

12 Q. And did you receive a shoplifting call?

13 A. I did.

14 Q. And where was the call? What location was the
15 shoplifting supposed to be have happened?

16 A. 851 Heckle Boulevard, the Family Dollar.

17 Q. And is that Family Dollar store there at 851 Heckle
18 Boulevard located in the City of Rock Hill and inside York
19 County?

20 A. It is.

21 Q. And when you arrived, do you remember who you talked
22 to?

23 A. Michelle Williams, the manager.

24 Q. And at that point, did you believe in your own mind
25 there had been a shoplifter?

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 A. Yes, according to her account.

2 Q. And at that point you'd done a little bit of
3 investigation had you not? You talked to people, you
4 looked around, and so forth?

5 A. Yes.

6 Q. This is a copy of your report. I want you to hold it
7 in case you need it.

8 Now at that point in your investigation, did you think
9 any goods had been stolen and taken away, carried away, got
10 away from the Family Dollar store?

11 A. Yes, sir.

12 Q. Did you have a suspect description?

13 A. We did.

14 Q. Was it a man or a woman?

15 A. A male.

16 Q. And white man, black man, Hispanic?

17 A. White male.

18 Q. Any clothing features?

19 A. The tan hat was the specific item of interest there
20 that she saw.

21 Q. And did you have a getaway vehicle description?

22 A. We did. A white Ford Taurus.

23 Q. Did you have a license tag number?

24 A. She told us it was on a South Carolina plate.

25 Q. All right. Now was a "Be on the lookout," a "BOLA"

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 put out on the police radio, "Be on the lookout for a white
2 Ford Taurus, license tag with a white, male driver
3 wearing a tan hat"?

4 A. Dispatch gave that out before I arrived at Family
5 Dollar. And then I gave it back out once I was on scene
6 because she also said that the small, little window was
7 broken out, the side window, triangle-shaped one.

8 Q. Right. Okay. All right. Did some officer locate that
9 same white Ford Taurus?

10 A. Officer Popov contacted me on the radio and said he
11 was turned around on a white Ford Taurus at Cherry and
12 Charlotte at the BP.

13 Q. Did you go over there yourself, in your car?

14 A. I did about five minutes later.

15 Q. And did you see the white Ford Taurus?

16 A. I did.

17 Q. And was the white male there at the white Ford Taurus
18 when you got there or was he gone?

19 A. He was not.

20 When I pulled up, Officer Popov told me he had -- he
21 thought -- he believed he walked straight through the BP.
22 He saw him walk into one side then couldn't locate him.

23 And I did a couple of quick laps around that block
24 just to see if he was walking in the area but I did not
25 locate him.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. Now was there anybody at the car? Any person in the
2 car or at the car when you got there?

3 A. When I came back from checking the area for Mr.
4 Altman, there was a white female. It was Brenda Sims in
5 the back seat.

6 Q. And when you got up close to the car was the tag
7 reading EXU585?

8 A. It was. Well, it appeared that way.

9 Q. So was there anything unusual about this license tag?

10 A. It had been altered with either some sort of paint or
11 marker of type.

12 Q. Let me ask you specifically. How had it been altered?
13 How about -- Let's start with the beginning letters. Had
14 any letter been altered?

15 A. The "E" which was the first letter given was by DMV
16 supposed to be an "F." So they added a bottom line to make
17 it an "E."

18 Q. Anything else changed? How about the numbers?

19 A. No. And then the "8," in the "585" the "8" was
20 originally a "3." And they just added a couple of extra
21 marks to make it an "8."

22 Q. All right. Let me show you what's been marked,
23 State's Exhibit One for identification. Peak in there, see
24 if you recognize it. And if you do, say so.

25 A. That's the tag.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. All right. And that's the one that was on the white
2 Ford Taurus when you got over to the BP station?

3 A. This is it.

4 MR. SPRINGS: Your Honor, we do offer State's Exhibit
5 One into evidence at this time.

6 MR. DELANEY: No objection, Your Honor.

7 THE COURT: Enter without objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE, MARKED AND
9 IDENTIFIED, RECEIVED INTO EVIDENCE.)

10 Q. Let's go ahead and lay the mic down. Come over here
11 in front of the jury. Show us what letter had been
12 modified.

13 A. This is what looks like an "E". This bottom portion
14 here was added. It's supposed to be just the "F." This is
15 supposed to be a "3." Those two raises right there were
16 added to make it look like an "8." And the very top of
17 that sticker - -

18 MADAME COURT REPORTER: I'm sorry, E.B. He's got his
19 back to me. Can he have the mic?

20 Hold the mic, Officer.

21 THE WITNESS: Do you want me to do that whole thing
22 again?

23 MADAME COURT REPORTER: Please.

24 Q. Tell us how the number was marked.

25 A. The "F" here had an extra portion here at the bottom

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 to make it look like an "E." And the "8" has two extra
2 little curve areas here that make the "3" look like an "8."
3 And then at the bottom here on the sticker that came with
4 the tag, that says, "FXU535."

5 Q. Go ahead and take your seat.

6 MR. SPRINGS: May we publish this to the jury, Your
7 Honor?

8 THE COURT: (INDICATED AFFIRMATIVE.)

9 MR. SPRINGS: Just have the jury pass it around so it
10 comes back to you.

11 Q. So who was the registered owner of the true tag
12 number, "FXU535"? Did you check that out?

13 A. The registered owner is Donald Ray Altman.

14 Q. I'm showing you what's been marked as State's Exhibit
15 Two for identification. What does that show?

16 A. This is a South Carolina DMV motor vehicle
17 registration for a 2004 Taurus registered to Donald Ray
18 Altman.

19 Q. And the tag number -- the actual, the legitimate tag
20 number, what goes with that registration?

21 A. FXU535.

22 Q. So is that a copy of the registration for the white
23 Ford Taurus you saw at the BP that day?

24 A. It is.

25 Q. All right.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 MR. SPRINGS: Your Honor, we do offer State's Exhibit
2 Two into evidence.

3 MR. DELANEY: No objections, Judge.

4 THE COURT: In without objection.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO, MARKED AND
6 IDENTIFIED, RECEIVED INTO EVIDENCE.)

7 Q. Now you said earlier that you were of the belief that
8 goods had been stolen from the Family Dollar store?

9 A. Yes.

10 Q. And that those goods had gotten away from the Family
11 Dollar store, it's your belief, in the white Ford Taurus?

12 A. In the white Ford Taurus.

13 Q. So did you believe there was probable cause to believe
14 there may be stolen goods in the white Ford Taurus?

15 A. Absolutely.

16 Q. Pursuant to that probable cause, did you search the
17 white Ford Taurus?

18 A. I did.

19 Q. Let's talk about what you may have found up in the
20 front seat area of the car. Did you look under the
21 driver's seat?

22 A. Yes, sir.

23 Q. What did you find?

24 A. A brown paper bag that had flashlights and pocket
25 knives in it?

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. How many pocket knives, and how many flashlights?

2 A. We had 3 flashlights and 13 pocket knives.

3 Q. All right. Let's move on to the passenger side of the
4 front of the Ford Taurus. Did you find anything of
5 interest on the passenger side?

6 A. I did. I noticed there was a brown-colored --
7 light-brown-colored shirt that was obviously had been
8 placed on the top of something larger. We pulled that off
9 and found all of the other goods that I believe were also
10 stolen.

11 Q. Is this on the seat or the floorboard?

12 A. Floorboard. Front passenger floorboard.

13 Q. I'll show you what's been marked, State's Exhibit
14 Three. What's in that bag, sir?

15 A. This is the brown shirt that was laid over top of the
16 pile of goods.

17 Q. That look like it?

18 A. That's exactly it.

19 Q. The pile of goods, did you make a -- and the stuff in
20 the brown paper bag, did you make an inventory? Did you
21 make a listing of what you found there in the white Ford
22 Taurus on the floor, covered with the shirt, in the bag?

23 A. Everything. I listed, yeah.

24 Q. And do you have a copy of your list there with you?

25 A. I do.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. Does this look like your list?

2 A. That's it.

3 Q. What did you, at that point -- actually before you
4 found all this stuff -- what did you think had been stolen
5 from Family Dollar store?

6 A. I was informed that beef jerky was stolen.

7 Q. Did you find any beef jerky on the floor of the white
8 Ford Taurus?

9 A. I found six packs -- or packages.

10 Q. Who did you return Family Dollar store's beef jerky
11 to?

12 A. To Ms. Williams.

13 Q. Did you find anything else in all that stuff that
14 belonged to Family Dollar store?

15 A. There were, let's see, the 6-in-1 Duro-Test
16 screwdrivers, there were three of those.

17 Q. They belong to Family Dollar store?

18 A. They did.

19 Q. Same one where the beef jerky came from?

20 A. Same store.

21 Q. Did you give those back to Family Dollar store?

22 A. I did.

23 Q. Did you find anything else that belonged to that same
24 Family Dollar store?

25 A. The 8" Duro-Test pliers. There were five of those,

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 belonged to them.

2 Q. Did you give them back to the Family Dollar store?

3 A. I did.

4 Q. Anything else from the Family Dollar store, the same
5 store?

6 A. The 6-in-1 paint tools. There were two of those.

7 Q. Did you give those back to the Family Dollar store?

8 A. I did.

9 Q. Now anything else from Family Dollar store?

10 A. Yeah, the last thing is the safety paint-scraper
11 blades. There were two of those.

12 Q. Did you give those back to the Family Dollar store?

13 A. I did.

14 Q. The -- Did you suspect anything about this stuff?
15 Obviously, the Family Dollar store, you knew some things.
16 But this other stuff, did you have some suspicions at that
17 point?

18 A. I did. What first caught my eye were the sort of
19 Goody powder boxes that had -- still had the CVS anti-theft
20 little stickers on them.

21 Q. Right.

22 A. The identification stickers. And then I began to
23 notice that nearly all of these items had the store's
24 original stickers on them. They looked brand new and used,
25 unopened. And just the mass quantities they were in.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Based on my training and experience, it appeared to be
2 groups of stolen items. Things that could be easily
3 concealed in someone's purse during shoplifting.

4 Q. You suspected some of these things may be stolen?

5 A. They way they were all together, I suspected all them
6 were stolen.

7 Q. Did you ever find out -- Let's take it from the top.

8 Did you ever find out where the 13 pocket knives came from?

9 A. No. No, I checked with several stores, and they --
10 Those were some of the few items that did not have any bar
11 codes. So no one knew whose they were.

12 Q. All right. How about the three flashlights? Did you
13 have -- When you saw them there in the Ford Taurus, did you
14 see something on the three flashlights that gave you a clue
15 as to where they might have come from?

16 A. The flashlights had Big Lots' stickers and bar codes
17 on them.

18 Q. Did you go to the local -- the nearest Big Lots'
19 store?

20 A. The one on North Cherry Road.

21 Q. Did you talk to store personnel there, management or
22 security?

23 A. There was a -- I believe a manager on scene.

24 Q. Did that store have a computerized inventory system?

25 A. Yes, sir.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. And did you and management check the shelf where the
2 flashlights were kept?

3 A. I stayed up at the register with my goods. And I
4 believe they went back to the shelf. I did not.

5 Q. As a result of your investigation, did you learn
6 whether or not the shelf was short flashlights?

7 A. The manager -- The inventory --

8 Q. Don't tell us what people said. Tell us what you
9 learned.

10 A. The inventory revealed that three flashlights were not
11 accounted for.

12 Q. Did you have -- Did you and management or security
13 actually scan on the computer thing, the bar code, on the
14 flashlights?

15 A. Correct. Yes, sir.

16 Q. That was Big Lots?

17 A. Big Lots.

18 Q. As we go through this, did you have a mystery here?

19 Do you have any question about who had been in the front of
20 that car next to this stuff?

21 A. No, well again, Officer Popov was the one that saw the
22 driver leaving the car. And Ms. Williams, the manager at
23 the Family Dollar saw him getting into it. So, I never saw
24 him in the driver seat. But based on those two
25 testimonies, that's what I believed to be true.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. All right. So did you need to call forensics. Did
2 you have any mystery you needed to clear up about who had
3 been in the car - - -

4 A. No, not at all.

5 Q. - - - with the stuff?

6 A. Right.

7 Q. All right, the three flashlights, did you give them
8 back to Big Lots?

9 A. I did.

10 Q. The 19 Goody's headache powder 6-dose boxes, that's a
11 lot of headaches. Where did that come from? Did you know?

12 A. Those 19 6-doses were from Walmart.

13 Q. Did you give them back to Walmart?

14 A. I did.

15 Q. How about the eight 24-dose boxes of Goody's? Where
16 did they come from?

17 A. Six of them came from CVS, the one at Heckle and
18 Herlong. And two were from Walmart.

19 Q. Did you give the six back to CVS and the two back to
20 Walmart?

21 A. Yes.

22 Q. The Goody's 50-dose boxes. These are headache
23 powders; is that right?

24 A. Yes.

25 Q. Where did they come from?

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 A. Three came from the same CVS. And three came from the
2 same Walmart.

3 Q. And they had bar code stickers on them?

4 A. They did. All the CVS merchandise had the little
5 anti-theft sticker on it.

6 Q. And you said 47 at Walmart?

7 A. Say that again.

8 Q. You had three in the -- The six 50-dose boxes, how
9 many came from CVS?

10 A. Three.

11 Q. And about - -

12 A. Three from Walmart.

13 Q. How about the BC powder 50-dose boxes?

14 A. Four were from CVS, and one was from Walmart.

15 Q. Did you give these things back to the stores?

16 A. I did.

17 Q. How about the six Visine eye drop boxes?

18 A. All six were from Walmart.

19 Q. Did you give them back to Walmart?

20 A. I did.

21 Q. How about the two Bic lighters, the 6-packs. Is that
22 12 lighters?

23 A. Twelve lighters?

24 Q. Yeah.

25 A. Yes, two 6-packs. Both were from Walmart.

1 Q. Did you give them back to Walmart?

2 A. I did.

3 Q. How about the seven Stanley FatMax 10 snips?

4 A. All seven were from Walmart.

5 Q. How about the 12 crescent wrenches with red handles?

6 A. All 12 were from Walmart.

7 Q. Did you give them back to Walmart?

8 A. I did.

9 Q. How about the nine adjustable wrenches?

10 A. The nine adjustable wrenches are from Walmart.

11 Q. How about the one Stanley socket wrench, small-size?

12 A. I never could figure it out who the owner of that was.

13 Q. How about the five Stanley socket wrenches, large-
14 size?

15 A. Those were from Walmart.

16 Q. How about the two Knipex needle nose pliers, large-
17 size? Do you know where they came from?

18 A. Lowe's on Dave Lyle-Springdale.

19 Q. How about the two Knipex wire cutters, large-size?

20 A. Lowe's.

21 Q. And you're learning these things from the bar code and
22 taking them to the store and running them through the
23 system?

24 A. Yeah, just going up and asking the manager to come and
25 look and start running bar codes.

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 Q. Okay. How about the five Knipex wire cutters, medium-
2 size?

3 A. That would be Lowe's.

4 Q. How about the four Knipex wire cutters, small-size?

5 A. Also Lowe's.

6 Q. How about the one Knipex needle nose pliers, small-
7 size?

8 A. Lowe's.

9 Q. How about the four pairs of open-trail gloves? Those
10 are gloves you put on your hands?

11 A. Like garden gloves. They -- I could not find the
12 owner of those.

13 Q. How about the nine wooden-handle pocket knives?

14 A. I didn't find out who owned any of the pocket knives
15 there.

16 Q. Okay.

17 A. That's the - -

18 Q. And the 4 medium, are those -- 9 and 4 is 13. Is that
19 actually the 13 that's up at top of the list?

20 A. I guess so. 13 --

21 Q. That's a duplicate?

22 A. Got a 9 and a 4. I've got them split up on my list.

23 Q. I got you, okay. Didn't find any?

24 A. No, sir.

25 Q. How about the Gillette Mach3 razor?

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

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1 A. Those would be Walmart. That one, I should say.

2 Q. How about the one Fusion Power razor?

3 A. Walmart.

4 Q. How about the regular Fusion razor? The one?

5 A. That'd be Walmart.

6 Q. How about the Nokia car charger?

7 A. Unknown owner.

8 Q. And the Schick Hydro 3 razor?

9 A. That would be Walmart.

10 Q. And in your paperwork there, do you have copies of the
11 -- you said you ran -- When you went to the store, you ran
12 all these through the scanners?

13 A. Yes, sir.

14 Q. Did you have them scanned and get a printout showing
15 the prices?

16 A. They basically made a receipt for me of -- like as if
17 I was returning those goods to them, that they could print
18 out the whole list and pricing of everything.

19 Q. All right. How about if you would, take your papers -
20 - Take the staple out so that I can get those printouts,
21 the scan printouts from you.

22 (WITNESS COMPLIES.)

23 A. I don't have Lowe's.

24 Q. I'm showing what's been marked State's Exhibit Four,
25 Five, and Six. Do you recognize what those are?

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS

1 A. There are the five receipts from the fi

2 Q. So you've got Lowe's, Big Lots, Walmart
3 the other one? CVS?

4 A. CVS and Family Dollar.

5 Q. And those printouts there were made when you took the
6 things from the Ford Taurus into the stores and had them
7 run it through the bar code scanners?

8 A. Yes, sir.

9 MR. SPRINGS: Your Honor, we do offer into evidence
10 State's Four, Five, and Six.

11 MR. DELANEY: No objection, Judge.

12 THE COURT: Okay.

13 (WHEREUPON: STATE'S EXHIBITS FOUR, FIVE AND SIX,
14 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

15 Q. Donald Ray Altman, Officer Thomas, do you see him in
16 this courtroom?

17 A. Yes, sir, he's seated right there.

18 Q. Point him out, please.

19 A. The white shirt and tie.

20 MR. SPRINGS: Let the record show, he's pointed to our
21 Defendant, Donald Ray Altman.

22 Q. The BP station is on Cherry Road?

23 A. Yes, sir. I believe it's 624, if I'm not mistaken.

24 Q. Is that BP station where the Taurus was with the stuff
25 in it, is it in Rock Hill in York County?

OFFICER RYAN THOMAS: DIRECT BY MR. SPRINGS
CROSS BY MR. DELANEY

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1 A. It is.

2 Q. Now all the stores we've been talking about, the CVS,
3 the Big Lots, the Walmart, and the - - -

4 A. Lowe's.

5 Q. - - - Lowe's, are they all in Rock Hill and York
6 County?

7 A. Yes, sir. Every one of them is.

8 Q. Thank you, sir. If you would answer any questions the
9 Defense Attorney has for you.

10 A. Yes, sir.

11 CROSS-EXAMINATION

12 OFFICER RYAN THOMAS BY MR. DELANEY:

13 Q. Officer Thomas, through your investigation and going
14 to the Family Dollar store, the description that you
15 learned of was a meeting, I guess, with a Michelle
16 Williams; is that right?

17 A. Yes, sir.

18 Q. Okay. And the description that you learned of through
19 your investigation was of a white male wearing a tan cap.
20 Right?

21 A. Yes, sir.

22 Q. No other description was gathered by you at that time;
23 is that right?

24 A. I believe she may have more specifically said an older
25 white male - - -

OFFICER RYAN THOMAS: CROSS BY MR. DELANEY

1 Q. Okay.

2 A. - - - with a tan hat.

3 Q. Now you were in here when Officer Popov was
4 testifying. Correct?

5 A. Yes, sir.

6 Q. And would you agree with Officer Popov as far as, I
7 guess -- Let me first ask you. You had training in writing
8 these reports. Correct?

9 A. Yes, sir.

10 Q. Okay. And you wrote some reports in this case; is
11 that right?

12 A. I wrote all of it.

13 Q. Okay. What you describe in every report that you
14 wrote in this case regarding this individual who took items
15 out of the Family Dollar was a white male with a tan hat.
16 Correct?

17 A. Yes, sir.

18 Q. No where in any report that you prepared in this case,
19 did you say anything about this individual being older.
20 Correct?

21 A. I did not include the word "older."

22 Q. Okay. And now, close to fifteen months later, you're
23 coming into court saying that you remember she may have
24 said it was an older male. Correct?

25 A. Yes, sir.

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Okay. And you did not learn that she had ever seen
individual before. Correct?

3 A. No, sir. She stated to me she was very familiar with
4 him, just minus his name.

5 Q. Say it again. You said, I asked you, you had never --
6 You didn't learn -- My question to you is, you didn't learn
7 in your investigation of this case that she had ever seen
8 -- I say "she" -- Ms. Williams had ever seen this
9 individual before?

10 A. No, no she had seen him before.

11 Q. She had seen him before?

12 A. According to her, multiple times.

13 Q. According to her, so the witness in this case,
14 according to your testimony right now is that she had seen
15 him multiple times?

16 A. Yes, sir.

17 Q. And again, Officer Thomas, that is no where in any
18 report that you prepared in this case. Correct?

19 A. No.

20 Q. Don't you think that's kind of an important piece of
21 information to leave out of a report?

22 A. That would be on her word that she had seen him
23 before. It's not part of the cause as to what we were
24 looking for.

25 Q. That's not part of the, I guess the -- And let me just

OFFICER RYAN THOMAS: CROSS BY MR. DELANEY.

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1 go back up. And she didn't give you any other type of
2 description of this individual as far as height. Right?

3 A. No, I can't recall that she gave me anything further
4 than that.

5 Q. Now, let me ask you this. If you didn't put any of
6 that -- It's nowhere in the report that you'd written.
7 Correct?

8 A. That I what?

9 Q. That's in -- That's nowhere in any report that you
10 wrote in this case. Correct? As far as - -

11 A. You mean the further information?

12 Q. Yeah.

13 A. Right.

14 Q. Any further description. Right?

15 A. Correct.

16 Q. And that would be important information to put in a
17 report, a description of a suspect. Correct?

18 A. The description is important, yes.

19 Q. Okay. And would you not agree, it's also important
20 information if a witness is saying that they know somebody,
21 other than describing someone as a white male wearing a tan
22 cap, but they're saying they've seen that person before?
23 Would you not agree that is important information?

24 A. It makes their information more believable, but it
25 doesn't change anything in terms of what crime I'm

1 investigating for that day. I can't base anything off of
2 things that she said he's done before, times that she's
3 encountered him before.

4 Q. But it's your testimony here today, fifteen months
5 later, that that's what you remember. Correct?

6 A. Yes, sir.

7 Q. And that's with no -- using no reports to refresh your
8 memory. Correct?

9 A. Yes, sir.

10 Q. And you never showed -- Let me ask you this, in part
11 of your training are you familiar with the photo lineup?

12 A. I am.

13 Q. And you've been trained that a photo lineup can be
14 important to the process because it can cut down on what
15 they call "suggestibility." Is that correct?

16 A. To be honest, I've never had training on photo
17 lineups. But I would assume that from my experience, yes.

18 Q. Instead of just bringing the photo of one individual
19 to a person, or bringing someone to a person, you would
20 bring multiple photos or have multiple people that look
21 alike or look similar. Correct?

22 A. Correct.

23 Q. Okay. And that would cut down, potentially and the
24 hope is, from someone making a wrong identification.
25 Right?

OFFICER RYAN THOMAS: CROSS BY MR. DELANEY

1 A. That would be the point. Yes, sir.

2 Q. Okay. You never did any type of photo lineup with Ms.
3 Williams in this case. Correct?

4 A. No, sir. I had no training on it.

5 Q. Now there's plenty of officers in your department that
6 has training on that. Correct?

7 A. Our detectives do as far as I know. I'm not standard
8 patrol.

9 Q. And you're aware that the Family Dollar has
10 surveillance cameras. Correct?

11 A. Yes.

12 Q. They have multiple surveillance cameras. Correct?

13 A. They do.

14 Q. And you never viewed them. Did you?

15 A. Not that I recall.

16 Q. Didn't take them from the store, perhaps someone else
17 to view them later. Did you?

18 A. I definitely didn't take any from the store.

19 Q. And no surveillance cameras, videos of the
20 surveillance cameras were viewed from CVS. Right?

21 A. No, at the other stores I definitely didn't view any
22 because we didn't have the time frame as to when those
23 items were had possibly been taken from the store.

24 Q. And the a -- Are you familiar with the Forensic
25 Services Unit, the Crime Scene Unit that works out of Rock

1 Hill. Correct?

2 A. Yes, sir.

3 Q. And you know a little bit about forensic evidence?

4 A. Yes, sir.

5 Q. And is it your understanding of forensic evidence --

6 When I'm talking about forensic evidence, I'm talking about
7 fingerprints, DNA, those type of things. Right?

8 A. Okay.

9 Q. And forensic evidence can be important because it can
10 contradict or support, corroborate what someone is saying.
11 Correct?

12 A. It can.

13 Q. An example: This here. This Bible here. If I
14 maintain at some point that I didn't hold -- I didn't touch
15 this Bible, forensic evidence could be something that could
16 confirm that or contradict that. Right?

17 A. It could.

18 Q. And the Forensic Services Unit was not called out to
19 process the scene in this case. Correct?

20 A. It was not.

21 Q. That would be either the car or the items that were
22 found in the car. Correct?

23 A. Correct.

24 Q. And it was your testimony that Brenda Sims, located in
25 the back seat of this vehicle; is that right?

MICHELLE WILLIAMS: DIRECT BY MR. SPRINGS

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1 A. Yes, sir.

2 MR. DELANEY: No further questions, Judge.

3 Thank you Officer.

4 A. Thank you.

5 MR. SPRINGS: Nothing further.

6 THE COURT: You can step down and be excused. We
7 appreciate your time.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: Would you like him to stay?

10 MR. SPRINGS: Yeah, he's the case agent. He's got to
11 stay.

12 THE COURT: Call your next witness.

13 MR. SPRINGS: We call Michelle Williams.

14 Come right up to the clerk. She'll swear you in.

15 MADAME CLERK: Please raise your right hand, place
16 your left on the Bible.

17 (WHEREUPON: MICHELLE WILLIAMS,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 MADAME CLERK: Thank you. You may have a seat.

20 DIRECT EXAMINATION

21 MICHELLE WILLIAMS BY MR. SPRINGS:

22 Q. What is your name, ma'am?

23 A. My name is Michelle Williams.

24 Q. And where do you work?

25 A. I work at Family Dollar on Heckle Boulevard.

MICHELLE WILLIAMS: DIRECT BY MR. SPRINGS

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1 Q. How long have you worked at that Family Dollar store?

2 A. I've been at that particular store two and a half
3 years. But I've been with Family Dollar a total of eight
4 years.

5 Q. Were you working at that Family Dollar store on Heckle
6 Boulevard around 4:15 the afternoon of May 10th, 2010, last
7 year?

8 A. Yes, sir.

9 Q. At about 4:15 that afternoon, did something bad
10 happen?

11 A. Yes, sir.

12 Q. And what was the bad thing that you saw happen?

13 A. I seen someone conceal beef jerky in their pocket at
14 that time.

15 Q. Was it a man or a woman?

16 A. It was a male.

17 Q. And after you saw this man conceal beef jerky in his
18 pockets, where did you see him go?

19 A. He went out the door.

20 Q. Did he stop and did he pay for the beef jerky?

21 A. No, sir.

22 Q. And had you ever seen that man before that day May
23 10th when you saw him sticking beef jerky in his pockets
24 and hitting the road?

25 A. I had not seen him that day, but I had seen him in

MICHELLE WILLIAMS: DIRECT BY MR. SPRINGS

1 prior days before that.

2 Q. So you recognized the man?

3 A. Yes, sir.

4 Q. And did you follow him outside or just watch from
5 inside the store?

6 A. I followed him outside, but I don't think he was aware
7 that I followed him outside. I did not approach him. And
8 I just got his tag number. And I was on the phone with
9 dispatch at that time while I was giving them the tag
10 number.

11 Q. I want to find out how close you were to him when you
12 were at the closest point from me to you, were you any
13 closer than this to him?

14 A. Yes, I was a lot closer. Yes, sir.

15 Q. All right. I'm going to start walking slowing towards
16 you. And when I get to the point where the distance apart,
17 you and me, that -- the closest point that you got to him
18 -- I want to find out how close you got to him that day.
19 Okay, does that make sense? You tell me to stop when I get
20 to that point.

21 (MR. SPRINGS APPROACHED WITNESS.)

22 A. Stop.

23 Q. That looks to me like about 12, 13 feet. Is that
24 about right?

25 A. Yes, sir.

1 Q. Okay. Was there anything about his clothing that
2 caught you and stuck in your mind?

3 A. The hat caught -- stuck in my mind because the way it
4 was shaped, it was -- it had a odd shape like a railroad
5 hat, maybe, kind of.

6 Q. Okay. And what color was the hat?

7 A. It was tan.

8 Q. All right. Did he get into the car?

9 A. He did.

10 Q. And did you get a good look at the car?

11 A. I did.

12 Q. And did you look at the tag?

13 A. I did.

14 Q. And did you give the 911 operator those descriptions?

15 A. I did.

16 Q. Did you tell them about the man, the car, and the tag?

17 A. I did.

18 Q. And did a police officer come out and talk to you?

19 A. Yes, sir.

20 Q. And later did the police come and return, not just
21 your beef jerky, but some other things to the store?

22 A. Yes, sir. They did.

23 Q. Ms. Williams, if you see the man that took the beef
24 jerky, put it in his pockets, and walked out of the Family
25 Dollar store without paying for it, stolen, point him out

MICHELLE WILLIAMS: DIRECT BY MR. SPRINGS
CROSS BY MR. DELANEY

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1 if you see him in this room.

2 A. It is the gentlemen in the white shirt.

3 MR. SPRINGS: Let the record show she's pointed to our
4 Defendant, Donald Ray Altman.

5 Thank you Ms. Williams. If you would, answer any
6 questions the defense attorney now has for you.

7 CROSS-EXAMINATION

8 MICHELLE WILLIAMS BY MR. DELANEY:

9 Q. Ms. Williams, you were subpoenaed to be here today.
10 Is that right?

11 A. That's correct.

12 Q. And that was by the State?

13 A. Yes, sir.

14 Q. Store manager at Family Dollar; is that right?

15 A. That's correct.

16 Q. And you're still employed at Family Dollar now?

17 A. Yes, that's correct.

18 Q. Okay. And this incident where you saw this man in the
19 store taking some beef jerky happened May the 10th, 2010.
20 Correct?

21 A. That's correct.

22 Q. And that's roughly fourteen and a half months ago.
23 Right?

24 A. Uh-huh.

25 Q. And Family Dollar on Heckle Boulevard is a business

1 store. Right?

2 A. That's correct.

3 Q. A lot of people, customers are coming in and out of
4 the store every day. Right?

5 A. Uh-huh.

6 Q. Every hour. Right?

7 A. Yes, sir.

8 MADAME COURT REPORTER: Erik, I need a "yes" or "no"
9 response. I'm sorry.

10 A. Sorry, yes.

11 MADAME COURT REPORTER: Okay, just yes or no. Thank
12 you.

13 A. I'm sorry.

14 Q. In fact, over the past fourteen and a half months,
15 you've had thousands of people come in and out of that
16 store. Right?

17 A. Yes.

18 Q. You told police over a year ago that a white male
19 wearing a tan hat had taken some beef jerky out of the
20 store. Right?

21 A. Yes.

22 Q. You gave the police no other description of this
23 individual other than white male in tan hat. Correct?

24 A. Correct.

25 Q. No description as to height. Right?

MICHELLE WILLIAMS: CROSS BY MR. DELANEY

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1 A. Correct.

2 Q. Weight?

3 A. Correct.

4 Q. Age?

5 A. I think I did tell him that he was a older gentlemen.

6 Q. You think? Or did you just hear what Officer Thomas
7 testified to?

8 A. I heard what Officer Thomas testified to.

9 Q. Right. Hair color?

10 A. I knew what he looked like, but I don't know that I
11 told him what he looked like, no.

12 Q. Ma'am, my question to you is did you Officer Thomas a
13 description as to hair color?

14 A. No.

15 Q. Eye color?

16 A. No.

17 Q. Facial hair?

18 A. No.

19 Q. Any scars?

20 A. I did make a statement that he had severe acne scars
21 on his face. I did do that.

22 Q. You made a statement that he had severe acne scars on
23 his face?

24 A. I did, uh-huh.

25 Q. Tattoos?

MICHELLE WILLIAMS: CROSS BY MR. DELANEY

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1 A. No.

2 Q. And the police never came to you, showed you any type
3 of a photo lineup in this case. Right?

4 A. No, they did. He actually brought a photo to me the
5 next morning.

6 Q. The police showed you a photo lineup the next morning?

7 A. A photo picture of him.

8 Q. Not a lineup?

9 A. No, not a lineup.

10 Q. They brought you a picture?

11 A. Yes.

12 Q. Just one picture?

13 A. One picture.

14 Q. No other individuals in this picture?

15 A. No.

16 Q. It's just the police brought you one picture of Mr.
17 Altman. Correct?

18 A. Yes, uh-huh.

19 Q. And showed you that picture. Correct?

20 A. Correct.

21 Q. And there was no other individuals that they showed
22 you pictures of?

23 A. No.

24 Q. What officer was that?

25 A. Thomas.

MICHELLE WILLIAMS: CROSS BY MR. DELANEY

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1 Q. Officer Thomas. And he, Officer Thomas told you that
2 was Donald Altman. Right?

3 A. No he didn't. He asked me was that the person. And I
4 told him yes.

5 Q. How many surveillance cameras do you have in the
6 store?

7 A. We have four.

8 Q. You have four different surveillance cameras in the
9 store?

10 A. Uh-huh.

11 Q. Different areas of the store. Correct?

12 A. Correct.

13 Q. You got a couple of front and a couple in the back;
14 is that right?

15 A. That's correct.

16 Q. The police at no time came to view video footage of
17 these surveillance cameras. Right?

18 A. No, they did not.

19 Q. I have no further questions.

20 MR. SPRINGS: Nothing further.

21 THE COURT: You may step down and be excused. We
22 appreciate your time.

23 (WITNESS LEAVING WITNESS STAND.)

24 MR. SPRINGS: Mary Ann Gomulinski.

25 Come on up and see the Bible right over there.

MARY ANN GOMULINSKI: DIRECT BY MR. SPRINGS

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1 MADAME CLERK: Please raise your right hand, place
2 your left on the Bible.

3 (WHEREUPON: MARY ANN GOMULINSKI,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 THE DEFENDANT: Don't forget my twin brother comes in
6 there all the time.

7 MS. WILLIAMS: Are you threatening me?

8 THE DEFENDANT: You seen my twin brother - -

9 SECURITY BAILIFF: Sir, sir.

10 Set down.

11 MR. SPRINGS: Would you use that microphone, the
12 skinny one doesn't work very well. We want to make sure
13 everyone hears you.

14 DIRECT EXAMINATION

15 MARY ANN GOMULINSKI BY MR. SPRINGS:

16 Q. What is your name, ma'am?

17 A. Mary Ann Gomulinski.

18 Q. And where do you work?

19 A. CVS.

20 Q. And which location? Which CVS?

21 A. 1746 Heckle.

22 Q. Which store?

23 A. Heckle Boulevard.

24 Q. You're a little nervous, aren't you? I'll be darned.

25 I want to ask you about the store's computerized

MARY ANN GOMULINSKI: DIRECT BY MR. SPRINGS

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1 inventory system. Does the store have a computerized
2 inventory system?

3 A. Yes.

4 Q. Can you, as basically as possible just kind of tell
5 the jury how that works? How you stock a shelf, and then
6 the computer keeps track of people getting checked out.
7 Would you mind?

8 A. Our weekly truck automatically has the amount of new
9 inventory coming in; is added right into the computer
10 system so it knows, like if we get 30 of an item in the
11 store, it adds to what the current inventory is.

12 Q. Okay.

13 A. And then when someone brings it to the register and
14 buys it, it deducts that from the total so the count in the
15 system stays with what the count on the shelf is.

16 Q. I got you. Now when -- So when somebody picks up an
17 item, a headache powder box or whatever off a shelf and
18 goes to the checkout and pays like they're supposed to,
19 does the computer deduct that from the inventory - - -

20 A. Yes.

21 Q. - - - so that the shelf number still is accurate?

22 A. Yes.

23 Q. And if the shelf number is looked at, and it's lower
24 than what the computer says it should be there, what does
25 that tell the store manager?

MARY ANN GOMULINSKI: DIRECT BY MR. SPRINGS

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1 A. The items left without being paid for, that they were
2 stolen.

3 Q. All right. And was -- let me get my glasses.

4 (SOLICITOR RETRIEVED GLASSES FROM DESK.)

5 Q. I'm showing you what's been marked State's Exhibit
6 Five. Is this a CVS pharmacy printout?

7 A. Yes, it is.

8 Q. Okay. And is it your understanding that on May the
9 11th, 2010, the police scanned those items in?

10 A. They brought it in and I scanned them.

11 Q. And was the inventory checked -- Was there a
12 discrepancy in - -

13 A. There was a discrepancy and those items matched the
14 holes and brought the count to where it should have been.

15 Q. Which led you to believe that the things the police
16 brought in had been stolen?

17 A. Yes.

18 Q. All right. And did the police give your stuff back to
19 you?

20 A. Yes.

21 Q. Thank you, Ms. Gomulinski. Answer any questions the
22 defense attorney has.

23 MR. DELANEY: No questions for this witness.

24 THE COURT: You can step down and be excused. We
25 appreciate your time. Thank you.

JONATHAN GARRETT: DIRECT BY MR. SPRINGS

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1 (WITNESS LEAVING WITNESS STAND.)

2 THE COURT: Call your next witness.

3 MR. SPRINGS: We call Mr. Jonathan Garrett.

4 Mr. Garrett, come on up and take the oath please, sir.

5 There's the Bible right over there.

6 (WHEREUPON: JONATHAN GARRETT,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 MR. SPRINGS: Keep your voice up nice and loud.

9 DIRECT EXAMINATION

10 JONATHAN GARRETT BY MR. SPRINGS:

11 Q. What is your name, sir?

12 A. My name is Jonathan Garrett.

13 Q. Where do you work?

14 A. I work for Lowe's Home Improvements in Rock Hill.

15 Q. And what street's it on?

16 A. Springdale.

17 Q. Does that Lowe's Home Improvement Center have a
18 computerized inventory system tied into the cash register?

19 A. Yes, sir, it does.

20 Q. And as people buy things off the shelves, and they go
21 to checkout to pay for their goods, does the inventory
22 computer automatically reduce the numbers that are
23 supposedly on the shelf?

24 A. Yes, sir, it does.

25 Q. So with that system, if you go look at the shelf and

JONATHAN GARRETT: DIRECT BY MR. SPRINGS

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1 the computer says there's supposed to be 20 of an item, and
2 there are only 15, what does that tell store management?
3 What does that indicate?

4 A. It indicates that five had been stolen or lost.

5 Q. I'm showing you what's -- Let me get my glasses again,
6 hold on. I'm gonna get a leash for these. I'm showing you
7 what's been marked State's Exhibit Four. Is that a Lowe's
8 Home Center's printout of merchandise?

9 A. Yes, sir, it is.

10 Q. And is it your understanding that this printout was
11 done on May the 11th of last year when the police brought
12 in certain items of merchandise?

13 A. Yes, sir, it does indicate that date.

14 Q. And is it your understanding that those items of
15 merchandise had been stolen?

16 A. Yes, sir. That is my understanding.

17 Q. Did you get your stuff back?

18 A. Yes, sir.

19 Q. Thank you. If you would, answer any questions of the
20 defense attorney.

21 A. Thank you.

22 (PAUSE.)

23 THE COURT: Do you have any questions?

24 MR. DELANEY: No, Judge, no questions.

25 THE COURT: You can step down. Thank you, sir. I

JANE ADAMS: DIRECT BY MR. SPRINGS

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1 appreciate your time.

2 (WITNESS LEAVING WITNESS STAND.)

3 MR. SPRINGS: We call Ms. Jane Adams.

4 MADAME CLERK: Please raise your right hand, place
5 your left on the Bible.

6 (WHEREUPON: JANE ADAMS, BEING
7 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 MADAME CLERK: Thank you. You may have a seat.

9 DIRECT EXAMINATION

10 JANE ADAMS BY MR. SPRINGS:

11 Q. What is your name, ma'am?

12 A. Jane Adams.

13 Q. Where do you work?

14 A. Big Lots, Rock Hill, Cherry Road.

15 Q. How long have you worked for Big Lots?

16 A. Two and a half years.

17 Q. Does the Big Lots there on Cherry Road have a
18 computerized inventory system that ties into the cash
19 registers?

20 A. We do.

21 Q. And is it supposed to keep track of the number of
22 items on the shelves?

23 A. That's correct.

24 Q. When people go through the checkout -- And you use a
25 bar code system; is that right?

JANE ADAMS: DIRECT BY MR. SPRINGS

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1 A. That is correct.

2 Q. When people go through the checkout, and they take
3 something off the shelf, go through the checkout and it
4 gets scanned and they pay for it, does your computerized
5 inventory system reduce the amount that supposed to be on
6 the shelf to show that something got sold and went away?

7 A. Yes, sir.

8 Q. When the number on the shelf and the computer says
9 it's 20 and you go look at the shelf and it's only 15, what
10 does that tell you, store management, or security?

11 A. That five are -- have gone missing, stolen.

12 Q. All right. Showing you State's Exhibit Six, a Big
13 Lots printout. Does that indicate that you -- that on May
14 the 11th, last year -- Is it your understanding on May
15 11th, last year the police brought these flashlights in?

16 A. That is correct.

17 Q. And were they returned to your store?

18 A. They were.

19 Q. And they, the computerized system indicated they had
20 disappeared, for lack of a better term?

21 A. That is correct.

22 Q. Thank you very much. If you would, answer any
23 questions the defense attorney has.

24 MR. DELANEY: No questions for the witness.

25 THE COURT: You can step down. Thank you. Take your

AMY STEVENS: DIRECT BY MR. SPRINGS

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1 time.

2 THE WITNESS: Thank you.

3 (WITNESS LEAVING WITNESS STAND.)

4 MR. SPRINGS: Jennifer Hardin.

5 May we approach?

6 THE COURT: Yes, sir.

7 (BENCH CONFERENCE AT 12:13 PM OUT OF HEARING OF THE
8 JURY OFF THE RECORD.)

9 MR. SPRINGS: Amy Stevens.

10 | (WHEREUPON: AMY STEVENS, BEING
11 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAME CLERK: You may have a seat.

13 DIRECT EXAMINATION

14 AMY STEVENS BY MR. SPRINGS:

15 Q. Tell us your name, please.

16 A. Amy Stevens.

17 Q. Ms. Stevens, where do you work?

18 A. Walmart.

19 Q. Which one?

20 A. Dave Lyle Boulevard.

21 Q. And how long have you worked for Walmart?

22 A. Three and a half years.

23 Q. Does the Walmart there on Dave Lyle, does it have a
24 computerized inventory system?

25 A. Yes, sir.

AMY STEVENS: DIRECT BY MR. SPRINGS

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1 Q. And does it keep track -- As people pick things up off
2 the shelves, go through the checkout through a bar code
3 system, does it keep track of that so that the inventory is
4 reduced every time something gets sold?

5 A. Yes, sir, uh-huh.

6 Q. With your system, if the computer says there's
7 supposed to be 20 of an item on the shelf, and you go
8 physically look at it, and there are only 15, what does
9 that indicate to you folks in management?

10 A. That five are gone.

11 Q. I'm showing you what's been marked State's Exhibit
12 Six. Is that a Walmart printout?

13 A. Yes, sir.

14 Q. And is it your understanding that on May the 11th, the
15 police brought these items in, and it was scanned in and
16 the inventory was checked?

17 A. Yes, sir.

18 Q. And what is your understanding as to whether the
19 inventory was accurate or it was short by these items?
20 Does that make sense?

21 A. Yeah, they checked it.

22 Q. And the -- Was the store inventory off such that these
23 had disappeared so to speak?

24 A. Yes, sir.

25 Q. Thank you. Answer any questions the defense attorney

1 has.

2 A. Yes, sir.

3 MR. DELANEY: Judge, we have no questions for this
4 witness.

5 THE COURT: You can step down.

6 MR. SPRINGS: Come on down.

7 (WITNESS LEAVING WITNESS STAND.)

8 MR. SPRINGS: We rest our case, Your Honor.

9 THE COURT: All right. Members of the jury panel, the
10 State is resting. That is, the State is telling us they
11 presented their evidence. We're going to break for lunch
12 at this time until 1:30. Remember don't discuss the case.
13 Don't let anyone discuss the case with you. Don't try to
14 make up your own mind. You're not at that point yet. So
15 have a pleasant lunch. If you'll go out this door, the
16 Bailiff will show you how to get in and out. You, of
17 course, will be utilizing that jury room that you went to
18 on the break. But the Bailiff will tell you how to get in
19 and out for lunch. Be back at 1:30.

20 (JURY EXITS COURTROOM AT 12:16 PM.)

21 MR. SPRINGS: Your Honor, while we were presenting our
22 case, there was an outburst from the Defendant. He yelled
23 back at the witnesses, "I have a twin brother." That was
24 totally inappropriate, Your Honor. And I would ask the
25 Court consider holding Mr. Altman in contempt for that.

1 THE COURT: Mr. Delaney.

2 MR. DELANEY: All I can say is I talked with Mr.
3 Altman about that and it's not going to happen again. And
4 he apologized to the Court.

5 THE COURT: Well let me -- I'll think about whether or
6 not to impose any sanctions for that conduct. Of course,
7 if it happens again there will be sanctions.

8 Anything else? Anything?

9 MR. DELANEY: Your Honor, at this point, we would make
10 our -- The State has rested and we would make our motion
11 for a directed verdict in this case. I would argue to Your
12 Honor the testimony that we've heard regarding the
13 identification of Mr. Altman, I would argue that, that
14 identifications came from Ms. Williams who takes the stand.
15 And I would argue to this court that the suggestiveness
16 that took part as far as her being showed a single
17 photograph of Mr. Altman a day after this alleged incident
18 it would be overly suggestive to obtain her identification
19 of Mr. Altman in this case. And without her testimony,
20 without that identification, the State doesn't have any
21 identification. And I would like to ask, Your Honor, to
22 direct a verdict in favor of the Defense in this case.

23 THE COURT: What do you have to say about that, Mr.
24 Springs?

25 MR. SPRINGS: Your Honor, Ms. Williams knew this

1 fellow before. She testified she'd seen him numerous times
2 before.

3 A single photo -- I didn't know about the single photo
4 showing. But a single photo is done all the time with
5 people that already knew the person to confirm that it's
6 the person that they already knew.

7 These people weren't strangers. Ms. Williams said
8 she'd seen him quite a few times in the store -- didn't
9 know his name, but surely knew him and that was what her
10 identification was based on, and not the single photo
11 lineup, which would not have been inappropriate with
12 somebody that already knew the person.

13 THE COURT: Well, I find that it could -- a single
14 photo is suggestive, but that would not affect the
15 reliability in this case because the witness had observed
16 the individual in the past. And therefore that even though
17 the showing of the one photograph as suggested on its face
18 that that does not affect in this case to reliability of
19 the identification of Mr. Altman as the individual who was
20 involved in the act. And I will certainly charge the jury
21 regarding eyewitness identification.

22 Anything else?

23 MR. DELANEY: That's all from the defense at this
24 time, Your Honor.

25 THE COURT: Did you make a motion for directed

1 verdict? Did I --

2 MR. DELANEY: Yeah, I just - -

3 THE COURT: Okay, all right. I'm going to find that
4 and I want to put on the record that I got side tracked on
5 the identification.

6 I find that there is sufficient direct and substantial
7 circumstantial evidence that the jury could conclude that
8 Mr. Altman did in fact commit these offense and therefore I
9 deny your motion for a directed verdict.

10 All right, we'll be at ease until 1:30.

11 (COURT IN LUNCH RECESS AT 12:20 PM.)

12 (COURT BACK IN SESSION AT 01:51 PM.)

13 THE BAILIFF: All rise. Please come to order.

14 THE COURT: Thank you. Take your seats.

15 Get Mr. Altman in.

16 (DEFENDANT ENTERING COURTROOM.)

17 THE COURT: Anything from the State before I talk to
18 Mr. Altman?

19 MR. SPRINGS: Nothing from the State.

20 MR. DELANEY: Judge, just briefly at this time, before
21 you talk to Mr. Altman about whether or not he wanted to
22 testify. I'd just like to put a couple of things on the
23 record, briefly.

24 We did not do -- I did not request to do a Biggers
25 hearing regarding identification before the trial. At that

1 point, the discovery that had been provided to me by the
2 State indicated that there was no identification made by
3 Ms. Williams in this case, either her being able to an out
4 of court identification or that she would use any type of
5 photographs in this case. Obviously we've heard some
6 testimony that would say she did view a photograph the
7 after the day of the incident.

8 And I would just renew, I guess, just renew my
9 objection to the admissibility of that testimony at this
10 time.

11 THE COURT: Anything you want to say about that?

12 MR. SPRINGS: I would just briefly, Your Honor, that
13 Ms. Williams did testify she had seen the teller quite a
14 few times prior to this. She was identifying as someone
15 who had seen him before. They were not strangers. And she
16 got quite close to him, I believe she agreed with me, he
17 was about 12 feet away from her when she saw him.

18 MR. DELANEY: Just to clarify, and it's my
19 understanding that the State did not have this photograph.
20 That's why it wasn't turned over. I still haven't seen a
21 photograph and I believe the State doesn't have that
22 photograph at this time.

23 MR. SPRINGS: That's correct.

24 THE COURT: And as I mentioned in chambers when we
25 were going over the charges, that caught my ear also, and

1 that's why after I heard arguments and having listened to
2 testimony, I did put on the record that I believe that the
3 showing of one photograph lineup, so to speak, is
4 suggestive on it's face. But I found that in spite of that
5 because the witness knew Mr. Altman from previous
6 encounters, that her testimony still feels liable and, of
7 course, that will be up to the jury to determine.

8 Mr. Altman, can you hear me?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: We've reached a point in the trial where
11 you have a right to present a defense. You do not have to
12 present a defense because you are presumed innocent of the
13 charge and need not prove that.

14 The State must however prove your guilt beyond a
15 reasonable doubt. You have a right to present witnesses if
16 you wish, but you don't have to. You have the right to
17 testify if you wish, but you don't have to. If you present
18 witnesses or testify, the State will have the right to make
19 the last argument. If you present no evidence, then the
20 State -- then your attorney would have the right to make
21 the final argument to the jury.. If you testify, you would
22 be under oath. You would have to answer questions. And
23 the State could ask you the questions concerning the record
24 that was handed up to me and handed to your counsel
25 earlier. Those questions could be asked by the State

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1 regarding your prior record solely for impeachment, what we
2 call impeachment purposes. That is, for the jury to
3 consider whether or not because you committed these
4 offenses, you'd be less likely to tell the truth. I will
5 tell the jury that they cannot consider any prior record as
6 evidence of your having committed these crimes, but rather
7 solely for the purpose of deciding whether to believe you
8 or not. If you exercise your right to remain silent, I'm
9 going to tell the jury that that is what you've done. I'll
10 tell them do not hold that against you, they cannot discuss
11 it in the jury room, they cannot factor it into their own
12 liberation. And again, I will remind them you are presumed
13 innocent, and State must you're guilty beyond a reasonable
14 doubt.

15 Do you understand all of that?

16 THE DEFENDANT: Yes, sir..

17 THE COURT: Have you discussed that with Mr. Delaney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions, Mr. Altman?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you intend to testify or exercise your
22 right to remain silent?

23 THE DEFENDANT: I'm going to testify.

24 THE COURT: Okay, that's fine. All right then, we'll
25 bring in the jury.

DONALD RAY ALTMAN: DIRECT BY MR. DELANEY

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1 (JURY REENTERS COURTROOM AT 01:55 PM.)

2 THE COURT: All right. Mr. Delaney.

3 MR. DELANEY: Thank you, Your Honor. If it please the
4 Court, at this time the Defense will call Donald Altman.

5 THE COURT: Please come up and be sworn.

6 MADAME CLERK: Raise your right hand.

7 (WHEREUPON: DONALD ALTMAN, BEING
8 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 MADAME CLERK: Thank you. Please have a seat.

10 DIRECT EXAMINATION

11 DONALD ALTMAN BY MR. DELANEY:

12 Q. Would you please state your name?

13 A. My name is Donald Ray Altman.

14 Q. Donald, how old are you?

15 A. I'm 48.

16 Q. Where are you from?

17 A. I'm from Lancaster, South Carolina.

18 Q. Do you have any children?

19 A. I have two.

20 Q. Donald, you have been in some trouble in the past.

21 A. Yes, sir. I've got a rap sheet from here to that door
22 back yonder.

23 Q. Say that again.

24 A. I said, I've got a rap sheet that goes from here to
25 that door back yonder. I've been in trouble a good bit in

DONALD RAY ALTMAN: DIRECT BY MR. DELANEY

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1 my life.

2 Q. You have some larceny convictions on your record?

3 A. Yes, I do, sir. Receiving stolen goods. Common law
4 robbery. A few things.

5 Q. Now that being said, Donald, are you guilty of what
6 you're charged here with today?

7 A. No, sir, I'm not. They took my car off for smoking
8 crack. They --

9 Q. Let me -- Let's not get -- Let's just slow down a
10 little bit.

11 A. Okay.

12 Q. Let me ask you this. May the 10th, 2010, were you in
13 the Family Dollar store off of Heckle Boulevard?

14 A. No, sir, I was not. It could have been my twin
15 brother, my other brother he's 40 years old and they both
16 look just like me. And they're all on crack down now.

17 Q. You heard testimony regarding the Ford Taurus; is that
18 right?

19 A. Yes, sir, I have.

20 Q. Were you driving that car that day?

21 A. No, sir. I was not.

22 Q. What happened? Who was driving your car? Why were
23 you not in possession of your car that day?

24 A. Sir, I had the car parked. I lost my license. They
25 took my license.

DONALD RAY ALTMAN: DIRECT BY MR. DELANEY

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1 Q. You say someone -- Who took your license?

2 A. The Highway Department sent a letter for me to not --
3 they wanted my license back on account of financial
4 responsibilities where I had been in a wreck prior to that.
5 And I didn't have the \$5000 dollars to pay it so I parked
6 the car. And it was either my twin if you pull the
7 pictures up they both look just like me.

8 MR. SPRINGS: I'm sorry. I can't hear him. He's
9 mumbling.

10 A. I said, sir, they both look just like me. Both of my
11 brothers do. And they're all on crack real bad. And prior
12 to that, they had stole my aunt's car -- took her car.
13 Went off joyriding with Brenda, she's on crack too.

14 Q. And you said, Brenda, you --

15 A. Brenda Sims.

16 Q. You know a Brenda Sims?

17 A. Yes, sir. She walks the streets smoking crack.

18 Sir, I'm telling you, I'm not guilty here today. If
19 y'all take me away my mama will go down and I didn't do
20 this.

21 Q. Just a couple of more questions, Donald.

22 A. Yes, sir.

23 Q. On May the 11th, May the 10th, 2010, did you have any
24 type of interaction with the lady who testified from Family
25 Dollar, Michelle Williams?

DONALD RAY ALTMAN: DIRECT BY MR. DELANEY

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State of South Carolina BY MR. SPRINGS In The General Sessions

A. No, sir. She must have seen Ronnie. I've got a Court of York

brother named Ronnie and I've got a brother named Scotty. Case No. 2011-ES-46-01573.

Q. And did you take any items from any of these stores County of York?

that were mentioned in this case?

A. No, sir. I did not. Honest, I did not, lay my hand

on the Bible. I did not. I swear to God, I have not.

Q. No further questions, Donald Ray Altman, Defendant.

Transcript of Record
Trial

QUESTIONS Mr. Springs has,

Defendant. CROSS-EXAMINATION

DONALD ALTMAN BY MR. SPRINGS:

Q. Mr. Altman, what kind of a car do you drive? July 25, 2011
York, South Carolina

A. E F O R E. 2004 Taurus. I own a truck too.

Q. A white Ford Taurus? Honorable John C. Hayes, III, Judge, and a jury.

A. P P Y E S A R A N C E S:

Q. I'm showing you what's been marked as State's Exhibit

Two. Assistant Solicitor General, Sixteenth Judicial Circuit

Moss Justice Center

it? 1675-1A York Highway

York, South Carolina 29745-7422

A. Yes, sir, it is.

Q. And State's Exhibit One. That's the tag for your

Mr. Erik Delaney Assistant, Public Defender

Taurus, but it's been monkeyed with hasn't it? Sixteenth Judicial Circuit

Moss Justice Center

A. Yes, sir, it is. 1675-1A York Highway

P.O. Box 691

Q. York; South Carolina 29745

A. The "8" has too. Wanda Nelson, CVR

Q. The "F" has been made into an "8" Sixteenth Judicial Circuit

Wnelson@sccourts.org

A. Yes, sir.

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 Q. And the "3" has been made into an "8" hasn't it?

2 A. Yes, sir. And I'm going to be honest with you --

3 Q. Let -- Let me ask questions.

4 A. Okay.

5 Q. And then you get to explain all you want. Just a
6 minute. And that's the tag off your Ford Taurus?

7 A. Yes, sir, it is. Yeah, it is.

8 Q. That's the tag that was on it on March 10th? Was it
9 not?

10 A. That's my tag, sir, yes.

11 Q. And Brenda Sims, your girlfriend, was in the back of
12 your car. Was she not?

13 A. Well sir, I wouldn't call her my girlfriend, but I --

14 Q. Well how many years have you and Brenda been together?

15 A. I've known Brenda all my life, sir. We rode the
16 school bus together.

17 Q. A lot of years.

18 A. A lot of years. And I loved her.

19 Q. And Brenda was in the back of your car when the police
20 caught up with your car. Wasn't she?

21 A. Yes, sir. Brenda's got a lot of boyfriends, sir.

22 Q. I can't hear, you're mumbling. What?

23 A. I said, Brenda's got a lot of boyfriends.

24 Q. And how many of your brothers are also her boyfriend?

25 A. She went with Ronnie before she was going with me.

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 And then I knew she was going with Scotty while I was in
2 prison, so --

3 Q. So how many brothers have you got now?

4 A. I got two brothers, and I also got a cousin down there
5 and we all stay in the same area right there.

6 Q. Now are you -- Help me out here. Are you triplets?

7 A. No, sir. But my little brother looks more -- My
8 40-year-old brother looks more like me than my twin does,
9 sir.

10 Q. And you have a twin brother?

11 A. Yes, sir, I have a twin.

12 Q. Okay.

13 A. His name is Ronny and mine's Donny.

14 Q. I --

15 A. His name's Ronald and my name's Donald. He was born
16 in 1963.

17 Q. Okay, looks just like you.

18 A. March. Yes, sir.

19 Q. He was with your girlfriend in your car?

20 A. He was either with her or Scotty was either with her.
21 But it wasn't me, sir.

22 Q. Well let's go back to the last time before May 10th
23 last year when you had your car -- when you had your car.
24 When was the last time before one of your brothers that are
25 identical to you went off with your girlfriend? When's the

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 last time you had the car before that day?

2 A. Sir, I parked the car about a week before.

3 Q. You parked it?

4 A. Yes, sir. I parked the car. I parked the car behind
5 my house, behind my mother's house.

6 Q. Was Brenda in the back seat when you parked it?

7 A. No, sir.

8 Q. When did Brenda get in the back seat?

9 A. I don't know.

10 Q. And after you parked the car, what did you do? Walk
11 off? Walk on?

12 A. I parked the car and put the keys in the ashtray, sir,
13 because I couldn't drive it because they sent me a letter.
14 They took my license and I didn't want to get another
15 driving under suspension. I just paid \$1700 dollars to get
16 my license back.

17 Q. All right.

18 A. Then they --

19 Q. Okay.

20 A. Then they sent me a paper from the highway department
21 told me they was going to take my license 'cause I needed
22 to pay \$5000 dollars restitution on a vehicle that he hit
23 me from behind on the paint because I was driving.

24 Q. Okay. So you parked the car and left the keys in the
25 ashtray?

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 A. Yes, sir.

2 Q. Well why did you leave them in the ashtray?

3 A. To keep from losing them, to keep them from getting
4 gone. I put them there in the ashtray because the motor
5 cost me, it only cost the motor something like \$1700
6 dollars on the car, and I was thinking about letting him
7 come on and get it, sir.

8 Q. And that was your mama's house where you parked it?

9 A. Yes, sir.

10 Q. Why didn't you give your mama the keys?

11 A. Well 'cause my mother and father, to be honest with
12 you, they can't remember where they put nothing. They
13 can't remember. My daddy, he can't remember -- If he lays
14 something down, he can never go back and pick it up. He
15 don't know where he laid it at. He's 70 something years
16 old, sir.

17 Q. You've been in their house before, though?

18 A. I lived there.

19 Q. And you could have put the keys somewhere in their
20 house, couldn't you?

21 A. I don't stay in their house. I stay in the camper
22 behind the house.

23 Q. But you could have put the keys somewhere yourself in
24 their house where you could later find them. Couldn't you?

25 A. Sir, I don't even use their bathroom. I respect my

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 mother. I don't even go in there and use her bathroom.

2 Q. I thought you lived there?

3 A. I live in the camper behind my mother's house. I
4 don't -- I won't use my mother's bathroom. I respect my
5 mother and father. He's my stepfather. And I respect them
6 that much. I won't even go in their guestroom and use
7 their bathroom. I'll eat there at their table. But, you
8 know, I don't curse in front of them. I -- They don't
9 allow no drinking in their yard. They don't allow no
10 smoking in their house. They go to church every Sunday
11 that they can get there.

12 Q. Actually, you were in your car on May 10th last year.
13 You picked Brenda up and got her at the hospital. Didn't
14 you?

15 A. No, sir. I did not pick Brenda up at the hospital.

16 Q. You didn't pick your girlfriend Brenda up at the
17 hospital?

18 A. No, sir. I did not.

19 Q. And she wasn't in the back of the car when you went in
20 the Family Dollar store and shoplifted the beef jerky's?

21 A. Sir, I never went in the Family Dollar store. I was
22 working.

23 Q. You were at work?

24 A. Sir, I was at Myrtle Beach, South Carolina when all of
25 this went down.

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 Q. How did you get there?

2 A. I got there, to be honest with you, by Robert
3 McIntyre. Robert McIntyre come back down here, signed my
4 bond, got me out, let me borrow the money to pay the
5 bondsman with.

6 Q. Now what did you do at Myrtle Beach?

7 A. Paint.

8 Q. How did you get back from Myrtle Beach?

9 A. I got back from Myrtle Beach with Robert McIntyre.

10 Q. All right. So Brenda, when she got out of the
11 hospital, one of your brothers that looks just like you,
12 picked her up?

13 A. I think so, sir.

14 Q. All right. And that day, you say you weren't in the
15 Family Dollar store?

16 A. No, sir. I was not.

17 Q. But you'd been in that Family Dollar store with Brenda
18 quite a few times prior to that. Had you not?

19 A. Sir, to be honest with you, I'd been in there with her
20 about a month before that, probably. I would say two,
21 three, four weeks before that. Yes, sir. I was. And they
22 was following her all over that store. And she was drunk.
23 Brenda stays drunk, sir. She's drunk from the time she
24 gets up until the time she goes to bed.

25 Q. But you'd been in that Family Dollar Store - -

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 A. All she wants to do is walk the streets and smoke
2 crack.

3 Q. Okay. Okay. But you've been in the Family Dollar
4 store - -

5 A. Yes, sir. I've been in that Family Dollar store. So
6 has my twin. And the whole family's been in that Family
7 Dollar store. We've seen the woman from Lancaster, she
8 used to work in Lancaster.

9 Q. You and Brenda have been in the Family Dollar store
10 before May 10th?

11 A. Yes, sir. I've been in that Family Dollar store with
12 Brenda. Yes, I have.

13 Q. You've gotten up there in your white Ford Taurus
14 before. Have you not?

15 A. Yes, sir.

16 Q. You've gone up there in the white Ford Taurus?

17 A. Yes, sir. I've been up there in the -- Yes, sir, I
18 ain't going to sit here and lie to you. Yes, sir. About
19 two or three, four weeks prior to that me and Brenda walked
20 in there. Like I said, they followed her all over that
21 dad-blamed store. And I told Brenda, I said, "Come on."

22 Q. Why do you reckon they were following her all over the
23 store.

24 A. 'Cause she was drunk. Most of the time -- I love
25 Brenda. I love her, sir. But a...

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 Q. But she goes off with all your brothers that look just
2 like you.

3 A. Yes, sir, she does.

4 Q. All right. Now - -

5 A. And I keep taking her back, sir.

6 Q. Bless your heart. Okay. All right, now --

7 A. But I'm a good man like that. I don't believe in
8 throwing her out. I want her to be -- I try to -- I don't
9 know, it's hard to understand.

10 Q. Let me know when I can ask the next question.

11 A. Well here. Yeah.

12 Q. I want to talk about this rap sheet of yours that goes
13 from here all the way to the back door.

14 A. Okay.

15 Q. Rattle off those crimes again that you've been
16 convicted of. The same the ones you told -----

17 A. Well if you let me hold the paper that you got there,
18 sir, I can tell you.

19 Q. No, you did it from memory before. You can do it
20 again.

21 A. I got felony larcenies on it.

22 Q. Yeah.

23 A. I got possession of an unlawful weapon on it.

24 Q. All right.

25 A. That's been 1980's, I think. I got common law robbery

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 on there.

2 Q. Uh-huh.

3 A. That was brought back in 1980 something?

4 Q. How about the 2004?

5 A. 2004? That's a -- What was that?

6 Q. Common law robbery.

7 A. Common law robbery?

8 Q. Yeah.

9 A. That was where I was in Charlotte.

10 Q. We're not going to talk about - - -

11 A. You don't want to talk about what happened?

12 Q. - - - how many you were convicted. We're going to
13 talk about what you're convicted of. Okay?

14 A. Yeah, what --

15 Q. So we've got the common law robbery?

16 A. Yes, sir.

17 Q. Keep going. You're doing fine on your list.

18 A. Well I see what you're trying to do. You're trying to
19 convict me on what I've done in my past, sir. I mean, that
20 -- God don't want people doing that. Maybe I could have
21 been reunited with - -

22 Q. Just a minute --

23 MR. SPRINGS: Your Honor, would you --

24 A. Maybe I could be a Christian man now.

25 THE COURT: You have to answer the questions.

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 THE WITNESS: I'll do it, sir. I'll do it.

2 BY MR. SPRINGS:

3 Q. Now, going back to your rap sheet that goes from there
4 to the back of the courtroom. We got to the common law
5 robbery. I just want -- I'm old, and I don't hear well. I
6 want to hear the list again that you gave your attorney.

7 A. Well sir, I can't sit here and do it out of my head.
8 Just like I can't tell you --

9 MR. DELANEY: Your Honor, this time Mr. Springs has
10 the -- we've discussed what --

11 THE COURT: Why don't you just ask him whether or not
12 he's been convicted of those rather than have him go over
13 this. I think that would be a better way to do it.

14 MR. SPRINGS: All right.

15 Q. So we're agreed. You've been convicted of common law
16 robbery in 2004?

17 A. Yes, sir. I have.

18 Q. And attempted felony larceny in North Carolina, 2006?

19 A. Yes, sir. I have.

20 Q. And misdemeanor larceny, 2010?

21 A. Yes, sir. I'm 48 years old. I've got a rap sheet.

22 Q. Felony larceny in 2011?

23 A. Yes, sir.

24 Q. Shoplifting in 2008?

25 A. Because I was on crack too, sir.

DONALD RAY ALTMAN: CROSS BY MR. SPRINGS

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1 Q. Just yes or no. Were you convicted?

2 A. Yes, sir, I'm being honest with you all.

3 Q. Receiving stolen goods in 2004?

4 A. I told you that, yes.

5 Q. And burglary?

6 A. Yes, sir. The burglary was back when I was 18 years
7 old. And I'm 48 years old now.

8 Q. And all your brothers look just like you?

9 A. My twin -- I've got a twin brother that looks like me.
10 And my 40-year-old younger brother looks more like me than
11 my twin does. Yes, sir. You can put my 40-year-old right
12 there, his name is Scotty Mullis, he's my stepbrother --
13 And you put me and him right beside each other and you
14 can't tell us apart hardly. Scotty's been locked up here
15 for driving them cars. He's in prison right now. Y'all
16 got him in prison right now for driving up here with no
17 license, no insurance, and doing a tag like that right
18 there. Scotty has gotten us all in more trouble than you
19 can shake a stick at, sir.

20 Q. He's got -- Scotty's gotten you in trouble?

21 A. He's gotten me in trouble sitting here right now, him
22 or Ronny one.

23 Q. Did he get you in trouble with the common law robbery,
24 the attempted felony larceny, the misdemeanor larceny, the
25 felony larceny, the shoplifting, the receiving stolen

MICHELLE WILLIAMS: REDIRECT BY MR. SPRINGS

1 goods, and burglary? Did your brother get you into those?

2 A. Yes, sir. He got me in both of them in Monroe. Yes,
3 he did. But I ain't going to sit here and criticize him
4 'cause I love them both. I love them both very, very much.
5 I'm just telling you, they've got problems with crack
6 cocaine, and we all have, sir. I have had problems with
7 it. I've overcome it.

8 Q. Can I ask a question now?

9 A. Yes, sir.

10 Q. All right. Now when your brothers were off with your
11 girlfriend on May 10th, how long would you figure it would
12 take to go into the CVS, and the Walmart, and the Lowe's,
13 and the Big Lots, and the Family Dollar store and steal all
14 this stuff? You think it could be done in a day?

15 A. I'd say so. If they didn't dig it out of trash cans.

16 Q. Thank you, Mr. Altman. That's all I have.

17 A. Thank you, sir.

18 MR. DELANEY: No follow-up questions, Judge.

19 THE COURT: You can step down and have a seat at
20 counsel's table.

21 Anything else, Mr. Delaney?

22 MR. DELANEY: Your Honor, at that time -- at this
23 time, the Defense would rest.

24 (DEFENSE RESTS AT 01:15 PM.)

25 THE COURT: Anything in reply?

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MR. SPRINGS: I'd like to recall Ms. Williams.

THE COURT: Please come back up.

You're still under oath.

4

(WHEREUPON: MICHELLE WILLIAMS,

5

BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

6

REDIRECT EXAMINATION

7

MICHELLE WILLIAMS BY MR. SPRINGS:

8

Q. Ms. Williams, how many times prior to May 10th did you see the Defendant, Donald Altman, in your store would you say?

10

11

A. Over the past years I've seen him probably 20 times or so.

12

13

Q. All right. And prior to the May 10th, prior to watching him put the beef jerky's in his pockets and walk out, do you remember about how long before that it was the last time you saw him in the store?

16

17

A. The reason I remember him so well is on a particular day a week or two before this incident, him and Brenda came into the store. They normally come in separately. He'll come in first, and she'll come in behind him.

20

21

And she asked to use the restroom. I gave her the key to the restroom, which is in our stockroom. And our back door is in our stockroom. It's got an alarm on that back door. She went into the restroom, and she went out my back door. When she went out my back door, it sounded the

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23

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25

MICHELLE WILLIAMS: REDIRECT BY MR. SPRINGS
RECROSS BY MR. DELANEY

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1 alarm. I went running back there because I got to protect
2 Family Dollar. And then too, my thought went to, they must
3 be setting me up to rob me, honestly, because nobody goes
4 out your back door to see -- I asked her, I said, "What are
5 you doing at my back door?" And she said, "Oh, I got
6 confused." So at that point on, I knew when they both came
7 into the store, I had to watch them 'cause nobody ever goes
8 out my back door and sounds the alarm. That's why I
9 distinctly remember who he is.

10 Q. And is there any doubt in your mind today, that's the
11 guy you saw --

12 A. There's no doubt. There's no doubt. 'Cause soon as
13 he come in the door, I knew I had to watch him simply
14 because I felt like they may have been -- I can't say that
15 probably. I don't know why she went out my back door to
16 set that alarm off. I don't know if they was --

17 Q. You didn't feel comfortable?

18 A. I did not, no.

19 Q. That's all I have. Thank you.

20 RECROSS-EXAMINATION

21 MICHELLE WILLIAMS BY MR. DELANEY:

22 Q. Ms. Williams, why didn't you testify to that a couple
23 of hours ago?

24 A. Because I was not asked that a couple of hours ago.

25 Q. Why didn't you tell the police this 15 months ago?

MICHELLE WILLIAMS: CROSS BY MR. DELANEY

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1 A. I may have told the police this.

2 Q. Now your testimony is, well you were asked, had -- You
3 were asked had you seen my client before. Correct?

4 A. Uh-huh.

5 Q. And now it's 20 times he's been in the store before?

6 A. Uh-huh. Yes.

7 Q. No further questions.

8 MR. SPRINGS: Thank you, Ms. Williams.

9 THE COURT: Step down. Have a seat.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Anything else?

12 MR. SPRINGS: That's all for the State.

13 THE COURT: Members of the jury panel, you've now
14 heard all the evidence and received the exhibits.

15 We have to take a break now because I have to take up
16 some matters of law. And when you come back, you'll hear
17 the attorneys make for you their closing statements or
18 arguments. I will charge you the law, and then we'll have
19 the case in your hands. This will be a very short break.

20 (JURY EXITS COURTROOM AT 02:19 PM.)

21 THE COURT: Anything from the State at this time?

22 MR. SPRINGS: No, sir.

23 THE COURT: Anything from the Defense?

24 MR. DELANEY: No, Your Honor.

25 THE COURT: State waive opening?

1 MR. SPRINGS: The State does unless the Defense
2 demands we will.

3 MR. DELANEY: No, Judge.

4 THE COURT: Well, let's take about a two or three
5 minute break. I know we just got started but I know as
6 soon as everybody goes in the jury room they're going to
7 want to use the restroom. So let's give them a few minutes
8 and we'll take about five minutes too. So then we'll be
9 ready to argue and charge when we come back.

10 (COURT IN RECESS AT 02:20 .PM.)

11 (BACK ON THE RECORD AT 02:27 PM.)

12 THE COURT: Take your seats.

13 (PAUSE.)

14 (DEFENDANT REENTERING COURTROOM.)

15 THE COURT: Is the State ready?

16 MR. SPRINGS: The State is ready.

17 THE COURT: Defense ready?

18 MR. DELANEY: The Defense is ready, Your Honor.

19 THE COURT: Bring in the jury.

20 (JURY REENTERS COURTROOM AT 02:30 PM.)

21 THE COURT: All right. We'll now hear the closing
22 arguments.

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

25 THE COURT: Yes, sir.

CLOSING ARGUMENT: BY MR. DELANEY

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1 MR. DELANEY: Thank you ladies and gentlemen, for
2 being so attentive throughout this trial. And I know we
3 said at the beginning, at the beginning you heard that this
4 is going to be a trial that is not going to take very long.
5 But that doesn't mean it's any less important to be parties
6 in this case and specifically to my client, Mr. Altman.

7 I want to look up a definition here in the dictionary.
8 And the word I'm looking up is "assumption." And the
9 definition that is provided here is assumption is
10 "something taken for granted or accepted as without proof."
11 The system that we have in this courtroom is not built upon
12 assumptions. It's built upon evidence that can be backed
13 up by proof. The State's case against Mr. Altman is full
14 of assumptions. And we just heard from Mr. Altman, and we
15 heard that he has a criminal record. But ladies and
16 gentlemen, you're going to be told that you can't assume
17 he's guilty of the offenses he's on trial here today just
18 because of that.

19 The State still needs to come into court and prove his
20 guilt, as we talked about, beyond a reasonable doubt. And
21 you remember at the beginning of this trial, we talked
22 about the burden. And it's their burden to present
23 evidence to you in this case.

24 Let's talk a little bit about what was presented to
25 you in this case and what wasn't. You had -- we had -- We

CLOSING ARGUMENT: BY MR. DELANEY

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1 heard first, Officer Popov testify that he got a
2 description. And you heard this description repeated over
3 and over: white male wearing a tan hat. And we heard
4 Officer Popov testify that he's trained to write these
5 reports, even though he didn't write the report. But he's
6 trained to -- These officers are trained to put in these
7 reports what they feel is -- what they feel is important to
8 a case and trained to be as accurate and detailed as
9 possible in filling these reports out.

10 Now Officer Popov testified that, almost 15 months
11 later, he believed he could make an identification based
12 upon looking at a Department of Motor Vehicles photo from
13 what he saw of this individual. And when he was further
14 questioned about that and why that wasn't listed in any
15 type of a report and why that wasn't documented in this
16 case, but rather why it was told some 15 months later. And
17 I would argue to you, ladies and gentlemen, and submit to
18 you that, that's because it doesn't make sense. And that's
19 the State's case, being full of assumptions. And this
20 system demands more. And Mr. Altman, even with his
21 criminal record, deserves better than just assumptions.

22 And then with witnesses coming into court, and I would
23 submit to you, just adding a bunch of things that was not
24 initially the case almost 15 months ago. We heard about
25 this lady in the back seat, Brenda Sims. And you heard

CLOSING ARGUMENT: BY MR. DELANEY

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1 some of the witnesses testify from the State. And the
2 witnesses that testified from the State, they were
3 subpoenaed to be here today. The State has subpoena powers
4 in this case to get someone to come to court. Where is
5 Brenda Sims? Wouldn't you like to hear from Brenda Sims?
6 She was in that car. That's undisputed in this case. She
7 was in the back of that car riding around with the
8 individual before he left the Family Dollar. Now everybody
9 else was in here: the lady from the Family Dollar; the
10 lady from Walmart, from Big Lots, from Lowe's. But no
11 Brenda Sims. Wouldn't you be interested to hear who she
12 would say -- Who she said was in that car? It's their
13 burden to present evidence to you. Where is she at? And
14 you heard Officer Popov testify she was a little -- I think
15 he said, kind of, a little groggy but she was able to
16 understand what he was saying, what they were asking her.
17 And I think it's a pretty logical assumption, if I can use
18 that word, to make what they were asking her. And he heard
19 his testimony that she knew what they were asking. Where
20 is she at today? Wouldn't you like to hear from her?

21 You heard testimony that the Family Dollar is equipped
22 with four different, four different surveillance cameras.
23 Not one, not two, not three, but four. A couple in the
24 front, a couple in the back. You heard testimony from the
25 manager at the Family Dollar, and also the officers

CLOSING ARGUMENT: BY MR. DELANEY

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1 associated with this case, Officer Thomas, that no video
2 was ever reviewed. These tapes were never requested to see
3 who is on that video. Wouldn't you like to see who was on
4 that video? Where is that video? We have video in this
5 case. We have video of this incident.

6 MR. SPRINGS: I'm going to object. That was nowhere
7 introduced into evidence, Your Honor, that's a
8 misstatement.

9 THE COURT: Just stick to what the facts are.

10 You remember the facts -- Members of the jury, you
11 remember the facts as presented from the witnesses.

12 MR. DELANEY: And I'll correct that by saying, ladies
13 and gentlemen, that there was video cameras in that store.
14 And we heard testimony that the officers did not bother to
15 check these video cameras. But wouldn't we all like to see
16 what was on that video? Again, it's their burden. It's
17 their burden to present this evidence to you. And they
18 haven't.

19 So what we're left with -- And Mr. Springs, one of his
20 questions to Officer Thomas was something to the effect of,
21 "Officer Thomas, there was no -- Was there any mystery or
22 question in this case of who was involved?" That was one
23 of his questions to Officer Thomas. Now Officer Thomas'
24 response was "No". Based upon Officer Popov and Michelle
25 Williams "There was no question," "There was no mystery."

CLOSING ARGUMENT: BY MR. DELANEY

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1 Well let's think a little bit and talk a little bit
2 about what Michelle Williams testified to. And what she,
3 according to the police reports in this case, told the
4 police initially, and what the police recorded. What the
5 police recorded was that there was a white male wearing a
6 tan hat. That is the description that was given. That's
7 what the police recorded in their General Sessions case
8 file summary and their incident reports in this case.
9 Nothing about age. Nothing about height, weight, scars,
10 tattoos, description of clothing. None of that was
11 recorded in any documents in this case. Now 15 months
12 later, Officer Thomas wants to take the stand and say, "Oh
13 yeah, I remember she did say something about age." Fifteen
14 months later. Nothing in any reports in this case
15 documented that she had ever seen this individual before,
16 known this individual before. Then we get testimony here
17 today, "Yeah, I saw him before." And then we get more
18 testimony here today, "Oh yeah, I've seen him at least 20
19 times in the past." That doesn't make sense. This system
20 demands better than that.

21 You're going to hear from Judge Hayes when Mr. Springs
22 is finished with his closing. You're going to hear Judge
23 Hayes instruct you as to the law that you must apply.
24 You're going to hear him charge you as to -- as far as
25 talking to you about identification, and an eyewitness

CLOSING ARGUMENT: BY MR. DELANEY

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1 making identification. You're going to hear some things
2 about that as far as what is -- what can be suggested, what
3 can be overly suggestive, what can cause you to look closer
4 and scrutinize someone's identification, an eyewitness'
5 testimony. And you heard me ask Officer Thomas about photo
6 lineups and photos in this case. You heard him agree that
7 a photo lineup where you take individuals that look similar
8 and an eyewitness will then pick someone out of a photo
9 lineup, cuts down on what they call the "suggestibility"
10 versus just showing someone a single picture. So we went
11 through all that questioning. And did we hear anything
12 from the officers in this case that they took a single
13 photograph of my client the next day to Ms. Williams? No,
14 that came out through Ms. Williams. Not through the police
15 about what they did in their investigation. That came out
16 from Ms. Williams.

17 Mr. Springs is going to get up here in just a couple
18 of minutes, and I expect he's going to be beating up on Mr.
19 Altman a little bit, adding some jokes about his brothers,
20 and his criminal record, but just because they built their
21 case on assumption I don't want you, ladies and gentlemen,
22 to base your decision on that. You have to be convinced
23 beyond a reasonable doubt. You have to be firmly
24 convinced. And if you're not, if you're not firmly
25 convinced, if they have not proved the case to you beyond a

CLOSING: BY MR. SPRINGS

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1 reasonable doubt, you must find Donald Altman not guilty.

2 And I contend to you, ladies and gentlemen, was there
3 some stolen items in this car? Yeah, they've proven that.
4 They've proven there was some stolen merchandise in this
5 Ford Taurus that was registered to Donald Altman. They
6 proved that. They proved there was some beef jerky sticks
7 in this vehicle that was registered to Donald Altman.

8 But what you're going to hear from the judge in a few
9 minutes is that the State, they've got to prove the
10 identity of the individual who was possessing these stolen
11 items. They have to prove the identity of the individual
12 they are charging with shoplifting, beyond a reasonable
13 doubt. And that's what I contend, ladies and gentlemen.
14 When you look at what they presented to you, what I would
15 argue would be the tainted identification that we had here
16 today from Ms. Williams, combined with what they could have
17 presented to you, you see what else they could have
18 presented to you, ladies and gentlemen, which would have
19 left you firmly convinced. But they haven't. Thank you
20 for your time. In the jury deliberation room at the close
21 when you talk about this case, and you reach your decision,
22 I would ask you to find Donald Altman not guilty. Thank
23 you.

24 MR. SPRINGS: May it please the Court.

25 THE COURT: Yes, sir.

CLOSING: BY MR. SPRINGS

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1 MR. SPRINGS: Ladies and gentlemen of the jury, Mr.
2 Foreman, when you go into big factories that make things,
3 manufacture things, there are people there, at least one
4 person, it's called a quality control person. And they
5 make sure a product is correct and is done right. I have a
6 quality control person. He's sitting right here. Mr.
7 Defense Attorney has done a great job with what he has to
8 work with.

9 What do you do when your client is seen stealing at
10 the Family Dollar store by a store manager who is very
11 alert to him, very suspicious of him, got up within 12 feet
12 of him, and got a good, clear look at him; got his license
13 tag number, a car registered to him full of stolen goods
14 including the beach jerkies? Did you notice that she
15 probably saw him on the tail end, by the way. The last
16 thing he stole, the beef jerkies, because we had other
17 stolen things from Family Dollar store. She didn't see
18 that. She just saw the last thing he took before he went
19 out the door, the beef jerkies. So what do you do when
20 you're the defense attorney, and your guy is caught red-
21 handed like that? You do the best you can. You don't just
22 give up. You fight like a tiger. And that's what this
23 gentlemen has done. I commend him for that.

24 I think you'll all be proud of the system today. We
25 are required to come in here and prove these things beyond

CLOSING: BY MR. SPRINGS

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1 a reasonable doubt. We're happy to do it. It keeps us all
2 safe. We want all criminals, all crimes to be prosecuted,
3 it keeps us safe. And we want to be put to the test the
4 way we have today because that keeps us safe.

5 But with all the evidence that this is the guy that
6 was in the Family Dollar store and not one of all his
7 brothers including his stepbrother that looks just like
8 him. Did you catch that? He's still denying. All his
9 brothers that look just like him are out with his
10 girlfriend, lifelong girlfriend. Now what are the chances
11 it wasn't Donald Ray Altman?

12 But Michelle Williams saw him put the beef jerkies in
13 his pocket and leaving the Family Dollar store, getting
14 into his car, registered to him with his lifelong
15 girlfriend.

16 And then when he steps out and Popov sees him, and
17 sees a man that looks similar to this, corroborating with
18 Ms. Michelle Williams.

19 And then you've got this mountain of stolen property.
20 Think about this. This is 19 Goodies 6-dose boxes. 19
21 boxes. 824 dose boxes. 650 dose boxes. Boxes and boxes
22 and boxes. All of these tools mounted up on the passenger
23 side floorboard of his car, including the beef jerkies that
24 are with all of this stuff covered with the brown shirt:
25 the beef jerkies and the screw drivers from Family Dollar

CLOSING: BY MR. SPRINGS

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1 store; the 6-in-1 paint tools from the Family Dollar store;
2 the paint scrapers from the Family Dollar store; and the
3 beef jerkies; all with the rest of it, the rest of the loot
4 on the floorboard of his car covered with the shirt. The
5 stuff from the Family Dollar store got added to that pile
6 by him.

7 And why does somebody take a tag and change the tag?
8 You get to use your common sense when you go back there to
9 deliberate. And your common sense would tell you, when you
10 are stealing, you might change your tag, so that the store
11 people have the wrong number when they call the police.
12 You fix up your tag to be fictitious so it doesn't come
13 back to you. This is his tag on his car with his
14 girlfriend with all the stuff that he possessed.

15 Now when you possess stolen goods, you got to know
16 they're stolen for it to be a crime. If it's an accident,
17 it's not a crime. If you accidentally get in possession of
18 stolen goods, and you don't know they're stolen, you have
19 no bad acting, it's a mistake, that's not a crime. He knew
20 they were stolen. Did he steal them? Probably, but we
21 don't know that. All we know for a fact is he was
22 possessing all this stuff, all this stolen stuff. And he
23 knew good and well it was stolen. If he didn't steal it,
24 the circumstances -- and again you get to use your common
25 sense -- the circumstances tell you he knew it was stolen.

CLOSING: BY MR. SPRINGS

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1 For one thing he got out of the car at the BP, and he hit
2 the road. He goes in one door of the station and out the
3 other. And your common sense would tell you, he saw Popov,
4 Officer Popov, and knew the police were hot on his trail,
5 and he hit the road. Left girlfriend, left his stuff, and
6 bam boos, which tells you he knew it was stolen. Did he
7 steal it? I don't know, probably. But we know he
8 possessed these stolen articles. And he knew good and well
9 they were stolen.

10 When you go back to deliberate, talk over all these
11 things, discuss Mr. Altman's testimony. The Judge will
12 tell you to use your common sense when you evaluate a
13 witness' testimony.

14 Who was straightforward in this case? All these store
15 people got up here and in good faith told you what had
16 happened. Michelle Williams told you what she saw with her
17 own eyes. She doesn't have an axe to grind against this
18 guy. She's trying to run a store. And having probably a
19 difficult time with the Mr. Altmans of the world. She came
20 in here to get justice. All these people came in here to
21 get justice. You're not supposed to steal from them. They
22 just came in here to get justice.

23 Evaluate. There's testimony, compare it to Mr.
24 Altman's testimony. All his brothers look just like him.
25 Been setting him up for years and sending him up the river.

CLOSING: BY MR. SPRINGS

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1 They all go out and fool around with his girlfriend, and
2 they all drive his car, and they dummy up his license tag,
3 and they steal all sorts of stuff with his girlfriend in
4 the back of his car. And if you believe that, or you don't
5 believe that, you got good common sense all of you.

6 We had to prove the case beyond a reasonable doubt.
7 That's not beyond all doubt. You could go back there and
8 get silly and say, well maybe he is part of quadruplets.
9 Maybe he's related to that lady out in California that had
10 eight babies, and they all look like him. You could get
11 silly about that. But let's use your common sense and be
12 reasonable.

13 It's beyond a reasonable doubt. There have been a lot
14 of definitions over the years of reasonable doubt. The one
15 that's in fashion now, the judge will give you. He'll say
16 that a reasonable doubt is the kind of doubt that causes
17 you to hesitate to act.

18 But we want you to go back and deliberate and talk
19 about this. Go over what the State's witnesses said.
20 Think about what Mr. Altman said and how he testified.
21 Talk about it. There are chairs back there for that
22 reason. We want you to hesitate like that. You hesitate
23 in life when you make every important decision, and this is
24 important. Even the things you know good and well going
25 out how you are going to decide, you do hesitate to think

CLOSING: BY MR. SPRINGS

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1 about it. Think about that. If your boss offered you a
2 job making \$300,000 a year, but you had to move to
3 Gastonia. You're boss called you, "I got a job for you.
4 I'm going to pay you \$300,000 a year. You're going to
5 have to move up to Gastonia. Go home and think about it.
6 Sleep on it. And come back and tell me in the morning."
7 You walk out of the boss' office knowing good and well
8 you're moving to Gastonia. But you hesitated, and you
9 thought about it, and went home, thought about the kids,
10 schools, your spouse. So we do want you to hesitate that
11 way. Just sit down and talk about it.

12 You can all do this. You told the judge when you were
13 sitting out there, you're able to judge this case. You're
14 judging the facts. You're like an umpire. An umpire
15 doesn't make up the rules. The umpire gets the rules from
16 the baseball commission. He'll give you the rules. You
17 just judge behavior. You're going to judge his behavior.
18 You're not judging whether he is a good man or bad man.
19 You're not judging his soul. You're judging whether he did
20 this behavior. Just the facts, just call it like you see
21 it. And you will have done your duty. You can do that.
22 You can be fair to both sides. And you can give these
23 people the justice they deserve. We have proved this case
24 beyond a reasonable doubt.

25 Brenda Sims. Where's Brenda Sims? That's his

CLOSING: BY MR. SPRINGS
CHARGE ON THE LAW

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1 girlfriend. Where is Brenda Sims?

2 The video cameras, yes. This case was made by patrol
3 officers. I'm very proud of these patrol officers. There
4 wasn't a detective on this case. And Ryan Thomas did an
5 excellent job. Did he forget to ask about video cameras?
6 Yep. Would there have been him on the video cameras? I
7 don't know. We don't know. It might have been nice to
8 have a security camera video. They're usually grainy and
9 bad, but it have been nice to have. Nice to look at.
10 Didn't. But we have a live person. It's absolutely dead
11 positive that that's the guy that was in the Family Dollar
12 store. We do have her. Yes, he forgot about the video
13 cameras. So we don't know if we would have had him on
14 there or not.

15 But we have everything else. Everything else that
16 says, this is the guy that shoplifted from the Family
17 Dollar store. And this is the guy that possessed all this
18 stolen stuff from the CVS, the Walmart, the Big Lots, and
19 the Lowe's. I thank you.

20 THE COURT: Jury panel, I'm going to ask you now to
21 give me your attention for a few minutes while I charge you
22 the law that you all are to apply to the facts in this
23 case. Like the attorneys, I appreciate the attention
24 you've given to us.

25 Mr. Altman is charged with six charges: one, altering

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1 or possessing an altered license plate; four of possessing
2 stolen goods; and one of shoplifting.

3 These are all made to have occurred on May 10th, 2010
4 to these he has entered pleas of not guilty. I'll talk to
5 you more about that in a moment.

6 I first want to tell you that the fact that Mr. Altman
7 was charged, the fact that he was arrested, the fact that
8 he is on trial is not evidence that he committed these
9 offenses. That's just the way our system works when
10 someone is thought to have committed an offense. They are
11 arrested. The case is processed through our court system.
12 They are brought to trial. And the jury determines whether
13 or not the State can prove that person's guilt beyond a
14 reasonable doubt.

15 Now the fact that there are several indictments,
16 several charges against Mr. Altman, are not any evidence he
17 committed these offenses. The State has just, based on the
18 facts that they presented, felt that there were these six
19 offenses and charged six offenses. But that does not mean
20 that Mr. Altman committed any or all of them. Again, these
21 are just charges at this point. You are to look at each
22 indictment separately. What you find on one is not
23 indicative of what you must find on the other. You are to
24 listen -- you are to analyze the evidence as to each
25 indictment and determine based on the law as I charge it

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1 whether or not the State has as to that indictment and as
2 to that charge proven Mr. Altman guilty beyond a reasonable
3 doubt.

4 Mr. Altman like anyone charged with any offense in our
5 system is presumed innocent. He's presumed innocent of
6 this charge, this presumption of innocence is not a mere
7 legal theory or a mere legal phrase, it is a substantial
8 right. This is a right that adheres to the benefit of
9 anyone who is arrested at the time of their arrest, remains
10 with them as their case is processed through our court
11 system. Presumption of innocence in Mr. Altman's favor
12 exists at this moment and exists as you deliberate. This
13 presumption of innocence is removed if and when, and only
14 if and when you determine that the State has proven his
15 guilt beyond a reasonable doubt. It is a cardinal and
16 important rule that anyone charged with an offense is
17 presumed innocent.

18 Now the State is not required to prove an individual's
19 guilt beyond all or beyond every doubt, but beyond a
20 reasonable doubt. Our courts have described a reasonable
21 doubt as the kind of doubt that would cause a person, a
22 reasonable person, to hesitate to act. Proof beyond a
23 reasonable doubt -- I'm sorry -- Proof beyond a reasonable
24 doubt is proof that leaves you firmly convinced of an
25 individual's guilt. There are very few things in our world

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1 that we can know with absolute certainty, and the law does
2 not require absolute certainty. If based on your
3 consideration of the evidence, you are firmly convinced
4 that Mr. Altman is guilty of one or more of the offenses,
5 you would find him guilty. If on the otherhand, you think
6 there's a real possibility that he is not guilty, you would
7 give him the benefit of that doubt and find him not guilty.
8 He is entitled to the benefit of any reasonable doubt you
9 have as to any issue in this case.

10 I remind you, as I told you this morning, I am the
11 sole judge of the law in this case, and you must take,
12 accept, and apply the law as I charge it. You are not to
13 have -- You are not to infer from anything I have said or
14 done or anything I now say or do as indicating an opinion
15 of mine on the facts. Our law does not allow a trial judge
16 to formulate or express to a jury any opinion on the facts.
17 It is solely up to you as the trial jury in this case to
18 examine the evidence and give to the evidence the effect,
19 the value, the weight, and the truth you believe it should
20 have. In doing this, you may believe one witness as
21 opposed to several, several witnesses as opposed to one.
22 You may believe all, part, or none of a witness' testimony.
23 Use your common sense, your sense of logic, your
24 experiences in life in analyzing the evidence.

25 As judges of the facts, you must necessarily judge the

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1 credibility of the witnesses who have testified. In
2 assessing credibility, use the things I've already talked
3 about. Use the things that you find in your day to day
4 life, the indicativeness of truthfulness in an individual.
5 And you can use certain evaluators. What's his demeanor?
6 How they act on the stand? Are they hesitant or
7 straightforward? Consider the opportunity a witness had to
8 know those things to which that witness testified.
9 Consider any bias or prejudice a witness may have, that is,
10 whether a witness wish to help or hurt one side or the
11 other. Look at the consistencies or inconsistencies of a
12 witness's testimony.

13 As to Mr. Altman, there's been evidence of a prior
14 criminal record. You cannot use that as any evidence of
15 his guilt. That evidence is allowed only you, as a trial
16 jury in this case, to judge his credibility. That is, the
17 State is allowed to show that he has these past offenses in
18 order that you can determine whether to believe him or not.
19 Not to determine whether or not he committed the offenses
20 with which he is charged.

21 In cases such as this, there are generally two types
22 of evidence presented: direct and circumstantial evidence.
23 Direct evidence is testimony from a person who claims to
24 have actual knowledge of a fact such as an eyewitness.
25 Direct evidence immediately establishes the main facts

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1 sought to be proven. Circumstantial evidence is proven
2 from the chain of facts and circumstances which indicate
3 the existence of a fact. Circumstantial evidence is
4 evidence which immediately establishes collateral facts
5 from which the main fact may be inferred. Circumstantial
6 evidence is based on inference and not on personal
7 knowledge or observation. Our law makes absolutely no
8 distinction between the weight or value to be given direct
9 as opposed to circumstantial evidence. Nor is a greater
10 degree of certainty required of circumstantial evidence
11 than of direct evidence. What you should do is weigh all
12 of the evidence in this case. After weighing all the
13 evidence, if you are not convinced of Mr. Altman's guilt as
14 to one or more of the indictments, you would find him no
15 guilty. On the otherhand -- Well, as I said, if you find
16 -- Let me repeat that. If after weighing all the evidence,
17 you are not convinced of his guilt you, of course, would
18 have to find him not guilty.

19 In this case, there is an issue regarding the
20 identification of Mr. Altman as the person who committed
21 the crime of shoplifting. The State has a burden of
22 proving this beyond a reasonable doubt. That is, proving
23 beyond a reasonable doubt that it was Mr. Altman as
24 alleged. But you must be satisfied beyond a reasonable
25 doubt the accuracy of the identification of Mr. Altman

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1 before you may convict him.

2 Identification testimony is an expression of belief or
3 impression by a witness. You must determine the accuracy
4 of the identification of the Defendant. You must consider
5 the believability of the identification witness in the same
6 way as you look at all witnesses' testimony. You may
7 consider whether the witness had an adequate opportunity to
8 observe the Defendant at the time of the offense. And this
9 will be affected by things such as how long or short time
10 was involved. How far or close the witness was to the
11 alleged Defendant. The lighting conditions. And whether
12 the person the witness had a chance in the past to know the
13 person. Once again, I instruct you the burden on the State
14 extends to every element of the crimes charged including
15 the identity of Mr. Altman as the person who committed the
16 crimes.

17 As to the charges, he is charged with shoplifting.
18 That is a statutory, that is a law passed by our
19 legislature. The State must prove in order for you to
20 convict Mr. Altman of shoplifting, that Mr. Altman took
21 possession of, carried away merchandise with the intent to
22 deprive the merchant of the possession, use, or benefit of
23 the merchandise without paying the full retail value.
24 Merchandise means any goods, chattels, food stuffs, or
25 wares of any type and description regardless of value.

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1 Merchant means the owner or operator of a store or their
2 agent, employee, franchisee, independent contractor.

3 "Intent" means willfully. That is intending the
4 result which actually occurs. Something that is
5 intentional is not done accidentally or involuntary.
6 Intent may be shown by acts and conducts of an individual
7 and other circumstances from which you may naturally and
8 reasonably infer intent. If a Defendant willfully
9 concealed unpurchased goods or merchandise on the premises
10 or outside the premises, or among their belongings or
11 clothing, you may consider this as evidence that the items
12 were concealed with the intent to convert them to his own
13 use without paying the full purchase price. The word
14 "conceal" means to hide merchandise on the person or among
15 one's belongings so that although there may be some notice
16 of his presence, it is not visible through an area of
17 observation. The State must prove that offense beyond a
18 reasonable doubt.

19 As to the motor vehicle alteration, there is a license
20 tag in evidence. The parties have agreed that the Code
21 Section I'm going to read you applies to that particular
22 license tag. This again is a statutory offense enacted by
23 our legislature. It provides that it is unlawful for a
24 person to alter a license plate. Very simple. That's what
25 the State must prove beyond a reasonable doubt, that it was

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1 altered, and it was done by Mr. Altman.

2 The third offense, receiving stolen goods or being in
3 possession of stolen goods, is also a statutory offense
4 enacted by our legislature. Here the State must prove
5 beyond a reasonable doubt that Mr. Altman bought, received,
6 or possessed goods, and that he knew or had reason to
7 believe that those goods or property were stolen. Whether
8 he knew or had reason to believe the property was stolen
9 may be shown by direct or circumstantial evidence. The
10 State must prove beyond a reasonable doubt that Mr. Altman
11 knew or had reason to believe that the property at issue
12 was stolen, by showing that he knew facts that would make a
13 reasonable person believe that the property was stolen.

14 "Possession" means that a person be in actual or
15 constructive possession of the items at issue. And that
16 that person have actual knowledge of their presence.
17 Actual possession of an item exists when that item is found
18 in the actual, physical custody of the person charged with
19 possessing it. "Constructive" possession of an item exists
20 when a person, although not in actual, physical possession
21 of the controlled substance, exercises dominion and control
22 over the controlled substance, or has the right to exercise
23 dominion and control over the controlled substance. A
24 person has possession -- I'm sorry, I said controlled
25 substance. That's not involved here. I'll read it all

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1 over. When a person has -- Let me start over.
2 Constructive possession of a item exists when a person,
3 although not in actual, physical possession of it,
4 exercises dominion and control over that item or has the
5 right to exercise dominion and control over that item. A
6 person has possession of an item within the meaning of the
7 law when they have both the power and intent to control
8 that item's disposition. Mere presence by an individual
9 where items are found is not enough. It must be shown that
10 Mr. Altman had possession and that he knew he had control
11 -- he knew that he had possession. Knowledge of the
12 presence of a stolen item by the Defendant is essential.
13 The State must prove those elements as to that charge
14 beyond a reasonable doubt before you can convict Mr.
15 Altman.

16 Now your vote -- you're verdict must be unanimous.
17 All 12 jurors must agree.

18 Ms. Cannon, I believe, the alternate will stay in here
19 while the rest of you exit in just a moment. Do not start
20 deliberating until I -- until you hear from me further.

21 I have to go over with the attorneys whether or not I
22 have made an error in my charge. If I have, I'll have to
23 bring you back in and correct it because you must follow to
24 the letter the law as I give it to you. If I have not made
25 an error, I will send the verdict form, which I will go

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1 over in just a moment, and the exhibits into the jury room.

2 Again, do not start deliberating until the Bailiff
3 tells you to start deliberating. Your verdict must be
4 unanimous. All 12 jurors must agree. And your verdict
5 cannot be based on passion, prejudice, sympathy, public
6 opinion, or matters outside the record. We can have
7 testimony replayed if you wish. If you have any questions,
8 write them down, knock on the door, tell the -- give them
9 to the Bailiff. The Bailiff will come and get me. I may
10 be doing some other work. But as quick as I can, I will
11 confer with the attorneys, respond to the note by writing
12 on it if I can. And if I do that, I'll send the note back
13 in, keep it, and send it back with the exhibits, Mr.
14 Foreman because it has to be part of the record. Or it may
15 be that I'll have to bring you here in the courtroom and
16 address whatever your question is.

17 In South Carolina, we do not send a written charge in
18 with the jury, but if you wish me to go over any part or
19 all of the testimony -- I'm sorry -- all the charge, just
20 let me know, and I'll bring you back here in open court,
21 recharge -- let you listen to the testimony. Whatever you
22 wish. And I will bring you back and recharge you the law
23 if you wish me to do that.

24 When you've reached a verdict, knock on the door, tell
25 the Bailiff. The Bailiff will come and get us as promptly

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1 as possible. Again, I may be working on something else,
2 but I will send for you as quickly as I can.

3 All the verdict forms are the same. They have two
4 options. The order the options are in is of no importance.
5 I have to put them in some fashion, some order, and I
6 always put them in this order. So the fact that one
7 proceeds the other does not mean it has any greater value
8 or is for greater consideration. They are of equal value
9 to you. First is, "We find the Defendant guilty of" and
10 then it lists the crime. And I'll talk about that more in
11 a moment. Second, "We find the Defendant not guilty." If
12 the State has failed to prove Mr. Altman guilty as to a
13 certain offense, you would use that second line, and put a
14 "check" or an "x" on the front of that line saying that we
15 find the Defendant not guilty. There's a place for you to
16 sign, and I've already dated that. Now what I have done on
17 the four possessions of stolen goods, they say, "We find
18 the Defendant guilty of possession of stolen goods." Now
19 there were different locations where these occurred. So
20 what I have done is under the works, "Possession of stolen
21 goods," I have written the store, CVS, Big Lots, Lowe's,
22 Family Dollar, and Walmart so you will know which one you
23 are considering. Altering the tag is simply, "We find the
24 Defendant guilty of altering or possessing an altered tag."
25 Or, "We find the Defendant not guilty." And shoplifting is

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1 a simple choice, "We find Defendant guilty of shoplifting"
2 or "We find Defendant not guilty." Again, your verdict
3 must be unanimous. Everybody but the alternate will go to
4 the jury room just a minute while I go over my charge with
5 the attorneys.

6 (JURY EXITS COURTROOM FOR DELIBERATIONS AT 03:15 PM.)

7 THE COURT: I'll be with you in just one moment.

8 Anything from the State?

9 MR. SPRINGS: Possibly, Your Honor. Your Honor, in
10 chambers you asked the Defense attorney and I if we could
11 agree that, that thing is a license tag. So you didn't
12 have to define a license tag.

13 THE COURT: I think I said that the --

14 MR. SPRINGS: Well, I heard you say that this Section
15 applies -- The parties have agreed that this Section
16 applies to that particular tag. It sounds like this
17 Section, which is about altered tags, that's an altered
18 tag. That kind of worries me just a tad.

19 THE COURT: Well, I think I said it like I meant to.
20 And I think it's clear that I -- Hopefully the jury
21 understood. What I meant for them to understand was that
22 pursuant to that Section, this tag falls thereon.

23 MR. SPRINGS: Okay.

24 THE COURT: I'm not going to bring them back in for
25 that.

1 Anything from --

2 MR. DELANEY: Judge, the only thing that I guess I
3 would have at this point, and ask you, I guess, consider
4 adding. I erroneously assumed some things.

5 Looking at Erwin's requested to charge and under their
6 identification, there is a section that deals with "If the
7 identification by the Witness may have been influenced by
8 the circumstances under which the Defendant was presented
9 to him of identification, you should scrutinize the
10 identification with great care. We also consider the
11 length of time that lapsed between the occurrences of the
12 crime and the next opportunity the Witness had to see the
13 Defendant and the fact of the reliability of
14 identification." Then there's also a small section that
15 says, "You may also take into account that an
16 identification made by picking the Defendant out of a group
17 of similar individuals is generally more reliable than one
18 that results from the presentation of the Defendant alone
19 to the Witness."

20 THE COURT: Well, that part she didn't pick him out of
21 a line up. She said she already knew him. Let's see what
22 the other part says.

23 MR. SPRINGS: I would simply say the other part was
24 basically said in so many words in your charge.

25 THE COURT: Well I -- You're on the record. I think

1 the charges I gave under the facts of this case is
2 appropriate.

3 Anything else?

4 MR. DELANEY: No, Judge.

5 MR. SPRINGS: Nothing from the State.

6 THE COURT: Check the exhibits and the verdict forms
7 and we'll send them in. And I'll hold on to the
8 indictments and alternates, you will call back tonight?

9 MADAME CLERK: Yeah, after Seven o'clock.

10 THE COURT: You can leave now. If you'll just call
11 back after 7:00 tonight and follow whatever instructions
12 you receive.

13 ALTERNATE JUROR NO. 252: Thanks. I'm through for the
14 day?

15 THE COURT: You're through for the day. Yes, ma'am.
16 Thank you. The Bailiff will help you.

17 (ALTERNATE JUROR DISMISSED AT 03:19 PM.)

18 THE COURT: We will be at ease.

19 (COURT IN RECESS AT 03:20 PM.)

20 (JURY NOTE AT 03:32 PM.)

21 (JURY NOTE AT 04:05 PM.)

22 (BACK ON THE RECORD AT 04:20 PM.)

23 THE COURT: Take your seats.

24 We received a note from the jury. One juror needed to
25 make a phone call and I've allowed her to do that. And the

1 other indicated they wanted to hear the two officers
2 testimony so we're going to have that played back.

3 Bring in the jury.

4 MADAME COURT REPORTER: Judge, I ask for a pause when
5 I switch my files to get past what you discuss with them
6 before you brought the jury back in.

7 THE COURT: I turn it all over to you -- until you
8 tell me it's my turn.

9 MADAME COURT REPORTER: Okay.

10 (JURY REENTERS COURTROOM AT 04:22 PM.)

11 THE COURT: We're going to play the testimony you
12 asked for.

13 (TESTIMONY OF OFFICER POPOV AND OFFICER THOMAS
14 REQUESTED TO BE REPLAYED TO THE JURY - APPROXIMATELY 39
15 MINUTES TOTAL.)

16 THE COURT: I'll you go back to the jury room. Let me
17 know if you need anything further.

18 (JURY EXITS COURTROOM AT 05:13 PM.)

19 THE COURT: Anything from the State?

20 MR. SPRINGS: Judge Hayes, on the tape, I didn't hear
21 myself offer into evidence of State's Exhibit, I think it
22 was, Three, the brown shirt. May I, in an abundance of
23 caution, offer the shirt into evidence belated?

24 MR. DELANEY: I had a -- I should have followed
25 through on that when I had a question about that when I

1 was going back there. But I don't object to that at this
2 point.

3 THE COURT: It's in.

4 MR. SPRINGS: That's all.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
6 AND MARKED, RECEIVED INTO EVIDENCE.)

7 THE COURT: All right. We'll be at ease.

8 (COURT IN RECESS AT 05:15 PM.)

9 (BACK ON THE RECORD AT 05:35 PM.)

10 THE BAILIFF: All rise. Come to order.

11 THE COURT: Thank you. Take your seats. I understand
12 -- well, we'll get Mr. Altman out here.

13 (DEFENDANT REENTERS COURTROOM.)

14 THE COURT: Defendant's present. The jury has
15 indicated they've reached a verdict. Will you bring in the
16 jury?

17 (WHEREUPON: COURT'S EXHIBITS ONE, TWO AND THREE
18 MARKED AND RECEIVED INTO EVIDENCE.)

19 (JURY REENTERS COURTROOM AT 05:39 PM.)

20 THE COURT: Mr. Foreman, I understand the jury has
21 reached a verdict.

22 If you will just hand it to the bailiff, hand it up to
23 the bailiff. Thank you.

24 (VERDICT RECEIVED BY THE COURT.)

25 MADAME CLERK: The State of South Carolina versus

VERDICT

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1 Donald Ray Altman under Indictment 2011-GS-46-1977 for
2 possession of stolen goods, we the jury find the Defendant
3 guilty of possession of stolen goods.

4 The State of South Carolina versus Donald Ray Altman.
5 for Indictment No. 2011-GS-46-1976, we find the Defendant
6 guilty of possession of stolen goods.

7 For Indictment 2011-GS-46-1975, we find the Defendant
8 guilty of possession of stolen goods.

9 For Indictment 2011-GS-46-1974, we find the Defendant
10 guilty of possession of stolen goods.

11 For Indictment 2011-GS-46-1973, we find the Defendant
12 guilty of altering or possessing an altered license plate.

13 For Indictment 2010-GS-46-2900, we find the Defendant
14 guilty of shoplifting.

15 All signed by the Foreperson this day.

16 THE COURT: If this be your verdict, so say you all by
17 raising your right hand. Let the record show, all 12
18 raised their hands in response to that question.

19 Mr. Anderson, I'm going to have to get you to sign
20 something before you leave but wait just one minute.

21 Anything from the State before the jury is dismissed?

22 MR. SPRINGS: No, sir.

23 THE COURT: Anything from the Defense before the jury
24 is dismissed?

25 MR. DELANEY: No, Your Honor.

1 THE COURT: I'm going to allow the jury to leave.
2 Please call back tonight after 7:00, and you'll receive
3 instructions about whether to be here tomorrow or when to
4 call back, and those sort of things.

5 Mr. Anderson, I'm going to ask you to step outside
6 with the clerk, and she'll get you to sign the original
7 indictments which -- has to have you -- The verdict has to
8 be on there. And what you'll do is just on each one is
9 write the word guilty and sign your name. She'll show you
10 where to do that. Thank you.

11 (JURY DISMISSED AT 05:42 PM.)

12 THE COURT: I'll be back to you as soon as we get this
13 taken care of.

14 MR. SPRINGS: Judge Hayes, I am short one sentence
15 sheet. Let me run to my office real quick and rectify that
16 situation please.

17 THE COURT: All right.

18 (SOLICITOR SPRINGS LEFT COURTROOM.)

19 THE COURT: Thank you, Mr. Anderson.

20 MR. FOREMAN: Yes, sir.

21 (JURY FOREMAN DISMISSED.)

22 (PAUSE.)

23 (SOLICITOR SPRINGS REENTERS COURTROOM.)

24 MR. DELANEY: I guess, Judge, Mr. Springs is back in
25 the courtroom, at this time I would just renew objections I

made in the trial. Specifically an objection that dealt with the photograph that was viewed by Michelle Williams, and the procedure that was used there. And just renew my motion for a directed verdict as well.

THE COURT: Motions are denied. And motion for the directed verdict is denied. And when Mr. Altman signs those we'll have him brought around.

MR. DELANEY: All right, Judge.

(ATTORNEYS AND DEFENDANT APPROACH BENCH)

THE COURT: Mr. Altman, I'll hear for you and your attorney in just a moment. I want to hear from the Solicitor first. I know some of your records, but let's go and put it all on -- all of the record on the record.

MR. SPRINGS: Yes, sir. His record as I understand it is common law robbery, in North Carolina in 2004; attempted felony larceny in 2006 up in North Carolina; misdemeanor larceny in 2010 in North Carolina; resisting arrest 2010, in North Carolina; felony larceny in 2010, North Carolina. He has pending charges in a variety of places. I'm not going to go into those. He's convicted of shoplifting in 2008; burglary in -- convicted in 1999, got out of prison on September the 6, 2001; trespassing 2004; public disorderly conduct, 2004; receiving stolen goods; various motor vehicle offenses; carrying a pistol unlawfully in '87; shoplifting in '88; burglary in '85; assault and

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1 battery in '83; criminal domestic violence in '94; assault
2 and battery in '93; giving false information to law
3 enforcement in '99. That would be his record as I
4 understand it.

5 THE COURT: Mr. Delaney, I will be glad to hear from
6 you today and then from Mr. Altman.

7 MR. DELANEY: Thank you, Judge.

8 There's something that I'm going to have to get
9 figured out, to just let the Court be aware of that I will
10 be asking obviously for credit for time served.

11 THE COURT: He's entitled to that.

12 MR. DELANEY: Anyway, he's been here at the Moss
13 Justice Center since June the 2nd. Now he's been
14 incarcerated since November the 10th of 2010. That was for
15 a sentence that he was serving, North Carolina Department
16 of Corrections. I don't know, I'm going to have to find
17 out when a hold was put on him in North Carolina to see if
18 that's something he could be eligible for as far as credit
19 there. So that's something I will be checking into from
20 Mr. Altman. He is also on three different probations in
21 North Carolina, currently did finish up the sentence there.

22 And I'm asking to have some mercy in this case. Not
23 that it excuses anything, but the majority of the items
24 were returned to the stores in this case, as far as making
25 the victims whole again, so to speak. So, we would ask the

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1 Court to consider that. There was -- and this is something
2 that we never had the opportunity to accept. Mr. Altman
3 was incarcerated in North Carolina, but would Solicitor
4 Springs, or where another solicitor had made an offer in
5 this case, that if I was able to get that worked up in
6 time, I think that's something that we would have taken.
7 It was actually a 1-year offer. We're not asking for that
8 necessarily today, but we're asking for some mercy,
9 something under the maximum. We're asking for sentences to
10 run concurrent, Judge.

11 THE COURT: Anything you want to say, Mr. Altman?

12 MR. DELANEY: Mr. Altman, would like to address you
13 briefly.

14 MR. ALTMAN: Yes, sir. All I can say is I'm sorry,
15 and I done accepted your mercy, Your Honor. I just done a
16 year in North Carolina. I had a hold on me the whole time
17 I was up there for these charges, Your Honor. Because I've
18 got so many on my record is the reason it's trumped up on
19 me, Your Honor. Mr. Moody -- If I didn't have so much on
20 my record. That's the reason it happened. And I'd just
21 like to say I'm sorry, Your Honor. To be honest with you,
22 Your Honor, I would have took the year, if I could have
23 gotten down here to take it but I was incarcerated, Your
24 Honor, in North Carolina. And I didn't go through a jury
25 trial. I was wanting a plea, Your Honor, so I could go

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1 ahead and plead out to you. But they come at me with a
2 jury trial, Your Honor, because before I knew it I was
3 standing here taking a jury trial. But I would have went
4 ahead and took that year plea, Your Honor.

5 THE COURT: Well, a wise man probably would have. But
6 I'm not sure you fall into that category - - -

7 MR. ALTMAN: I would have.

8 THE COURT: - - - based on your conduct over the
9 years.

10 THE WITNESS: I would have. I was in North Carolina,
11 Your Honor. Like I said, Your Honor, I had a hold on me
12 for the charges the whole time.

13 THE COURT: At some point it comes to enough is enough
14 and we've reached that point. Anything else?

15 MR. ALTMAN: No, sir.

16 MR. SPRINGS: Nothing from the State. You saw where
17 he has a bench warrant. He absconded bond on this.

18 MR. DELANEY: I would just say, he did -- He was
19 incarcerated on the bond.

20 MR. SPRINGS: He fled, and he went to North Carolina
21 And got rearrested up in North Carolina. He absconded the
22 State of South Carolina's bond and this bench warrant for
23 him.

24 THE COURT: Mr. Altman?

25 THE WITNESS: I was arrested for my probation

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1 violation, Your Honor, while I was here.

2 THE COURT: It's hard to keep up when you've got so
3 much isn't it?

4 All right, sentence on indictments all these are 2010-
5 GS-46. On 46-2900, sentence is 10 years; on 1975, 10 years
6 concurrent; on 1976, 10 years concurrent; on 1977, 10 years
7 concurrent; on 1973 which is the license tag, 5 years
8 concurrent; and on 1974, 10 years consecutive to the 10
9 years on 2900. Thank you.

10 MR. SPRINGS: Thank you, Your Honor.

11 THE COURT: That will finish it up for the day. And
12 we'll have to start back in this courtroom. Thank you all.

13 (COURT RECESSED AT 06:00 PM.)

14 -- END OF TRANSCRIPT OF TRIAL--
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24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 25th day of July 2011.

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

Wanda Nelson

Wanda Nelson, CVR

Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2011

DATE: Oct. 27 / 2011

County: YorkDate: July 25, 2011**VOIR DIRE**Case No.: 2011-GS-46-01973Judge: John C. Hayes, IIIState/Plaintiff: StateState/Plaintiff's Atty: EB SpringsDefendant: Donald Ray AltmanDefense Atty: Erik DelaneyCourt Reporter: Wanda Nelson

Juror #	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
64	Benjamin L. Felton	M	B		X		
179	Carole F. Reynolds	F	W				X
38	Carla C. Clarke	F	W			X	
4 *	Caster J. Anderson	M	B				X
253	Amy E. Hilton-Schuler	F	W			X	
3	Douglas R. Addison	M	W				X
83	Patricia L. Hamilton	F	W				X
218	Hayes N. Thomas, Jr.	M	W			X	
249	Jesse I. Young	M	W				X
98	James H. Jackson	M	B				X
100	Holly E. Johnson	F	W				X
9	Patrice S. Baxter	F	B				X
209	Heather H. Suskin	F	W				X
50	Carol A. Danner	F	W			X	
117	Kirsten W. Leong	F	W				X
97	Eric G. Hughett	M	W			X	
66	Arleen B Fincher	F	W				X
25	Mary A. Brown	F	B		X		
215	Robbin S. Taylor	M	W				X
252 **	Kamilah L. Cannon	F	W				X

*For the Court column, indicate who made the motion to strike the juror "for cause".
 C-Court, P-Plaintiff, D-Defense

* Foreperson ** Alternate

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

RECEIVED

MAR 04 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DONALD R. ALTMAN,

APPELLANT

Appellate Case No. 2011-196626

FINAL BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court err in refusing to suppress the out-of-court identification of Appellant where the testimony of the State's key witness revealed that the State failed to disclose under *Brady v. Maryland*¹ an inherently suggestive single person photographic "lineup," which denied Appellant his due process right to require the trial court to conduct an *in camera* hearing prior to the witness's testimony pursuant to *Neil v. Biggers*²?

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

² *Neil v. Biggers*, 409 U.S. 188 (1972).

STATEMENT OF THE CASE

On August 19, 2010, Appellant Donald Ray Altman was indicted by York County Grand Jury for shoplifting, third or more property offense. R. 101 – 102. Appellant was again indicted by the York County Grand Jury on July 21, 2011, for four counts of possession of stolen goods and possession of an altered license plate. R. 91 – 100.

On July 25, 2011, Appellant proceeded to trial before the Honorable John C. Hayes, III, and a jury. R. 1. Appellant was represented by Erik Delaney, and the State was represented by E.B. Springs. R. 1. The jury ultimately found Appellant guilty as charged. R. 84, ll. 1-18. Pursuant to S.C. Code Ann. § 16-1-57 (2010),³ Judge Hayes sentenced Appellant to: (1) ten years imprisonment on the shoplifting conviction; (2) 10 years imprisonment on all four possession of stolen goods convictions; and (3) five years imprisonment on the possession of an altered license plate conviction. R. 90, ll. 4-9. The shoplifting sentence was to run consecutively to one of the possession of stolen goods sentences, and the other sentences were to run concurrently for a total of twenty years imprisonment. R. 90, ll. 4-9.

This appeal follows.

³ Sentence Enhancement: (1) S.C. Code Ann. § 16-1-57 (2010) (Classification of third or subsequent conviction of certain property crimes: “A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony”); (2) S.C. Code Ann. § 16-1-20 (2010)(A)(5) (“A person convicted of classified offenses, must be imprisoned as follows: for a Class E felony, not more than ten years”).

Property Crimes: (1) S.C. Code Ann. § 16-13-123 (2010) (Shoplifting); (2) S.C. Code Ann. § 16-13-180 (2010) (Receiving stolen goods).

STATEMENT OF FACTS

Officer Daniel Popov

At trial, Officer Daniel Popov of the Rock Hill police department recalled that on May 10, 2010, he responded to a shoplifting call at the Family Dollar store and that the vehicle and suspect description given was “a white Ford Taurus with a white male wearing a beige baseball cap.” R. 2, l. 23 – 3, l. 11. Officer Popov stated that he was also given the license plate number of the vehicle. R. 3, ll. 12-14. Officer Popov maintained that while on his way to the Family Dollar store, “[he] passed a white Ford Taurus with a white male driver with a baseball cap, matching the description that was given to us[.]” R. 3, ll. 17-25. Officer Popov further noted that he “saw the vehicle pull into the BP gas station” and that “[he] had some cars in front of [him] so [he] wasn’t able to pull in[to the gas station] right away.” R. 4, ll. 2-7.

Furthermore, Officer Popov claimed that “the male driver of that vehicle was walking into the BP [gas station]” as he pulled “in behind the [suspect’s] car[.]” R. 4, ll. 4-14. Officer Popov admitted, “*I never looked at him [the suspect] face to face,*” but claimed that he “got a passing glance” of the suspect’s face. R. 4, ll. 15-17 (emphasis added). Officer Popov maintained, however, that he was able to later identify the suspect as the owner of the vehicle after accessing Department of Motor Vehicles (DMV) records. R. 4, ll. 18-24. Specifically, Officer Popov stated that “[t]he owner of the vehicle appeared to be the subject that I saw driving the vehicle.

Officer Popov noted that he followed the suspect into the gas station and that the suspect was nowhere to be found. R. 5, ll. 2-16. Officer Popov recalled that he then went to the suspect’s vehicle, where he found Brenda Sims “pretty much asleep” in the back of the

car. R. 5, ll. 17-24. Officer Popov also recalled that Sims was wearing "a bracelet on her arm from Piedmont Medical Center and also [had] some discharge papers from Piedmont showing that she had been there sometime that day." R. 6, ll. 6-10. Officer Popov claimed that Sims "was able to understand our questions and communicate with us[.]" but that "[s]he appeared . . . to be in a drowsy kind of a way, almost like when you just wake up[.]" R. 6, ll. 13-21. Officer Popov also noted that Officer Ryan Thomas arrived at the gas station approximately five minutes later. R. 7, ll. 1-5.

On cross-examination, Officer Popov admitted that Officer Thomas wrote both the incident report and the case summary because "[i]t was his zone of responsibility the call came out to (sic)." R. 7, l. 21 – 9, l. 25. Defense counsel then inquired:

DEFENSE COUNSEL: [It is] your testimony here today fourteen and a half months later, that you checked a [DMV] picture, and that picture appeared to match this individual; is that correct?

OFFICER POPOV: Yes, sir.

DEFENSE COUNSEL: Okay. Why is that not anywhere in the General Sessions case file summary that you reviewed in preparation today?

OFFICER POPOV: I don't know, sir.

DEFENSE COUNSEL: Don't you think that's something ... kind of important to this case?

OFFICER POPOV: Maybe.

R. 11, l. 24 – 12, l. 11. Defense counsel further inquired as to Officer Papov's identification of the suspect:

DEFENSE COUNSEL: That's all you saw was a white male with a tan cap. Correct?

OFFICER POPOV: That's what [the case summary] says.

Yes, sir.

DEFENSE COUNSEL: But now fourteen and a half months later, you're coming into court saying that you believe it's my client. Correct?

OFFICER POPOV: Sir, at the time, like I said, I checked through DMV and it appeared to be the subject that was driving the car. Yes, sir.

R. 12, l. 24 – 13, l. 7.

Officer Ryan Thomas

Officer Ryan Thomas, formerly of the Rock Hill police department, stated at trial that he also responded to the shoplifting call at the Family Dollar store on May 10, 2010. R. 15, ll. 8-16. Officer Thomas recalled that he spoke to the manager of the Family Dollar store, Michelle Williams, about the shoplifting incident. R. 15, l. 21 – 16, l. 11. Officer Thomas stated that Williams described the shoplifter as a white male with a tan hat and described the "getaway vehicle" as a white Ford Taurus with a South Carolina license plate, number EXU585. R. 16, ll. 12-24.

Officer Thomas claimed that Williams told him she had seen Appellant prior the shoplifting incident. R. 35, ll. 12-16. Defense counsel then asked Officer Thomas why he neglected to note that in the incident report or case summary. R. 35, ll. 17-21. Officer Thomas replied, "*That would be on her word that she had seen [Appellant] before. It's not part of the cause as to what we were looking for.*" R. 35, ll. 22-24 (emphasis added).

Notably, Officer Thomas admitted that he "*never had training on photo lineups*" and *denied* that he conducted a "photo lineup" with Williams. R. 37, l. 10 – 38, l. 4 (emphasis added). Officer Thomas also admitted that, although the Family Dollar store has four surveillance cameras, he *never* viewed the surveillance video or took a copy of the video as

evidence. R. 38, ll. 9-20. Officer Thomas further admitted that there never any attempt to obtain forensic evidence. R. 39, ll. 3-23.

Furthermore, Officer Thomas maintained that Officer Popov had located a white Ford Taurus at a gas station, but that Officer Popov was unable to find the suspect by the time he arrived at the gas station. R. 17, ll. 8-25. Officer Thomas also maintained that the vehicle left by the suspect had an altered license plate and that a white female, Brenda Sims, was in the back seat of the car. R. 18, ll. 1-25. Officer Thomas noted that he subsequently found out Appellant was the owner of the vehicle after checking the registration of the correct license plate number. R. 20, ll. 11-24.

Additionally, Officer Thomas stated that he found packages of beef jerky, flashlights, various tools, and other small items in the vehicle. R. 21, l. 13 – 24, l. 20. Officer Thomas also stated that he suspected the items were stolen because “nearly all of these items had the store’s original stickers on them.” R. 24, l. 14 – 25, l. 3. Officer Thomas then explained how he verified the items were stolen by going to the stores and checking with their inventory systems. R. 25, l. 18 – 32, l. 14. Despite that Officer Thomas admitted he *never* saw the shoplifting suspect, *the State had Officer Thomas identify Appellant to the jury.* R. 32, ll. 15-21 (emphasis added).

Michelle Williams (Family Dollar Store Manager)

Williams recalled at trial that on May 10, 2010, she “[saw] someone [a white man] conceal beef jerky in their (sic) pocket” and then leave the store without paying for it. R. 41, ll. 5-21. The State inquired as to whether Williams was able to identify the shoplifter:

THE STATE: And had you ever seen that man before . . . ?

WILLIAMS: *I had not seen him that day*, but I had seen him in prior days before that.

41, l. 22 – 42, l. 1 (emphasis added). Williams then admitted that she did not provide the police with any other description of the shoplifter, except that the shoplifter was a white male wearing a tan hat. R. 45, l. 22 – 46, l. 24. Williams identified Appellant as the shoplifter to the jury. R. 44, ll. 1-4.

Notably, in *direct contradiction* to Officer Thomas's testimony, Williams testified that Officer Thomas brought her one photo of Appellant the day after the shoplifting incident occurred and that Officer Thomas told her Appellant was the man in the photo. R. 47, l. 2 – 48, l. 4. Williams also testified that the Family Dollar had *four* surveillance cameras in the store and that the police *never* viewed the surveillance footage of the incident. R. 48, ll. 5-18.

Motion for a Directed Verdict & Objection to Out-of-Court Identification

After the close of the State's case, defense counsel moved for a directed verdict. R. 59, ll. 9-11. Defense counsel argued that Williams's out-of-court identification of Appellant was unreliable because it was procured by Officer Thomas through an unduly suggestive procedure (i.e., showing a single photograph of Appellant and informing Williams that Appellant is the person in the photograph). R. 59, ll. 9-22. Defense counsel further argued, "[W]ithout [Williams's] testimony, without that identification, the State doesn't have any identification." R. 59, ll. 19-21.

The trial court subsequently found:

[A] single photo is suggestive, but that would not affect the reliability in this case because the witness had observed the individual in the past. And therefore that even though the showing of the one photograph as suggested on its face that that does not affect in this case [the] reliability of the identification of [Appellant] as the individual who was involved in the act. And I will certainly charge the jury regarding eyewitness identification.

R. 60, ll. 13-21 (emphasis added). The trial court then denied defense counsel's motion for a directed verdict. R. 61, ll. 6-9. Defense counsel explained to the trial court:

I did not request to do a Biggers hearing regarding identification before the trial[because] . . . [a]t that point, the discovery that had been provided to me by the State indicated that there was no identification made by Ms. Williams in this case, either her being able to an out of court identification or that she would use any type of photographs in this case. Obviously we've heard some testimony that would say she did view a photograph the day after the day of the incident.

R. 61, l. 24 – 62, l. 7 (emphasis added). Defense counsel then “renew[ed] [his] objection to the admissibility of that testimony at this time.” R. 62, ll. 8-10. The Assistant Solicitor admitted that the State *did not* provide defense counsel with a copy of the photograph because the Assistant Solicitor *does not* have a copy of the photograph. R. 62, ll. 18-23.

Despite defense counsel's argument, the trial court reiterated, “*I did put on the record that I believe[d] that the showing of one photograph lineup, so to speak, is suggestive on it's (sic) face. . . . But I found that in spite of that because the witness knew [Appellant] from previous encounters, that he testimony still feels liable (sic) and, of course, that will be up to the jury to determine.*” R. 63, ll. 2-7 (emphasis added).

Donald Altman (Appellant)

Appellant testified at trial that he is not guilty of shoplifting or receiving stolen goods from the Family Dollar store on May 10, 2010, because he was working as a painter in Myrtle Beach, South Carolina. R. 66, ll. 5-16; R. 73, l. 21 – 74, l. 9. Appellant also testified that both his *twin brother* and his younger brother “*look just like [him]*” and that either brother could have done it because “*they're all on crack . . . now.*” R. 66, ll. 12-16 (emphasis added). Appellant further testified that he was not the person driving his car on

May 10, 2010, because he had parked the car at his mother's house when his driver's license was suspended. R. 66, l. 20 – 67, l. 7; R. 70, l. 22 – 72, l. 9.

Furthermore, Appellant testified that he as well as both of his brothers has previously been in a relationship with Brenda Sims. R. 69, ll. 11 – 70, l. 21. Appellant *denied* that he picked Brenda Sims up from the hospital or had any interaction with the manager of the Family Dollar store on May 10, 2010. R. 67, l. 23 – 68, l. 6; R. 73, ll. 15-18. Appellant noted that even though he had previously been in the Family Dollar store with Sims, “[s]o has [his] twin . . . the whole family’s (sic) been in that Family Dollar store.” R. 74, l. 17 – 75, l. 23.

Post-trial

After the jury found Appellant guilty as charged, defense counsel renewed his trial objections and his motion for a directed verdict. R. 86, l. 24 – 87, l. 4. “Specifically [his] objection that dealt with the photograph that was viewed by Michelle Williams, and the procedure that was used there.” R. 86, ll. 1-3.

ARGUMENT

The trial court erred in refusing to suppress the out-of-court identification of Appellant where the testimony of the State's key witness revealed that the State failed to disclose under *Brady v. Maryland* an inherently suggestive single person photographic "lineup," which denied Appellant his due process right to require the trial court to conduct an *in camera* hearing prior to the witness's testimony pursuant to *Neil v. Biggers*.

At trial, the key witness's testimony revealed that the State failed to disclose under *Brady v. Maryland*, 373 U.S. 83 (1963) an inherently suggestive single person photographic "lineup," which denied Appellant his due process right to require the trial court to conduct an *in camera* hearing prior to the witness' testimony pursuant to *Neil v. Biggers*, 409 U.S. 188 (1972). R. 41, l. 5 – 48, l. 4. Accordingly, the trial court erred in refusing to suppress the out-of-court identification of Appellant.

A. The trial court erroneously found that the procedure used by the police to obtain the out-of-court identification was suggestive on its face, but permissible since the witness had seen Appellant on prior occasions.

In *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012), the South Carolina Supreme Court overruled *State v. McLeod*, 260 S.C. 445, 196 S.E.2d 645 (1973), finding due process required a trial court to conduct an *in camera* hearing pursuant to *Neil v. Biggers*⁴ to determine the reliability of an eyewitness's out-of-court identification of defendant, regardless of how well the eyewitness knew the defendant. See *Perry v. New Hampshire*, 565 U.S. ___, 132 S.Ct. 716 (2012) (finding preliminary judicial inquiry is required once it is contended that an identification is obtained under unnecessarily

⁴ In *Neil v. Biggers*, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness's identification: (1) whether the identification resulted from unnecessary and unduly suggestive police procedures; and (2) whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.*, 409 U.S. at 198.

suggestive circumstances arranged by State action, regardless of the witness's prior knowledge of the accused); *see also* Rule 104(c), SCRE (noting “[h]earings on the admissibility of . . . pretrial identifications of an accused shall in all cases be conducted out of the hearing of the jury”).

In this case, the State's key witness, Michelle Williams, the manager of the manager of the Family Dollar store, recalled at trial that on May 10, 2010, she “[saw] someone [a white man] conceal beef jerky in their (sic) pocket” and then leave the store without paying for it. R. 41, ll. 5-21. The State inquired as to whether Williams was able to identify the shoplifter:

THE STATE: And had you ever seen that man before . . . ?

WILLIAMS: *I had not seen him that day*, but I had seen him in prior days before that.

78, l. 22 – 79, l. 1 (emphasis added). Williams then admitted that she did not provide the police with any other description of the shoplifter, except that the shoplifter was a white male wearing a tan hat. R. 45, l. 22 – 46, l. 24. Williams identified Appellant as the shoplifter to the jury. R. 44, ll. 1-4. Notably, in *direct contradiction* to Officer Thomas's testimony, Williams testified that Officer Thomas brought her one photo of Appellant the day after the shoplifting incident occurred and that Officer Thomas told her Appellant was the man in the photo. R. 47, l. 2 – 48, l. 4.

After the close of the State's case, defense counsel argued that Williams's out-of-court identification of Appellant was unreliable because it was procured by Officer Thomas through an unduly suggestive procedure (i.e., showing a single photograph of Appellant and informing Williams that Appellant is the person in the photograph). R. 59, ll. 9-22. Defense counsel further argued, “[W]ithout [Williams's] testimony, without that identification, the

State doesn't have any identification." R. 59, ll. 19-21.

The trial court subsequently found that "*a single photo is suggestive, but that would not affect the reliability in this case because the witness had observed the individual in the past.*" R. 60, ll. 13-16 (emphasis added). Defense counsel explained to the trial court: "*I did not request to do a Biggers hearing regarding identification before the trial[because] ... [a]t that point, the discovery that had been provided to me by the State indicated that there was no identification made by Ms. Williams in this case*" R. 61, l. 24 – 62, l. 5 (emphasis added). Defense counsel then "renew[ed] [his] objection to the admissibility of that testimony at this time." R. 62, ll. 8-10. The Assistant Solicitor admitted that the State *did not* provide defense counsel with a copy of the photograph because the Assistant Solicitor *does not* have a copy of the photograph. R. 62, ll. 18-23.

Despite defense counsel's argument, the trial court reiterated, "*I did put on the record that I believe[d] that the showing of one photograph lineup, so to speak, is suggestive on it's (sic) face. . . . But I found that in spite of that because the witness knew [Appellant] from previous encounters, that he testimony still feels liable (sic) and, of course, that will be up to the jury to determine.*" R. 63, ll. 2-7 (emphasis added).

It is clear that the trial court relied upon the ruling set forth in *McLeod*, 260 S.C. 445, 196 S.E.2d 645⁵ overruled by *Liverman*, 398 S.C. 130, 727 S.E.2d 422, because the trial court found that the use of a single person photographic "lineup" was suggestive on its face, but permissible based on the witness's belief that she had seen Appellant prior to the shoplifting incident. R. 60, ll. 13-16; R. 63, ll. 2-7. Accordingly, the trial court erred in

⁵ In *McLeod*, the South Carolina Supreme Court held that the procedural safeguard of a pretrial hearing to determine the reliability and ultimate admissibility of eyewitness identification testimony was not necessary where the eyewitness knows the accused. *Id.*

refusing to suppress the out-of-court identification of the State's key witness. *See State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (noting "[a] criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification[,] and finding "[a]n in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.").

Furthermore, unlike in *Liverman*, 398 S.C. 130, 727 S.E.2d 422, the error was not harmless. *See State v. Reeves*, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990) (finding no definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case). This is because not only did the error involve the State's key witness, it denied Appellant his due process right to require the trial court to conduct an *in camera* hearing prior to the witness's testimony pursuant to *Biggers*, 409 U.S. 188. *See State v. Clark*, 315 S.C. 478, 481, 445 S.E.2d 633, 635 (1994) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431 (1986) (finding "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.")).

B. Appellant was denied his fundamental right to a fair trial when the State failed to disclose to Appellant an inherently suggestive single person photographic "lineup."

The State's duty to disclose evidence favorable to the defendant is addressed by

the United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963). “The suppression by the [State] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” *Brady*, 373 U.S. at 87. Consequently, an individual asserting a *Brady* violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused’s guilt or innocence or was impeaching. See *Kyles v. Whitley*, 514 U.S. 419, 432-42 (1995); see also *State v. Moses*, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010).

In this case, Officer Thomas admitted that he “*never had training on photo lineups[,]*” but *denied* that he conducted a “photo lineup” with Williams. R. 37, l. 10 – 38, l. 4 (emphasis added). Williams testified that Officer Thomas brought her one photo of Appellant the day after the shoplifting incident occurred and that Officer Thomas told her Appellant was the man in the photo. R. 47, l. 2 – 48, l. 4. After the close of the State’s case, defense counsel argued to the trial court, “*Obviously we’ve heard some testimony that would say she did view a photograph the day after the day of the incident.*” 61, l. 24 – 62, l. 7 (emphasis added). The Assistant Solicitor admitted that the State *did not* provide defense counsel with a copy of the photograph because the Assistant Solicitor *does not* have a copy of the photograph. R. 62, ll. 18-23.

i. The existence of a single person photographic “lineup” was *Brady* material.

The photograph was *Brady* material for three reasons. First, defense counsel would have known to move for an *in camera* hearing pretrial to determine the reliability of the out-of-court identification of Appellant. See *Biggers*, 409 U.S. 188; see also *State v. Ramsey*, 345 S.C. 607, 613, 550 S.E.2d 294, 297 (2001) (holding that generally, a trial

court must hold an *in camera* hearing when the State offers a witness whose testimony identifies the defendant as a person who committed the crime and the defendant challenges the in-court identification as being tainted by a previous, illegal identification or confrontation).

Second, defense counsel would have been able to use the photograph to impeach Officer Thomas's testimony on cross-examination that he did not conduct a single photographic "lineup." R. 37, l. 10 – 38, l. 4; *See United States v. Bagley*, 473 U.S. 667, 676 (1985) (noting evidence considered favorable to the defendant includes both exculpatory and impeachment evidence as well as evidence that is not in the actual possession of the prosecution, but also to evidence known by others acting on the government's behalf). Third, the overall strength of the State's case would have been crippled without the identification of the State's key witness. *Id.*

ii. The single person photographic "lineup" was imputable to the State.

Based on the testimony of the State's key witness, Michelle Williams, Officer Thomas showed her the single person photographic "lineup." R. 47, l. 2 – 48, l. 4; *See Kyles*, 514 U.S. at 437-38 (finding "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police"); *see also Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324, n. 3 (1999) (finding "*Brady* and its progeny place the burden upon the prosecutor to know all the relevant facts of a case in order to decide what information to disclose as exculpatory or impeachment evidence). Thus, the photograph was imputable to the State. *See State v. Von Dohlen*, 322 S.C. 234, 240-41, 471 S.E.2d 689, 693 (1996) (noting information known to investigative agencies may be imputable to the State).

iii. **The single photographic “lineup” was not provided by the State.**

The Assistant Solicitor admitted that the State *did not* provide defense counsel with a copy of the photograph because the Assistant Solicitor *does not* have a copy of the photograph. R. 62, ll. 18-23; *See Gibson*, 334 S.C. at 528, 514 S.E.2d at 326-27 (noting whether the prosecutor's failure to reveal evidence pursuant to *Brady* is due to negligence or an intentional act is *irrelevant* because a court may find a *Brady* violation *regardless* of the good or bad faith of the prosecutor).

iv. **The single photographic lineup was material to Appellant’s case.**

Appellant was denied his due process right to require the trial court to conduct an *in camera* hearing prior to the witness’ testimony pursuant to *Biggers*, 409 U.S. 188. *See Bagley*, 473 U.S. at 682 (finding “[e]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”). Appellant was further prejudiced because, although the trial court found the procedure used by the police to obtain the identification was suggestive on its face, the trial court erroneously held that the identification was permissible since the eyewitness had seen Appellant on prior occasions. *See Liverman*, 398 S.C. 130, 727 S.E.2d 422; *see also Perry v. New Hampshire*, 565 U.S. ___, 132 S.Ct. 716; Rule 104(c), SCRE.

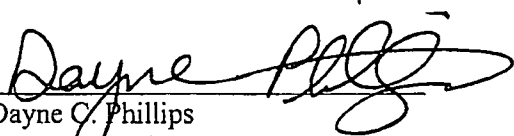
Accordingly, Appellant was denied his due process right to a fair trial. *See Riddle v. Ozmint*, 369 S.C. 39, 45, 631 S.E.2d 70, 73 (2006) (noting “[t]he question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial

'resulting in a verdict worthy of confidence.' " (quoting *Kyles*, 514 U.S. at 434)); *see also* *Gibson*, 334 S.C. at 327, 514 S.E.2d at 326-27 (because *Brady* is founded upon a sense of fairness and justice, the focus in a *Brady* analysis should not be on the misconduct of the prosecutor, but rather on the fairness of the procedure, and that "[t]he principle . . . is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused[, and thus,] [s]ociety wins not only when the guilty are convicted but when criminal trials are fair[.]" (quoting *Brady*, 373 U.S. at 87)).

CONCLUSION

For the foregoing reasons, Appellant Donald Altman requests that this Court reverse his convictions and remand this case to the York County Court of General Sessions for a new trial.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

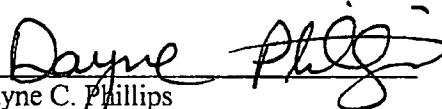
ATTORNEY FOR APPELLANT

This 5th day of March, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 5, 2013


Dayne C. Phillips
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

RECEIVED

MAR 04 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

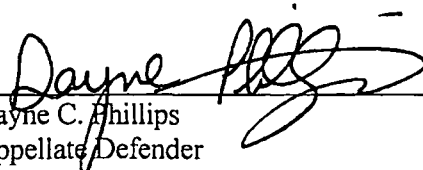
DONALD R. ALTMAN,

APPELLANT

Appellate Case No. 2011-196626

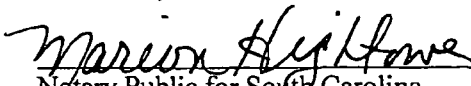
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of March, 2013.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of March, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case Tracking No. 2011-196626

The State,

Respondent,

vs.

Donald R. Altman,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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MAR 15 2013

SC Court of Appeals

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RECEIVED
MAR 15 2013
SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in refusing to suppress the identification of Appellant. Further, the issue is clearly not preserved for review on appeal.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court did not err in refusing to suppress the identification of Appellant. Further, the issue is clearly not preserved for review on appeal.

Appellant contends the trial court erred in refusing to suppress the out-of-court identification of Appellant. He maintains the State violated the requirements of Brady v. Maryland, 373 U.S. 83 (1963). Further, he asserts the out-of-court identification procedure was unduly suggestive and, therefore, not valid. First, the issue is clearly not preserved for review on appeal because Appellant did not make a contemporaneous motion to the identification and never raised an issue related to Brady. Further, on the merits, the failure to turn over a photograph did not constitute a Brady violation and the identification by the victim was very reliable and admissible.

Preservation

In order to preserve an issue for review, there must be a contemporaneous objection that is ruled upon by the trial court. See State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005); State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) (“Having denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object . . ., Appellant is procedurally barred from raising these issues for the first time on appeal.”). A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured.” State v. Torrence, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991); see also, State v. Garriss, 394 S.C. 336, 348, 714 S.E.2d 888, 894-895 (Ct. App. 2011) (finding objection to the testimony after the State rested its case instead

of when testimony actually admitted was insufficient to preserve and issue for the Court's review); State v. Burton, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997) ("Failure to object when the evidence is offered constitutes a waiver of the right to object."). Further, the failure to contemporaneously object cannot be later bootstrapped by another motion. See State v. Lynn, 277 S.C. 222, 226, 284 S.E.2d 786, 789 (1981) ("Failure to contemporaneously object . . . cannot be later bootstrapped by a motion for a mistrial.").

At trial, Appellant's counsel cross-examined the victim regarding her identification of Appellant as the one shoplifting from the store. She testified Officer Thomas brought a picture of Appellant for her to identify. The following colloquy occurred:

- Q. And the police never came to you, showed you any type of a photo lineup in this case. Right?
- A. No, they did. He actually brought a photo to me the next morning.
- Q. The police showed you a photo lineup the next morning?
- A. A photo picture of him.
- Q. not a lineup?
- A. No, not a lineup.
- Q. They brought you a picture?
- A. Yes.
- Q. Just one picture?
- A. One picture.
-
- Q. What officer was that?
- A. Thomas.
- Q. Officer Thomas. And he, Officer Thomas told you that was Donald Altman. Right?
- A. No he didn't. He asked me was that the person. And I told him yes.

(T.84-85; R. 47-48). Appellant never objected after finding out this information. At this time he did not move for a mistrial or ask the court to exclude the identification by the

victim. Instead, Appellant waited until the end of the State's case to raise any issue related to the identification or the photograph which was shown to the victim. As a result, the issue is not preserved for review on appeal because no contemporaneous motion or objection was raised.

Additionally, when Appellant did raise the issue, he did so as a motion for directed verdict. Specifically, he stated:

Your Honor, at this point, we would make our--The State has rested and we would make our motion for a directed verdict in this case. . . . And I would argue to this court that the suggestiveness that took part as far as her being showed a single photograph of Mr. Altman, a day after this alleged incident it would be overly suggestive to obtain her identification of Mr. Altman in this case. And without her testimony, without that identification, the State doesn't have any identification. And I would like to ask, Your Honor, to direct a verdict in favor of the Defense in this case.

(T.96; R. 59).

Appellant, however, failed to properly renew this motion at the end of the defense's case or after the State's reply. Instead indicating no motions when asked by the trial court. (T.120; R.83). In order to preserve the issue raised on appeal, Appellant was required to move for a directed verdict and obtain a ruling by the trial court immediately after the State presented its case and again at the close of the case if Appellant presented any evidence. State v. Rosemond, 348 S.C. 621, 628, 560 S.E.2d 636, 640 (Ct. App. 2002); State v. Bailey, 368 S.C. 39, 626 S.E.2d 898, 900, n. 4 (Ct. App. 2006) (if defendant presents evidence after denial of his directed verdict motion at the close of the State's case, he must make another directed verdict motion at the close of all evidence in order to appeal the sufficiency of the evidence). As a result, the motion for a directed

verdict, even if sufficient to raise the issue for the first time without a prior contemporaneous objection, is not preserved for review on appeal.

Finally, Appellant never raised an issue related to Brady. He never moved for a mistrial or to exclude the identification on the basis the photograph was not turned over during discovery. As a result, the issue cannot be raised on appeal. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (to preserve an issue for review there must be a contemporaneous objection ruled upon by the trial court). Further, a party may not raise one issue below and argue a different issue on appeal. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding issue not preserved when appellant did not object to testimony at trial on the grounds raised on appeal).

Merits

The issue is also without merit. The trial court properly found the identification reliable even in light of a single person photograph being shown to the victim. Further, the failure to turn over the photograph did not violate Brady.¹ The photograph was clearly not exculpatory because the victim used the photograph to provide an identification of Appellant as the shoplifter.²

Identification

In criminal cases, the appellate court sits to review errors of law only. State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012). “Generally, the decision to admit an

¹ It should be noted Appellant has not argued error under Rule 5, SCRCrimP.

² Appellant’s brief indicates Officer Thomas told the victim Appellant was the man in the photograph. (App. Br. 9). The testimony in the record clearly belies this assertion. When asked if Officer Thomas told her the picture was of Appellant, the victim specifically testified: “No he didn’t. He asked me was that the person. And I told him yes.”

eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error." State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) (citing State v. Johnson, 311 S.C. 132, 427 S.E.2d 718 (Ct.App.1993)).

The trial court properly found, even if the procedure used by law enforcement of showing the victim a single photograph was suggestive, the identification was nonetheless reliable because of the victim's prior knowledge of Appellant. "A criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." Liverman, 398 S.C. at ___, 727 S.E.2d at 425-426.

The United States Supreme Court developed a two-prong inquiry to determine the admissibility of an out-of-court identification. Neil v. Biggers, 409 U.S. 188 (1972). "First, a court must ascertain whether the identification process was unduly suggestive. The court must next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526-27 (2004) (citing Moore, 343 S.C. at 288, 540 S.E.2d at 448). "Reliability is the linchpin in determining the admissibility of identification testimony." State v. Blassingame, 338 S.C. 240, 251, 525 S.E.2d 535, 541 (Ct. App. 1999).

In the instant case, the reliability of the identification in this case was clearly such that no substantial likelihood of misidentification existed. Officer Thomas testified the victim "stated to me she was very familiar with him, just minus his name." (T.72; R. 35). The victim then testified she saw Appellant on prior days in the store. She testified she recognized him when he took the items from the store. (T.78-79; R. 41-42). She indicated she was about 12 feet away from him when he stole the merchandise and left the store. (T.79; R. 42). The victim testified she had seen Appellant in the store "twenty times or so." (T.118; R.81).

The victim testified to a particular incident where Appellant and the woman found in the car with Appellant entered the store and she asked to go to the restroom. When she went to the restroom, the victim heard the alarm sound because the woman had attempted to exit through the back door. The victim testified: "So at that point on, I knew when they both came into the store, I had to watch them 'cause nobody every goes out my back door and sounds the alarm. That's why I distinctly remember who he is." (T.119; R. 82). She testified there was no doubt in her mind Appellant was the person who stole from the store because she was watching him as soon as he entered. (T.119; R. 82). Accordingly, the trial court correctly found the identification reliable.

Brady

The United States Supreme Court holding in Brady v. Maryland requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or to punishment." 373 U.S., at 87, 83 S.Ct., at 1196. Defendants making a claim under Brady must demonstrate that 1) the evidence was favorable to the defense; 2) it was in the possession of or known to the prosecution; 3) it was suppressed by the

prosecution; and 4) it was material to guilt or punishment. State v. Bryant, 372 S.C. 305, 314-315, 642 S.E.2d 582, 587-588 (2007) (citing Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999)); State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 219-220 (Ct. App. 1998). “The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” U.S. v. Bagley, 473 U.S. 667, 682 (1985).

The evidence in this case, a photograph of Appellant which, according to the victim’s testimony, she used to identify Appellant, was not favorable to the defense. The victim was able to identify Appellant, a person she has known and has seen in the store numerous times, through the photograph. It was not impeaching because in no way did the photograph contradict her statement or identification. As a result, the evidence was not favorable to the defense, and, therefore, the State’s failure to disclose the evidence did not violate Brady.³

Harmless Error

Further any error is entirely harmless in light of the overwhelming evidence in the record and the cumulative nature of the identification. “An error is harmless if the defendant’s guilt has been conclusively proven by competent evidence, such that no other result could have been reached.” State v. Johnson, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005). Further, the admission of improper evidence is harmless where the evidence is merely cumulative to other evidence. State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d

³ Additionally, it is arguable the evidence was not material because Appellant learned of it and was able to use it in conducting cross-examination of the witness. See Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (finding information is not deemed “material” if the defense discovers the information in time to adequately use it at trial).

445, 448-49 (2003); see also, State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other unobjected-to evidence is harmless).

Officer Popov testified he saw Appellant driving the vehicle which was identified leaving the store. Further, the vehicle contained the items taken from the store in front of the clerk. Finally, he testified he matched Appellant's DMV photo, which he obtained after running the license plate⁴ through the DMV, to the person he saw driving the car. (T.40-42; 50; R. 3-5; 13).

Additionally, Officer Thomas testified the vehicle located with the stolen merchandise belonged to Appellant. (T.57-69; R. 20-32). Further, Officer Thomas identified Appellant in the courtroom without objection. (T.69; R. 32). He testified the victim described Appellant and that she had seen him multiple times before. (T.72; R. 35). As a result, there was ample evidence identifying Appellant as the individual who shoplifted from the convenience store.

⁴ The tag was altered to read EXU585, but the real license plate was FXU535, which was visible on the tag and on the license tag's registration sticker. (T.56-57; R. 19-20). The plate for FXU535 belonged to Appellant. (T.57; R. 20).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 

William M. Blitch, Jr.

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ATTORNEYS FOR RESPONDENT

March 15, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case Tracking No. 2011-196626

The State,

Respondent,

vs.

Donald R. Altman,

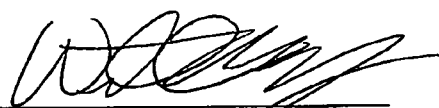
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

William M. Blitch, Jr.

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ATTORNEYS FOR RESPONDENT

March 15, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case Tracking No. 2011-196626

The State,

Respondent,

vs.

Donald R. Altman,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Dayne Phillips, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 15th day of March, 2013.

Ellen R. DuBois
ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
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Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Donald Ray Altman, Appellant.

Appellate Case No. 2011-196626

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-336
Submitted July 1, 2013 – Filed August 7, 2013

AFFIRMED

Appellate Defender Dayne C. Phillips, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In
order for an issue to be preserved for appellate review, it must have been raised to

and ruled upon by the trial [court]."); *State v. Williams*, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) ("A defendant must object at his first opportunity to preserve an issue for appellate review."); *State v. Garris*, 394 S.C. 336, 348, 714 S.E.2d 888, 894-95 (Ct. App. 2011) (finding a defendant's objection to testimony about a photographic lineup was not preserved for appellate review when the defendant did not contemporaneously object and waited until after the State rested its case).

AFFIRMED.¹

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

2013CP4602535

STATE OF SOUTH CAROLINA)

County of York)

Donald Altman #261468)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION REVIEW

FILED - RECEIVED
2013 AUG 22 AM 11:23
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS B 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 Kershaw Correctional Institution
4848 Goldmine Highway Kershaw, South Carolina 29067-8069
2. Name and location of Court which imposed sentence York County
General Session Court York, South Carolina 29745-0649
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(Family Dollar Store) Under _____ dollars
(a) 2010-GS-46-2900 Shop lifting (Under \$)
2011-GS-46-1973 Altered License Plate

- (b) Possession stolen goods under \$250.00/ 2011-GS-46-1974
- (c) 2011-GS-46-1975/2011-GS-46-1976/2011-GS-46-1977
5. The date upon which sentence was imposed and the terms of the sentence:
 7/26/2011 2011-GS-46-1977 10 Year Concurrent
- (a) 7/26/2011 2010-GS-46-2900 10 Year Concurrent
- (b) 7/26/2011 2011-GS-46-1974 10 Year Consecutive
- (c) 7/26/2011 2011-GS-46-1973 5 Year Concurrent
7/26/2011 2011-GS-46-1975 10 Year Concurrent
7/26/2011 2011-GS-46-1976 10 Year Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes (Court of Direct Appeals)
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 7th, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: Affirmed pursuant to Rule 220(b) SCACR and the following
Authorities State v. Dunbar 356 SC 138, 142, 587 SF2d 691, 693 (2003)
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ 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: Missing Family Dollar Stores Security Video.
Missing single photo, and missing inventory print cut slips.

(a) tainted testimony, INEFFECTIVE ASSISTANCE OF COUNSEL for failure to ask for mistrial or properly preserve objections for appellant review.

(b) Plus violating due process/did not comply with Brady Act 104 Court Rule -e-Procedures.

(c) Violating the 5th and the 14th Amendment of the Constitution

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

(a) See attached pages

(b) N/A

(c) N/A

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?

N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court?
N/A

13. If you answered A yes at to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/Aiv. N/A

(b) the name and location of the Court in which each was filed:

i. N/Aii. N/Aiii. N/A

- 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) PCR Issues
 - (b) PCR Issues
 - (c) PCR Issues
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Public Defender Erick Delainey Moss Justice Center
1675-1E York Highway P.O. Box 691 York, S.C. 29745
 - ii. Dayne C. Phillips and Carmen Ganjehsani
Division of Appellate Defense 1330 Lady Street Suite 401
 - iii. Columbia A.C. 29201-3332 P.O. Box 11589
 - (b) the proceedings at which each such attorney represented you:
 - i. Erick Delainey (Trial) General Sessions (York County)
 - ii. Dayne C. Phillips and Carmen Ganjehsani (Appeal)
South Carolina Court of Appeals
 - iii. _____

19. State clearly the relief you seek in filing this application:

Its clear that the photo is not in evidence to keep us from going back to trial again,
offer to me the one year plea offer that was offered by the state to be placed back on the
table or time served.

20. Are you now under sentence from any other court that you have not challenge??

N/A

State of South Carolina)

)

)

VERIFICATION

County of York)

I, _____, 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.

Donald Roy Altman

SACED to and subscribed before me this 16

day of August, 2013

Catherine A. Amerson (T.S.)

Notary Public

My Commission Expires: My Commission Expires December 31, 2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, 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.

Donald Ray Altman
Applicant

SWORN or affirmed to and subscribed before me this

14 day of August, 2013.

Catharine A. Amosa
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

Donald Ray Altman #261468
 Kershaw Correctional Inst
 4848 Gold Mine Hwy
 Kershaw SC 29069

To - The Judge
 of York County

FILED - RECEIVED
 2013 AUG 22 AM 11:30
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

Your Honor Sir Its A Easy CASE AND IM SURE YOU AND
 THE STATE'S ATTORNEY WILL SEE THEIRS SOME CONFUSION
 ABOUT THIS SINGLE PHOTO. SOME ONES LIEING ABOUT THIS PHOTO SR.
 THE PHOTO IS NOT IN THE MOTION OF DISCOVERY, ITS NO MENTION
 OF IT IN THE POLICE REPORTS AND OFFICER THOMAS TESTIFIED HE
 NEVER SHOWED MICHELLE WILLIAMS ANY TYPE OF PHOTO'S SR.
 SOLICITOR SPRINGS SAID HE DID NOT HAVE THE PHOTO AND HE
 KNEW NOTHING ABOUT THE SINGLE PHOTO LINEUP.

FURTHER MORE YOUR HONOR MICHELLE WILLIAMS ACCORDING TO THE INVESTIGATING
 OFFICER THOMAS, ^{SHE} COULD NOT GIVE HIM A DISCRPTION AT THE TIME OF
 THE CRIME OTHER THAN SOMEONE IN A WHA HAT.

NOW 14 $\frac{1}{2}$ MONTHS LATER ^{SHE} COMES TO COURT AT BURY TRAIL TESTIFYING
 TO STUFF THATS NOT IN THE INITIAL INCIDENT AND IN THE INVESTIGATING
 OFFICER'S REPORTS SR. JUST ADDING A BUNCH OF STUFF THATS
 NOT THE INITIAL CASE ^{SEE} POLICE REPORTS. A VIOLATING MY DUE PROCESS SR

THANK YOU FOR YOUR TIME
YOUR HONOR

Dora Altman

ARGUMENT

YOUR HONOR

(1) Theirs contradicting testimony concerning a single photo that between Michelle Williams and the investigating Officer Thomas on May-10-2010.

(2) Michelle Williams of Family Dollar can not give officer Thomas a description of the suspect at the time of the crime other than white man in a tan hat. The time May-10-2010, Tr-82 and Tr-83 proves this. In the initial police investigation report on Tr-53 the only identification Williams can give was someone in a tan hat. On Tr-70 Officer Thomas states that the only description she could give was of a white male wearing a tan hat on May-10-2010.

(3) The investigating Officer Ryan Thomas also testified on Tr-74 and Tr-75 that he never showed Michelle Williams any type of photos. On Tr-73 Thomas testified that Michelle Williams did not give him any other type of description and he also testified on Tr-71 L-13 through 17 that in every report he wrote in this case was of a white male wearing a tan hat. This is exactly what is on the police report.

Now 14½ months later

At Jury trial July 25, 2011

Michelle Williams testified Tr-82 L-18 through L-24:

Erick Delainey ask man you gave the police no other description

of this individual other than a white male in a tan hat and she answered "That's correct sir."

Tr-83: She was further asked if she gave the police officer during the investigation May-10-2010 height, weight, hair color, eye color, facial hair?

She responded "No I did not." On L-5 through L-8 I think I told him, he was an older gentle man. She then turned right around and said she was repeating what she had heard the Officer Thomas testify to.

On Tr-84 and Tr-85 Michelle Williams then testified that;

Officer Thomas brought her a single photo to identify the suspect and
 "I was asked what officer did that and she stated officer Thomas did."

Trial Attorney Frick Delainey failed to object at this time and ask for a mistrial due to the fact there was no photo in evidence and that officer Thomas had just testified that he never showed Williams any type of photo.

Attorney Delainey waited until the state rested and then ask for a Direct verdict due to the fact their was no photo given to him in the Motion of Discovery.

Solicitor Springs stated Tr-99 L-15 through L-23:

Just to clarify and it's my understanding that the state does not have this photograph. Mr. Springs that's correct sir.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	
Donald Altman, #261468,	)	2013-CP-46-2535
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on August 22, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2001 term of the York County Grand Jury for Altering or Possessing an Altered License Plate (2011-GS-46-1973), four counts of Possession of Stolen Goods (2011-GS-46-1974, -1975, -1976, -1977). The Applicant was also indicted at the August 2010 term of the York County Grand Jury for Shoplifting (2010-GS-46-2900).

On July 26, 2011, the Applicant proceeded to a trial by jury, pursuant to which he was convicted on all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for ten (10) years for Shoplifting, 3rd or subsequent offense, ten (10) years, consecutive, for Possession of Stolen Goods, 3rd or subsequent offense, ten (10) years, concurrent, for the other Possession of Stolen Goods charges, and five (5) years, concurrent, for Altering or Possessing an

Altered License Plate.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Altman, Op. No. 2013-UP-336 (filed August 7, 2013).

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Missing Family Dollar Stores security video. Missing single photo and missing inventory print out slips."
2. "Ineffective Assistance of Counsel for failure to ask for mistrial or properly preserve objections for appellant(sic) review."
3. "Plus violating due process/did not comply with Brady Act 104 Court Rule-e-Procedures."
4. "Violating the 5th and 14th Amendment of the Constitution"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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).

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. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. 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).

The Respondent submits that the 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).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States

Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

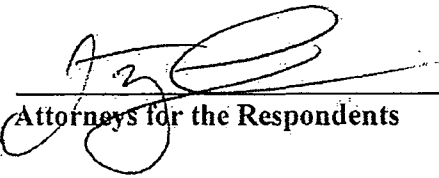
KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

Columbia, South Carolina
December 3, 2013

By:

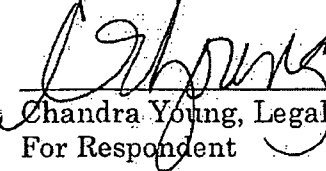

Attorneys for the Respondents

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2013-CP-46-2535
	)	
DONALD ALTMAN, 261468	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 235 East Main Street; Suite 100
 Rock Hill, SC 29731

DATED this 3rd day of December, 2013.


 Chandra Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 ||-----X

3 DONALD ALTMAN Petitioner,

4 Case No.

5 -against- 2013-CP-46-02535

6 STATE,

7	Respondent.

8 |-----x

9 November 19, 2014

10 York, S.C.

11

12 || B E F O R E:

13 HONORABLE ALISON RENEE LEE

14

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

16 LEAH B. MOODY, Esquire

17 Attorney for the Petitioner

18

19 J. RUTLEDGE JOHNSON, Esquire

20 Attorney for the Respondent

21

22

23 Aileen Butler

24 Official Court Reporter

25

1					
			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Donald Altman				
4	Ms. Moody	5		27, 33	
5	Mr. Johnson		21		32
6	Erik Delaney				
7	Ms. Moody	34			
8	Mr. Johnson		41		
9					
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
1			
2			
3			
4			
5	NO EXHIBITS ENTERED		
6			
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1 MR. RUTLEDGE: This is case of Donald Altman
2 versus the State of South Carolina. It is case number
3 2013-CP-46-2535.

4 Mr. Alton was in indict by the July 2010 term --
5 2011 term of the York County Grand Jury for altering
6 or possessing and an altered license plate, four
7 counts of possession of stolen goods. Also have that
8 he was in indicted at the August 2010 term of York
9 County Grand Jury for shoplifting.

10 On July 26, 2011 he proceeded to trial by jury
11 pursuant to which he was convicted on all charges as
12 indicted. The Honorable John C. Hayes III, sentenced
13 him to confinement for ten years shoplifting 3rd or
14 subsequent, ten years consecutive for possession of
15 stolen goods 3rd or subsequent, ten years concurrent
16 for the other possession of stolen goods charges and
17 five years concurrent for altering or possessing an
18 altered license plate.

19 Timely notice of appeal was filed on his behalf and
20 appeal was perfected. The South Carolina Court of
21 Appeals confirmed this conviction and sentence on
22 August 7, 2013. He filed a post conviction relief
23 application on August 22, 2013 and the State filed its
24 return on December 3, 2013 and he is represented here
25 today by Miss Leah Moody.

1 THE COURT: And again, this is I think a file
2 which I don't believe I have a copy of the Court of
3 Appeal Order, but I believe it was an unpublished
4 opinion.

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: So it will be available on line. I can
7 can check it on line. I think that was the only thing
8 I was missing. I have had the opportunity to review
9 his application and I read the transcript.

10 Yes, ma'am.

11 MS. MOODY: Your Honor, at this time we would call
12 Mr. Altman to the stand.

13 DONALD RAY ALTMAN, called as a witness, having
14 been duly sworn by the clerk, was examined and
15 testified as follows:

16 THE COURT: Miss Moody.

17 MS. MOODY: Thank you, May it please the Court.

18 DIRECT EXAMINATION

19 BY MS. MOODY:

20 Q Mr. Altman, we are here today for your post conviction
21 relief hearing?

22 A Yes, ma'am.

23 Q You filed this application. At the time that you filed
24 this application were you in custody?

25 A Yes, ma'am.

1 Q And where are you currently in custody?

2 A Wateree Correction.

3 Q Okay, and you there for different charges, correct?

4 A I am there for the sentence I am doing now.

5 Q And can you tell the Court what that sentence is?

6 A It's twenty year sentence, shoplifting, receiving
7 stolen goods.

8 Q And as far as those charges are concerned who was your
9 attorney in that case?

10 A Mr. Delaney.

11 Q And Mr. Delaney represented you in your trial?

12 A Yes, ma'am.

13 Q Okay. Now the application that you filed you alleged
14 certain issues with your representation with Mr. Delaney?

15 A I did.

16 Q Could you please state for the Court what those issues
17 were?

18 A I claimed ineffective assistance of counsel because Mr.
19 Delaney failed to object to the identification concerning the
20 photograph identifying me when there was no such photograph and
21 I have here evidence on the trial transcript pages.

22 Q We will come to that.

23 A Okay. So you are saying ineffective assistance as to
24 the identification?

25 A Yes, ma'am, and also I am claiming ineffective

1 assistance of counsel because he failed to do any
2 pre-identification hearing before the trial took place and also
3 he failed to preserve the issue for Court of Appeals review.

4 Q Okay.

5 A And also there was a plea offer that I was never told
6 about. It was actually a one-year plea offer on the table and I
7 was never informed of the plea offer and I never knew about it
8 until after trial was over.

9 MR. JOHNSON: Objection to that. That is not in
10 his application and I would move to strike that
11 allegation. The State has had no notice of that
12 allegation.

13 Q Okay. Let's -- let's talk about your ineffective
14 assistance on the issue of identification pretrial and you
15 indicated that there was no photo. Are those two one and the
16 same?

17 A Yes, ma'am.

18 Q Okay. So when you say that Mr. Delaney did not make
19 any kind of objection to any identification there was no
20 pretrial motion?

21 A There was never any pretrial, no, ma'am.

22 Q And so at what point did this issue become -- was it
23 presented to the Court?

24 A Yes, ma'am. He put it on the trial transcript record
25 on page 98, lines 24 and 25 and page 99, lines one through

1 seven. That he wanted to put it on record that he didn't do any
2 type of Biggers hearing in this case.

3 Q Do you have a copy?

4 A Yes, ma'am, I do right here.

5 Q Okay, page 98.

6 A Page 98, lines 20 through 25. Page 99, line one
7 through seven.

8 Q Can you read that into the record?

9 A Yes, I can. Mr. Delaney, "Judge, just briefly at this
10 time before you talked to Mr. Altman about whether or not he
11 wanted to testify I'd just like to put a couple of things on the
12 record. We did not -- I did not request to do a Biggers hearing
13 regarding the identification before the trial. At that point
14 the Discovery that had been provided to me by the State
15 indicated that there was no identification made by Miss Williams
16 in this case. Either her being to an out court identification
17 or that she would use any type of photographs in this case. But
18 obviously, we heard some testimony that would say she did view a
19 photograph a day after the incident."

20 Q All right. So, the Court heard from Mr. Delaney as to
21 that identification issue?

22 A Yes, ma'am.

23 Q At that point?

24 A Yes, ma'am, he put it on record.

25 Q Okay. But what I am going back to, there was nothing

1 put on record prior to starting the trial?

2 A No, ma'am.

3 Q And what was the Court's ruling in terms of this
4 identification issue, do you recall?

5 A Yeah. The judge, he said that he was -- I have it
6 right here. He said that he wanted to put it on record. Judge
7 Hayes said he wanted to put it on record that he had gotten
8 sidetracked and I think that's on -- I can't even move my
9 papers.

10 Q When you say "sidetracked" the judge got sidetracked
11 from hearing the issue?

12 A Yes, ma'am.

13 Q Okay. So, sidetracked at that point in time to
14 determine whether he was going to rule on the Neil v Biggers?

15 A No. He was going to rule on the photograph on the
16 identification.

17 Q Okay. And so your attorney put it on the record after
18 testimony was taken and after the trial had started?

19 A Yes, ma'am, he put it on record.

20 Q Okay. Now there was an appeal in this case?

21 A Yes, ma'am.

22 Q And I believe you made mention of that a few minutes
23 ago. I sent you documentation?

24 Q Right. Well, as to the appeal what was the ruling from
25 the appeal?

1 A They said that Mr. Delaney had failed to preserve the
2 issue for Court of Appeals review by not objecting to the
3 identification Michele Williams had given concerning the
4 photograph at the time she had stated that she identified me
5 from a photograph and I have here that trial transcript from the
6 officer that she said showed her the photograph. He's stating
7 that he never showed her any type of photo in this case. It's
8 on page 74, lines 10 through 25.

9 Q Okay. Let me back up for one second.

10 A Yes, ma'am.

11 Q Okay. When your saying there was an appeal in this
12 case?

13 A Yes, ma'am.

14 Q And the Court of Appeals did not rule on your case
15 because it wasn't preserved?

16 A That's right. That's correct.

17 Q And the specific issue that was appealed was the
18 photograph line-up that Miss Williams discussed in her
19 testimony?

20 A Yes, ma'am, photo line-up.

21 Q And is that the same issue that your attorney was
22 talking about on the record in terms of a Neil v Biggers
23 hearing?

24 A Yes, ma'am.

25 Q Okay. And so based on that the Court could not review

1 your case?

2 A That's correct.

3 Q As to that issue?

4 A That's correct.

5 Q Now, you are getting ready to say that there is another
6 page where the officer had conflicting testimony from Miss
7 Williams?

8 A Yes, ma'am, contradictory testimony. The officer
9 testifying that he didn't show a photograph, any type of
10 photographs and then I have her testimony.

11 Q Slow down. What page?

12 A Page 74, lines 10 through 25, page 75, lines one
13 through eight.

14 Q Okay. And this officer that you are talking about is
15 Officer Ryan Thomas?

16 A Yes, ma'am.

17 Q Okay, and he indicated that he -- line ten the question
18 was asked of Officer Ryans, he never showed -- let me ask you
19 this, as part of your training are you familiar with photo
20 lineups.

21 That's where you are beginning?

22 A Yes, ma'am.

23 Q Okay. And the officer testified his training in photo
24 lineups and then went on to say that he never showed her any
25 type of line-up on page 75?

1 A True. Yes, ma'am.

2 Q Now, you were going to say that Miss Williams indicated
3 that she was showed a line-up?

4 A Right.

5 Q And what page are you referring to on that?

6 A On page 84, lines one through seven -- I mean lines one
7 through 25, and page 85, lines one through four. She is
8 testifying that he did come and show her a picture to make her
9 identification from.

10 Q Now going back to your attorney's statement to the
11 Court that was it your attorney's statement that he did not know
12 that there was a line-up?

13 A Well. He never objected during that time. He never
14 made an objection to it. When she testified to it he failed to
15 object.

16 Q Once who testified?

17 A Michele Williams once she testified to it he failed to
18 object.

19 Q But wasn't it your attorney who asked her the question,

20 A He was asking her the question, yes, ma'am.

21 Q Okay, and at the time that he brought up this issue
22 with the Court that was his way of objecting?

23 A He was just asking her questions.

24 Q Now, when you referred to the initial pages of 98 and
25 99 --

1 A Yes, ma'am.

2 Q -- in what context was your attorney making the
3 argument about the photos? Was he speaking to the judge?

4 A Yes, ma'am, he was speaking to the judge, but he didn't
5 know anything about the photograph because he stated on page 99
6 that he didn't know anything about a photograph being shown to
7 her and that there is no photograph. Okay, and in your
8 investigation that you did, the papers that you sent to me from
9 the clerk of court's office also said that there is no
10 photograph.

11 Q Right.

12 A Right.

13 Q So, as to that issue the Court could not rule on that
14 issue?

15 A True.

16 Q And when it came down to presenting that issue to the
17 Court of Appeals you were not able to have that issue reviewed
18 because it was not objected to?

19 A That's right. That's right because it wasn't objected
20 to.

21 Q Okay, and so that is one of your ineffective
22 assistance of counsel?

23 A Right.

24 Q Now, you state a second ineffective assistance of
25 counsel. Not the one-year offer that you didn't receive. You

1 indicated in your application the missing Family Dollar store
2 security video?

3 A Yes, ma'am, I did, because the surveillance tape --
4 there was no surveillance tape. The video is missing.

5 Q Was there ever a videotape?

6 A To my knowledge, no, ma'am. We asked for it, but
7 through was none. Solicitor Springs stated on page 99 going
8 back to the photograph he said that the State does not have a
9 photograph. If you look on page 99, on line 18 through 23 on
10 page 99 of the trial transcript and Mr. Delaney asked him. He
11 says, Just to clarify, it is my understanding that the State
12 does not have this photograph. That's why it has not been
13 turned over to me. I still haven't seen a photograph and I
14 believe the State doesn't have that photograph at this time and
15 the solicitor answers. He says "That's correct, sir."

16 Q But Miss Williams in fact testified that there was a
17 photograph?

18 A Yes, ma'am, but it didn't exist to identify me.

19 Q Okay. You alleged another issue, missing inventory,
20 print cut-out slips?

21 A Yes, ma'am, I did, because the sales training receipts
22 from the stores are not inventory slips. They are presented to
23 the jury as inventory slips, but in reality these were training
24 receipts. They only showed the invoice of the price.

25 Q So --

1 MR. JOHNSON: Your Honor, I have to object at this
2 point. If he's talking about insufficiency of
3 evidence that's a direct appeal issue. Unless he
4 counts it as insufficient assistance that's not proper
5 for this Court to consider.

6 MS. MOODY: That's what it is couched as
7 ineffective assistance of counsel for failure to
8 preserve the objections for appellant review or to ask
9 for a mistrial. I believe that's in his application.
10 It's on the application.

11 Your Honor, if I may?

12 THE COURT: Yes, ma'am.

13 MS. MOODY: His overall from the way this is typed
14 it has ineffective assistance of counsel for failure
15 to ask for mistrial or properly preserve objections
16 for appellant review.

17 THE COURT: Yes, ma'am, go ahead.

18 Q So Mr. Altman, as to the missing inventory printout
19 slips --

20 A Yes, ma'am.

21 Q -- you indicated that your attorney did not object to
22 the, I guess, basically the categorizing of these slips?

23 A That's true. He let them testify. He let the
24 solicitor present them, the slips, the training slips, as
25 inventory printout slips from doing inventory inside the store.

1 These slips are not inventory slips. They are just mere
2 training receipts. And plus if you look at exhibits -- if we
3 look at the exhibits that you sent to me there is no Family
4 Dollar store receipt even in exhibits and there is no beef jerky
5 in exhibits.

6 Q And so --

7 A I'm accused of stealing beef jerky from the Family
8 Dollar. Beef jerky is not in evidence.

9 Q And that's the documents that your attorney received
10 from the State?

11 A Yes, ma'am.

12 Q Now, you also indicate that there is tainted testimony?

13 A Yes, ma'am, from Michele Williams.

14 Q And can you please tell us what you mean by that?

15 A Okay, Mr. Delaney put it on record, on trial transcript
16 record. He puts it on page 128 in his closing arguments -- no,
17 this is by Mr. Springs -- and he says on lines 18 through 20.
18 "He says but what you are going to hear from the judge in a few
19 minutes is the State they got to prove the identity of the
20 individual who was possessing the stolen item. They have to
21 prove the identity of the individual charged with the
22 shoplifting beyond a reasonable doubt and that's what I contend
23 to you, ladies and gentlemen. When you look at what they
24 presented to you, what I would argue to you would be the tainted
25 identification that we are here today from Miss Michele Williams

1 combined with what they could have presented to you. You see
2 what else they could have presented to you, ladies and
3 gentlemen, which would then left you firmly convinced, but they
4 haven't. Thank you for your time."

5 Q Now, you are saying this is Mr. Delaney?

6 A This is Mr. Delaney putting it on record, yes, ma'am.

7 Q Okay, and so you are saying that he failed to object to
8 the tainted identification?

9 A Yes, ma'am.

10 Q And that's going back to the original pretrial motion
11 and then the argument where he took it up in front of the judge
12 and alleges the issue about the photo?

13 A Yes, ma'am, he failed to object and and ask for a
14 mistrial.

15 Q And because of that you were unable to get your record
16 reviewed as to that identification by the Court of Appeals?

17 A Yes, ma'am.

18 Q Now, what relief are you -- well, first let me go back.
19 How do you feel you are prejudiced by this effort on your
20 attorney's part?

21 A Well, I feel he was ineffective. Mr. Delaney come to
22 my cell next morning.

23 Q No, I am asking how has it impacted you? Is it your
24 conviction?

25 A Yes, ma'am, conviction. Yes.

1 Q And can you explain further?

2 A I am wrongly convicted. I'm in prison for the tainted
3 testimony that Michele Williams has made against me from an
4 identification from a photograph that doesn't exist and the
5 police are saying they didn't show it to her.

6 Q And it wasn't preserved?

7 A And it wasn't preserved for Appellant Court review.

8 Q Okay.

9 A And plus, there was no type of identification,
10 pre-identification procedure took place before the trial.

11 Q And you just said that it wasn't preserved. So it
12 wasn't done at the beginning of the trial and then at the point
13 that your attorney raised it --

14 A Then and there at the time when she testified.

15 Q Okay, and then at the end of the trial?

16 A Yes. Yes.

17 Q Were there any other motions filed after your trial?

18 A No, ma'am.

19 Q Okay. Now, you were getting ready to say that Mr.
20 Delaney came to your cell?

21 A Yes, ma'am. He came to my cell and he said, I'm sorry
22 Donny. He said, I don't know what happened in there, but buddy,
23 her testifying to that photograph, he said, that came out of
24 left field. That came out of nowhere on me. That just
25 surprised me and if I could get you back in there right now

1 there are some things I would do differently. But I will get
2 you back to court Donny and we're going to straight this out.

3 Q What relief are you asking for from the Court here
4 today?

5 A Well, could I read you one more thing before I answer
6 that?

7 Q Yes, sir.

8 A I am on page 127, Mr. Delaney put something else on
9 record.

10 Q Okay. What line are you reading from?

11 A I am reading from lines five through 16. Lines five
12 through 16, page 127. Mr. Delaney says, "And you heard me ask
13 Officer Thomas about photo lineups and photos in this case. You
14 heard him agree a photo line-up where you take individuals that
15 look similar and an eye-witness will then pick someone out of a
16 photo line-up. Cuts down on what they called a suggestive billi
17 (phonetics) versus just showing someone a single picture.

18 So we went through all that questioning and did we hear
19 anything from the officers in this case that they took a single
20 photograph of my client the next day to Miss Williams. No, that
21 came solely through Miss Williams. Not through the police and
22 what they did in their investigation. That came solely from
23 Miss Williams.

24 Q Okay. And you wanted that on the record because?

25 A I wanted that in the record, yes, ma'am.

1 Q So what relief are you asking for from the Court?

2 A I am asking for time served, ma'am.

3 Q You realize that this Court here today can not give you
4 time served?

5 A I understand that.

6 Q Do you realize we are here today to establish whether
7 your attorney was ineffective assistance of counsel?

8 A Yes, ma'am, I understand that.

9 Q And that would start you over --

10 A Right.

11 Q -- in your matter, related to these charges?

12 A Yes, ma'am.

13 Q And if not starting over are you asking the Court to
14 find your attorney ineffective assistance of counsel as to the
15 appeal issue that was not preserved?

16 A Yes, I am.

17 Q And with that what is your request for your appeal?

18 A To overturn my sentence.

19 Q So you would like for the Court of Appeals to review?

20 A Yes.

21 Q You also indicated and I don't believe you mentioned
22 it. You talked about the Brady act. You talked about no photo
23 being turned over. When you read the information into the
24 record about Mr. Delaney not receiving a photo, is that what you
25 meant by the Brady act?

1 A Yes, ma'am, because he should have been given a
2 photograph if there had been a photograph. Solicitor Springs
3 said there is no photograph. When he asked Springs for a
4 photograph Solicitor Springs told him there is no photograph,
5 but yet he has got a woman testifying to put me in prison from
6 a photograph that don't exist.

7 Q Or wasn't given to your attorney?

8 A There wasn't one to give him. The lawyer never showed
9 her one.

10 Q Is there anything else you would like to tell the
11 Court?

12 A No, ma'am that is it.

13 MS. MOODY: No further questions for this witness,
14 Your Honor.

15 MR. JOHNSON: Briefly Your Honor.

16 CROSS EXAMINATION

17 BY MR. JOHNSON:

18 Q Mr. Altman, you realize that if you do go back and get
19 a new trial you are facing over fifty years in prison?

20 A Yes, sir.

21 Q And you are saying that the evidence that convicted you
22 was this photograph shown to Miss Williams?

23 A Yes.

24 Q But didn't she testify that she knows you because you
25 have been in that store many times?

1 A Well, if she knew me if we look at the incident report,
2 why did she not give my hair color. If she knew me as she
3 stated that she had seen me 20 times and she seen me in her
4 store if we look at the incident report it has somebody with
5 grey hair and brown eyes. I don't have grey hair and brown
6 eyes.

7 Q Mr. Altman, my question was at the trial did she not
8 testify that she'd seen you in the store many times?

9 A She testified to that but --

10 Q Said you had a tan hat on?

11 MS. MOODY: Objection. I ask that he be allowed to
12 finish his answer?

13 THE COURT: Let him finish his question.

14 Q She testified that she had seen you many times in the
15 store, correct?

16 A She testified that, yes, sir.

17 Q And she said you had a tan hat on, correct?

18 A That's what she testified to.

19 Q And she says she knows you because you have been in
20 that store many times before?

21 A She testified that she had seen me 20 times prior. But
22 she testified also on page 82 and 83 that she could not give a
23 description of the person in her store. She testified that she
24 could not give his hair color, his eye color, his weight, his
25 height. She could not give a description of the person in her

1 store on page 82 and 83 of the trial transcript. But then she
2 came back and testified that she had seen the person 20 times in
3 her store.

4 Q And the jury heard all that testimony did they not?

5 A Yes, sir. They heard that and about the photograph.

6 Q And they still convicted you?

7 A Yes, sir.

8 Q Okay. And sir, this is not the first time that you
9 have been convicted of charges like these, is it?

10 A No, sir, it's not.

11 MS. MOODY: Objection, Your Honor, relevance.

12 MR. JOHNSON: This goes to show that he not
13 necessarily guilty of this but it shows his
14 familiarity with the criminal justice system, Your
15 Honor. Goes to his credibility.

16 MS. MOODY: Your Honor, I would argue that it's
17 not relevant. We are here as to ineffective
18 assistance of his counsel and I think the issue is
19 whether his counsel and I think the issue is whether
20 his counsel gave him effective assistance in his trial
21 and whether or not he was prejudiced or not.

22 I don't think his prior record has anything to do
23 with whether his lawyer performed at the level that he
24 should have been performing.

25 THE COURT: I will say the trial transcript does

1 referenced his prior record because he testified in
2 the case and I think some of those charge may have
3 been used to impeach him on this matter. So at least
4 there is an evidence in the record in the transcript
5 that he has a prior record. So, as to its relevance
6 for today I don't know. I don't necessarily believe
7 that its relevant in this particular case on this
8 particular issue, but I did read the trial transcript
9 and I was familiar that he testified and that he had
10 prior charges which were -- could be used to impeach
11 him as to his credibility at trial.

12 MS. MOODY: So the ruling is ---

13 THE COURT: I'm sustaining your objection. It is
14 relevant in terms of the PCR, but I'm just making the
15 record aware of the fact that I know that he has a
16 prior record because of the trial transcript.

17 MR. JOHNSON: And Your Honor, just to complete
18 that record, what I was going to ask him about next is
19 giving false information and that goes to his
20 credibility on the stand here today as well as at the
21 trial. But I understand your ruling. I will move on.

22 BY MR. JOHNSON:

23 Q The third allegation is that Mr. Delaney brings in the
24 tainted identification, correct, it his closing argue, right?

25 A Yes.

1 Q And he was arguing on your behalf?

2 A Yes, sir, he was.

3 Q And then on page 99 you already testified that the
4 State states that there is no photo, right?

5 A Yes, sir.

6 Q The only person that says there is a photo is Miss
7 Williams, right?

8 A True.

9 Q And Mr. Delaney argued that and tries to discredit that
10 in the closing argument, correct?

11 A Yes.

12 MR. JOHNSON: The Court's indulgence, Your Honor.

13 A But excuse me sir. The States Attorney General Office
14 sent me a brief. In the brief that they prepared for the direct
15 Appeals Court on page four, it said that Mr. Delaney should have
16 objected at his first opportunity and ask for a mistrial in this
17 case and that's the reason that you all returned my Direct
18 Appeal down on Direct Appeals Court review.

19 Now, in that Attorney General's brief on page four, that you
20 all had sent to me, like I said, it states that he was in
21 effective because he failed to preserved the issue or ask for a
22 mistrial at that very moment and I just thought I wanted to put
23 that on record.

24 MR. JOHNSON: I move to strike that as
25 unresponsive to any question I asked.

1 THE COURT: I think it is irrelevant as well.

2 Although I understand it it relates to the issue on
3 appeal and not issues related to the PCR.

4 Q You state that these missing inventory slips, that they
5 are not inventory slips, correct?

6 A Yes.

7 Q Do you have any proof of that?

8 A What?

9 Q Do you have any physical proof of that?

10 A Yes, if you look -- if look at the receipts for sale,
11 it just got a price. It's just got the price. She has the
12 receipts. It just has the price on it. It doesn't have the
13 amount of items in the store. It doesn't have any of that and
14 he never questioned any of the witnesses concerning this matter.
15 That one Walmart would carry the same barcode as all other
16 Walmarts. And just because one Walmart sells the barcode and
17 another Walmart sells the same barcode on an item that doesn't
18 prove that the item is stolen. All you are showing me on these
19 training receipts is a barcodes. You are not showing me any
20 item that has been stolen from that store or the amount of items
21 that come off that shelf on these training receipts.

22 Q But the witnesses at your trial testified that they had
23 items stolen and they introduced those receipts as evidence that
24 you stole those items, correct? That's what the testimony at
25 trial was?

1 A They're testimony.

2 Q Yes or no?

3 A They're testifying to estimate receipt, is what they
4 are testifying to.

5 Q Is that a yes?

6 A No, sir, it's not a yes.

7 Q Is that not what they testified to at trial?

8 A They are testifying -- Solicitor Springs asked them if
9 -- if you would have counted the items on your shelf. He didn't
10 ask them did they count the items on their shelf. He asked them
11 if they would count the items on the shelf.

12 MR. JOHNSON: I have no further questions for this
13 witness.

14 THE COURT: Any redirect?

15 MS. MOODY: Yes, ma'am, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. MOODY:

18 Q The receipts you are talking about, Mr. Altman, you are
19 talking about the receipts that were provided by the stores?

20 A Yes, ma'am.

21 Q And can you please take the time to explain what you
22 meant that these were training slips?

23 A Could I please hold one.

24 Q I have one. (Handed) Can you identify those documents?

25 A Yes, ma'am.

1 Q We have a Walmart training receipt. We have a Big Lots
2 receipt, training receipt. I am missing the Lowes.

3 Q Well, just use show those?

4 A Okay.

5 Q So you can explain to the Court what you meant. You
6 said training slips and inventory slips?

7 A Yes, ma'am. This is just a mere training receipt, Your
8 Honor.

9 MR. JOHNSON: Your Honor, he doesn't have
10 personnel knowledge of this. He is not authorized to
11 to lay a foundation as to what those receipts are.

12 MS. MOODY: Your Honor, he is looking at the
13 actual slip that was presented in the Discovery to his
14 attorney.

15 MR. JOHNSON: He still can't authenticate these
16 documents and he can't testify to exactly what those
17 things are.

18 THE WITNESS: It's just a mere training receipt.

19 MS. MOODY: Can he just read the document, Your
20 Honor.

21 THE COURT: He can read what the document says. I
22 don't know -- I don't know that he has knowledge as to
23 what that means unless you lay an appropriate
24 foundation.

25 MS. MOODY: Okay. I just want him to read the

1 slip.

2 A Okay, we have here the Family Dollar Store. We have
3 Michele Williams testifying that somebody stole beef jerky from
4 her store. All right. We also have Mark Three razors stole.
5 We have razor stolen, is what they are testifying to. A group
6 joint pliers, a group joint pliers, group joint pliers. Then we
7 have bar codes. But the same Family Dollar store in the whole
8 South Carolina carries the same Mark Three razor with the same
9 bar code.

10 Did anybody testify from that store that they did an
11 inventory of those shelves to see if anybody had been taken from
12 those shelves.

13 Q So you are trying to say that there was no proof
14 presented that anything was stolen from the store?

15 A No, ma'am.

16 Q Okay, and earlier you testified about beef jerky?

17 A Beef jerky was never put in to evidence.

18 Q So it's not on that slip?

19 A It's Jack links, but that is not a beef jerky.

20 Q Okay. So the information -- the testimony that you are
21 challenging is your attorney did not challenge in your trial was
22 how did do they know those items were stolen from that store
23 that Michele Williams worked from?

24 A She testifying somebody stole the beef jerky.

25 Q Right. But my question is and answer my question.

1 A Yes, ma'am.

2 A You're saying that your attorney did not challenge that
3 item was stolen from that store.

4 A That's true.

5 Q Okay. So nothing was presented as to the beef jerky
6 being stolen from Michele Williams's Family Dollar store?

7 A No, ma'am. No, ma'am. And if we look at the Lowes's
8 receipt.

9 Q That is just one part of it.

10 A Yes, ma'am, but the Lowes's receipt is very, very
11 important. If we look at the Lowes's receipt --

12 MR. JOHNSON: Objection. It is non-responsive to
13 any question counsel has asked.

14 Q What is the purpose the Lowes's receipt?

15 A It's just an estimate receipt. At the top it has
16 estimate.

17 Q Okay.

18 A And if we look at Solicitor Springs's statement he asks
19 each witness that took the stand. Each one. If I could have
20 the document beside you there in the yellow paper Miss Moody.
21 The yellow folder. First of all tell me finish your statement.

22 A I'm going to read to you what Solicitor Springs asked
23 each witness. The yellow folder please.

24 Q The testimony is in the transcript.

25 A Right.

1 Q So you want to refer to each witness that testified in
2 Mr. Springs case in chief that they testified to the same thing?

3 A Right.

4 Q And the same thing was what?

5 A It was a trick question. He asked them a trick
6 question.

7 MR. JOHNSON: Objection. Speculation and no
8 personnel knowledge of that, Your Honor.

9 THE WITNESS: I'm going to read from the trial
10 transcript.

11 Q It's in the transcript?

12 A Yes, ma'am. Yes, ma'am.

13 Q So if the judge is reading the transcript will she see
14 the same question for each witness?

15 A Yes, ma'am.

16 Q Okay. So --

17 A If you would have counted the stuff on your shelf. He
18 didn't ask them did they count the stuff on the shelf. He asked
19 them if they would have counted stuff on the shelf.

20 Q So, your position is he had no proof that those things
21 were stolen from the store that Michele Williams or the other
22 witnesses worked at?

23 A That's true.

24 Q Okay, and your attorney never challenged that question?

25 A Right.

1 Q Okay, by objection?

2 A Right.

3 Q Okay.

4 MS. MOODY: Beg the Court'S indulgence. No
5 further questions for this witness.

6 MR. JOHNSON: Just followup Your Honor.

7 RECROSS EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Altman, would you agree with me that Officer Thomas
10 of the Rock Hill Police Department testified that the items were
11 found in 2004 Ford Taurus which is register to you?

12 A Yes, sir.

13 Q Okay, and among the inventory of the stolen items
14 including the beef jerky from the Family Dollar, included Goody
15 powder from CVS, flashlights and pocket knives from Big Lots,
16 lighters from Walmart, needle nose pliers, wire cutters from
17 Lowes and razors from Walmart.

18 Do you agree we me on that?

19 A That's correct.

20 Q That was the testimony?

21 A Yes, sir, but he turned in more then what came out of
22 the car. He has taken back more to Walmart then what he
23 testified that he took out of the car.

24 Q My simple question was that was the testimony at trial?

25 A That was the testimony at trial yes, sir.

1 Q And the jury convicted you?

2 A Yes, sir.

3 MR. JOHNSON: No further questions, Your Honor.

4 MS. MOODY: Your Honor, if I may ask one further
5 question.

6 THE COURT: Yes, ma'am.

7 REDIRECT EXAMINATION

8 BY MS. MOODY:

9 Q At the time that that officer testified what he took
10 from that truck were you in that truck?

11 A No, ma'am. It was automobile.

12 Q Who was in the car?

13 A There was a lady that was in it. She's mentally
14 disturbed.

15 MR. JOHNSON: Objection. Speculation.

16 Q Who was in the car?

17 A Brenda Sims.

18 Q Were you in the car?

19 A No, ma'am.

20 MS. MOODY: No further questions.

21 THE COURT: You may step down thank you.

22 THE COURT: Any additional witnesses, Miss Moody?

23 MS. MOODY: Erik Delaney, Your Honor.

24 ERIK DELANEY called as a witness, having been duly
25 sworn by The Clerk, was examined and testified as

1 follows:

2 MS MOODY: May it please the Court.

3 DIRECT EXAMINATION

4 BY MS. MOODY:

5 Q Mr. Delaney, can you -- well, do you recall this case
6 representing Mr. Altman?

7 A I do.

8 Q And you recall going to trial on this case?

9 A Yes.

10 Q And you heard the testimony from Mr. Altman about the
11 transcript, on page 99 of the transcript there was an exchange
12 between you and the Court and you talked about the
13 identification and you didn't request a Biggers hearing
14 regarding identification before the trial do you recall that
15 exchange with the Court?

16 A I do, vaguely.

17 Q Can you explain to us -- can you explain to the Court
18 what happened with regard to a Biggers hearing?

19 A I think you got some background information here.
20 Going in to the trial there was no -- I did not think there was
21 any need to do a Biggers hearing at that time. There was no
22 photo identification. No line-up from my understanding done,
23 and as you heard throughout the trial at different points that
24 is what ultimately the State contended, we didn't do a photo
25 line-up, no photo line-up was not given to this witness, or

1 photo was not given to this witness. She as you heard testified
2 to something different during the trial and obviously I raised
3 that issue at different points throughout the trial.

4 Q And you raised that issue to try to resolve that
5 identification coming in?

6 A I guess that's a good question. I guess sometimes it
7 was used. Sometimes it was cited. It was used in closing
8 arguments or in different arguments. I never -- I think as it
9 was contended I never objected or put anything on the record as
10 a formal objection preserving the record regarding the that.

11 Q At the end of State's case in chief you moved for a
12 directed verdict?

13 A Yes.

14 Q And the basis for your directed verdict was it based on
15 lack of identification or just what was your --

16 A I think that was part of it, and it was with the
17 reliability of the State's witness I think I was getting at
18 that.

19 Q And the reliability of the State's witness, which
20 witness are you talking about, Miss Williams?

21 A Yes, Miss Williams.

22 Q Can you explain to the Court what basically Miss
23 Williams had -- what did she testify basically on behalf of the
24 State?

25 A Miss Williams ultimately testified that Mr. Altman was

1 the one that was taking some of these items out of her store
2 that she was working in and I think what came out is that she --
3 there was different things she had testified that she saw. She
4 was given a photo that she looked at. Identified Mr. Altman but
5 then from what I remember her testimony also was that she had
6 known Mr. Altman through multiple times he had been in the store
7 in the past and obviously we had the other side of it too with
8 the State saying we didn't do this. There was no photos
9 presented. So that was kind of the different issues at that
10 time.

11 Q And so did you file the Notice of Appeal on behalf of
12 Mr. Altman?

13 A Yes.

14 Q And what was your basis of that appeal?

15 A I don't recall.

16 Q Okay. So, did you just generally file a general
17 notice?

18 A Yeah, from my understanding it was just a general
19 Notice of Appeal.

20 Q And so if you had a Biggers hearing what would you have
21 done in terms of objecting to that? You would have typically
22 done a pretrial motion?

23 A Yes.

24 Q And there was no pretrial motion in this case?

25 A That's correct.

1 Q And then you would have objected at the time of the
2 identification by Miss Williams?

3 A That's correct.

4 Q And then from there you would have renewed your
5 objections at the end of the State's case in chief?

6 A Yes.

7 Q And then after you presented the testimony on your
8 client's behalf you would have renewed all objections?

9 A Yes.

10 Q And based on the fact that you didn't know about the
11 photo you were unable to do any of that?

12 A I would agree that played a part. That did play a part
13 I guess with my thinking of why I didn't. But yes, that did
14 play a part.

15 Q And at the time that you brought it to the Court's
16 attention about the photo were you trying to preserve the record
17 as to that issue then?

18 A I think at that time I was looking through the
19 transcript I was trying to bring it to the Court's attention.
20 Obviously I was not successful in preserving anything, but yeah,
21 I was trying to bring it to the Court's attention at that time
22 trying to figure out what to do next.

23 Q So at any point did it -- well, you didn't move for a
24 mistrial. Can you explain why you didn't move for a mistrial in
25 this matter?

1 A Again, from what I remember as far as moving for a
2 mistrial because I didn't receive certain Discovery?

3 Q Yes.

4 A And again, it was the State's contention through the
5 officers involved, through Mr. Springs in the case, that they
6 had given -- they had turned over to me this photograph. So
7 they were in disagreement with what their witness was saying.
8 So I guess at that time I didn't feel it was necessary. I
9 didn't have good enough grounds to make that argument at that
10 point. I didn't have a good faith basis at that point that this
11 picture was being withheld from me by the State.

12 Q Did you move after the -- after the trial and Mr.
13 Altman was convicted, did you do any research or anything to
14 find out -- meaning by research, did you go look at the State's
15 file again to resolve any issue as to the identification?

16 A No, I don't recall going back and looking at their
17 file. No.

18 Q Did you file a Rule 29 for a reconsideration?

19 A No, I did not. So you filed a Notice of Appeal, and
20 are you aware the decision from the Court of Appeals.

21 A Yes. Yes.

22 Q And that was they couldn't review that issue?

23 A Because it wasn't preserved, yes, ma'am.

24 Q As to the other issues in the case as to the inventory
25 print out or inventory training slips, or inventory slips, did

1 you discuss that with Mr. Altman and what is your understanding
2 of where those inventory slips or training slips came from?

3 A I don't -- I don't recall any specific conversations
4 with Mr. Altman about that. My understanding was that was
5 something they were using to try to document what they believed
6 was taken out of the store. I think there was testimony from an
7 officer involved that he went back and he was trying to match up
8 what was taken from the store. But, yeah, I would agree these
9 weren't receipts or anything like that.

10 They were, just as Mr. Altman said, inventory, or some type
11 of printout. They weren't actually receipts or anything like
12 that.

13 Q Did the State offer any photos of the items that were
14 taken?

15 A I believe this were photos taken of the car. What was
16 found in the car. I believe there was. Just looking through my
17 file to see if I see any photos. I don't see any photos in my
18 file.

19 Q So what was your strategy in attacking this case? I
20 mean, obviously you did not receive a photo that was used to
21 identify Mr. Altman?

22 A Right.

23 Q There were know photographs of the items that were
24 taken from the store. There's a question as to the receipts
25 that were used to identify I believe items that were recovered

1 or returned. So, you know, I know you moved for a directed
2 verdict but what was your strategy going into this trial?

3 A From what I remember the strategy was Miss Williams her
4 -- what was her initial description to the police was very
5 minimal. So we tried to I think get the jury to concentrate on
6 that.

7 This was another lady, another witness in this case or
8 information came from a lady that they found in the car. She
9 had just gotten out of the hospital.

10 Q Was she a witness?

11 A I don't -- I am trying to remember. I don't think she
12 was actually called as a witness.

13 Q Are you referring to Miss Sims?

14 A Yeah, Miss Sims.

15 Q And so she was not at the court to testify?

16 A I don't believe so.

17 Q When Mr. Altman was arrested for these charges was he
18 located in the car or near the car?

19 A No, he was not located in the car or I guess you should
20 say near the car, no.

21 Q Do you recall where he was?

22 A I don't recall where he was actually located, but I
23 know when officers responded to the car he was he not in the
24 car. It was only this Miss Sims in the car at that time. But I
25 don't recall exactly where he was located.

1 Q So again, the issue of the photo before the photo came
2 about did you not question the identification or have any
3 questions as to how Miss Williams identified Mr. Altman when she
4 didn't know his name?

5 A That's correct.

6 Q So that's where it goes in to the lack of description
7 in the transcript?

8 A Right. Right.

9 MS. MOODY: No further questions for this witness.

10 Thank you.

11 THE COURT: Any cross.

12 MR. JOHNSON: Yes, ma'am.

13 CROSS EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Delaney, what is your understanding when a Neil v
16 Biggers hearing is is necessary?

17 A When there is some time the State is presenting some
18 type of a photo line-up to a witness or if this is some type of
19 identification going on as far as I showup or drive-by type of
20 ID.

21 Q But it must be State action, right.

22 A That is my understanding.

23 Q And in this case the Solicitor Springs is adamant there
24 is no photo that exists, right?

25 A That's correct.

1 Q And the police say there was no photo lineup shown to
2 Miss Williams?

3 A That is correct.

4 Q And there was no showup in this case?

5 A That's correct.

6 Q So on those grounds you wouldn't have had a good faith
7 basis to object to the testimony is there?

8 A Yes, that's where it makes it a -- a little more
9 difficult to object in those regards as far as if the State is
10 not doing something. Obviously that was their contention even
11 though we heard something different from one of the State's
12 witnesses that there was that contention. So it does make it a
13 little more difficult to have a good faith basis to make that
14 objection.

15 Q And the State in their case in chief did not present
16 any evidence of a photo line-up?

17 A No.

18 Q Or show-up?

19 A That's correct.

20 Q And did you cross the State's witnesses on there
21 wavering testimony?

22 A I believe so.

23 Q And did you try to argue that in your closing argument
24 that Miss Williams was not reliable witness?

25 A Yes.

1 Q There also was testimony that an officer had seen a
2 suspect in car matching Mr. Altman's description, correct?

3 A Yes, that is correct.

4 Q That he followed him to a BP station and tried to go in
5 the station and saw him but could not get to him and then he
6 goes out and find Miss Sims in the car, right?

7 A I believe that is what the officer testified to, yes.

8 Q And that car is register to Mr. Altman, correct?

9 A That is correct.

10 Q And that's the same Ford Taurus that they found all
11 these stolen items in, correct?

12 A That's correct.

13 Q So this certainly is a circumstantial case?

14 A I would agree, yes.

15 Q Okay, and all this evidence was presented to the jury,
16 correct?

17 A Yes, that is correct.

18 Q And they still found him guilty?

19 A That's correct.

20 MR. JOHNSON: Court's indulgence, Your Honor.

21 Q So one of the allegations is that -- let me reiterate
22 -- you failed to did he any pretrial identification hearing. At
23 the time of the pretrial hearing did you have any good faith
24 basis on which to ask the Court to conduct a pretrial hearing?

25 A No.

1 Q And you couldn't object to the photo because no photo
2 existed that the State tried to present in their case in chief,
3 correct?

4 A I would agree, correct.

5 MR. JOHNSON: That is all the questions I have,
6 Your Honor.

7 THE COURT: Any redirect?

8 MS. MOODY: No further questions, Your Honor.

9 THE COURT: You may step down.

10 MR. JOHNSON: And the State asks that Mr. Delaney
11 be excused.

12 THE COURT: Any objection?

13 MR. JOHNSON: I will not call him unless you have
14 any further witnesses.

15 MS. MOODY: I don't have any further witnesses.

16 MR. JOHNSON: And the state has no witnesses.

17 THE COURT: You he can be excused.

18 THE COURT: Any further argument or discussion.

19 MS. MOODY: Yes, Your Honor. Based on my client's
20 application he filed his application for ineffective
21 assistance of counsel in failure to ask for a mistrial
22 or proper preserve objections for appellant review.
23 The basis of that is the identification which would
24 have preserved the record where my client would have
25 had an opportunity to have his record reviewed as to

1 his appeal rights.

2 I realize there was testimony that Mr. Delaney did
3 not timely object or file a motion for a pretrial
4 motion to be heard and there was no question as to
5 whether there was a photo actually provided to the
6 State's witnesses and this is a contradiction between
7 the State's witnesses and the witness who identified
8 and places my client at the location where the robbery
9 actually took place, stated that she saw a photo. She
10 didn't know my client by his name but she does testify
11 in the record that she's seen him a couple of times.
12 At less 20, or a dozen times, but she was also shown a
13 picture and that was her testimony.

14 The State presents evidence where the officers
15 contradict her testimony. However, you know, Mr.
16 Delaney is left with the quandary of whether he should
17 object or request a directed verdict, and I believe in
18 this case he did his objection through his directed
19 verdict. However, he did not timely object to
20 preserve it for Mr. Altman to exercise his right to an
21 appeal.

22 In order for him to have preserved the record he
23 would have needed to object in pretrial. Object it
24 timely and state specifically what his objection was
25 on the record as to the identification or ask for a

1 mistrial because there was obviously a breach of the
2 Discovery rules.

3 I understand that the State said that there was no
4 photo and I understand that the officer says that he
5 didn't show any photo, but it still left my client at
6 the short end of the stick where he would have been
7 able to exercise his right and have this reviewed by
8 the Court of Appeals.

9 I believe you heard the testimony that Mr. Altman
10 gave where he received a copy of the initial brief of
11 response to his appeal where he tried to exercise his
12 right to appeal and I believe the State -- the
13 Attorney General's Office is going at it two different
14 ways. He is objecting to -- well, not objecting. He
15 is finding issue with Mr. Delaney's merit that he
16 might have for making the objection, but he still --
17 Mr. Delaney, still needed to make that objection
18 timely or ask for a mistrial as to my client's right
19 to preserve the record. Specifically in their own
20 brief they called Mr. Delaney ineffective for not
21 timely filing a motion and if in fact it was objected
22 to and if it was without merit that would have been
23 determined at the Court of Appeals level, but Mr.
24 Altman didn't get that opportunity. I think the
25 purpose of filing an objection and making timely

1 objections is so that the State will not be able to
2 run amok of my client's rights. In this instance he
3 was not able to get his objection.

4 Further going as to the facts of the case there is
5 some question as to whether it was even him at the
6 location and there is some question as to whether he
7 was in that truck with Miss Sims. Miss Sims didn't
8 testify. They did find some items but I think that
9 Mr. Delaney tried to in his effort trying to protect
10 Mr. Altman's case filed appropriately -- moved
11 appropriately for the directed verdict.

12 Ultimately at the end of the day Mr. Altman is
13 prejudiced by the failure in objecting and preserving
14 the record and he is serving a sentence in which, you
15 know, there may be some question as to whether that
16 was a valid or I guess a meritorious identification of
17 him being in Family Dollar that day, if in fact it was
18 him. If in fact he was the person who actually stole
19 those goods there was no pictures in the record of
20 those items that were taken. They are just receipts
21 and he questioned that. He questioned the evidence
22 and some of those arguments might not have been
23 meritorious to take to Court of Appeals, but I do
24 think that at least the identification was an issue
25 that should have been preserved and taken up to the

1 Court of Appeals, but -- but for the objection for the
2 mistrial Mr. Altman will -- he's prejudiced.

3 As to -- I think the record shows where Mr. Delaney
4 tried to cure the record in terms of asking and
5 arguing the tainted record but that still was not
6 enough and Mr. Altman was convicted.

7 Based on that, Your Honor, I would ask the that
8 Court grant him his relief at least for a belated
9 appeal in this matter so that he can have his record
10 reviewed to see if there was any question as to that
11 identification of Mr. Altman. If not, Your Honor, we
12 ask that he have his relief granted in the form of a
13 new trial.

14 THE COURT: Any response?

15 MR. JOHNSON: Yes, ma'am. First of all the State
16 objects to that belated appeal. That was not in the
17 application. It should be stricken from being a
18 remedy.

19 The State's position is that there is no Neil v
20 Biggers hearing that is necessary. The Supreme Court
21 of South Carolina, State versus Liverman, 398 S.C.
22 130, a 2012 case states that a pretrial hearing is not
23 necessary where a witness knows the accused. There is
24 testimony that Miss Williams knew Mr. Altman. That
25 she is the only one who testified there is a photo.

1 The officer stated there was no photo line-up. The
2 solicitor stated there was no photo that existed. Now
3 whether Miss Williams is credible is a determination
4 for the jury. This was no State action here.
5 Liverman goes on to quote Perry versus New Hampshire
6 which is a United States Supreme Court Case where the
7 Supreme Court refused to extend breach of
8 identification due to due process protection into
9 areas where identification is not procured by State
10 action. This ID is not procured by State action.
11 There is no photo line-up presented. The ID is
12 strictly procured by her prior knowledge of Mr.
13 Altman. And I will agree with Miss Moody, this is a
14 circumstantial case, but the jury heard all that
15 evidence. The ID -- Miss Sims is still in the car but
16 Mr. Altman is not but it is registered to him. He has
17 admitted that. All the stolen items were found in
18 that car. But according to Mr. Delaney I asked him
19 point blank did he have any good faith basis to object
20 and ask for a Neil v Biggers hearing to which he said
21 no because he did not know of the photo line-up. Yes,
22 he tried to cure it later on but the issue -- and I
23 agree that it was not preserved for appeal, is -- is
24 that was a Neil v Biggers hearing even necessary, and
25 under State v Liverman it wasn't because there was no

1 State action and because of that there could be no
2 ineffective assistance of counsel and Mr. Altman was
3 not prejudiced by counsel not asking for this lineup,
4 this photo ID to be challenged.

5 We ask that you deny the application and affirm his
6 conviction.

7 MS. MOODY: Your Honor, if I may. He cites State
8 v Liverman, and I understand he is saying there is no
9 State action, however the witness testified that she
10 was shown that photo by Officer Thomas and that's in
11 the transcript. That's her testimony. It seems like
12 the State is taking a position that they can decide
13 whether or not there was State action or not.

14 These are witnesses and when a witness goes to the
15 stand the jury has to determine which witness is
16 credible in part or in whole or all that they believe.
17 However, the Court has the obligation, I believe, if
18 there is an issue as to the reliability of that
19 witness's testimony to do an in camera hearing. Mr.
20 Altman was not given that opportunity and I think that
21 this is where he again -- I mean he gets the short end
22 of stick because this witness, the State's witness who
23 they had an opportunity to prepare gets on the stand
24 and says she was shown a photo and she was shown a
25 photo by an officer by the name of Thomas. Then the

1 other witnesses for the State, officers, who may not
2 have shown her a photo they testify something
3 different. At that point I think that is when Mr.
4 Delaney should have asked for a mistrial or asked for,
5 you know, to approach and whether they needed to hold
6 in camera hearing as to whether this witness's
7 testimony or identification of Mr. Altman was
8 reliable.

9 In this transcript she also couldn't give a very
10 good description and it doesn't matter whether she
11 knew Mr. Altman or not. That doesn't necessarily mean
12 that she actually saw Mr. Altman that day in the store
13 stealing whatever items she alleged that he took out
14 of the store. So I think in this situation --

15 THE COURT: But those are two different issues.

16 MS. MOODY: Right. But I am arguing that Mr.
17 Delaney's failure to object prejudiced Mr. Altman and
18 I would have to read fully -- more fully Liverman to
19 be able to distinguish the factual circumstances in
20 that case but if he's citing it as the whole basis it
21 is not a government action in the transcript the
22 witness testifies that she was shown --

23 THE COURT: So what you are saying -- I guess I am
24 trying to get past your argument that there should
25 have been a hearing before -- before the trial. I

1 mean, if there is no -- if the State says that there
2 was no photo, there was no photo line-up, there was no
3 show-up, that there was no line-up with a number of
4 suspects when someone comes in to the police station
5 and identifies somebody that there was no -- that
6 there was nothing that the State called or did to have
7 the witness make any identification of the person that
8 they are claiming committed the acts. How -- and they
9 communicated that to the defense through the Discovery
10 and said we don't have anything. How is the defense
11 going to know to make a pretrial motion?

12 MS. MOODY: I understand that. I mean, I'm saying
13 if they had that information that's where you start
14 off. But at the point that he learned in the
15 testimony where she said that she identified him from
16 looking at photo then at that point there should have
17 been an objection as to any kind of testimony that
18 says she identified him from a photo. And what I am
19 simply getting at here in this instance he's saying
20 that there is no State action. There shouldn't have
21 been a Neil v Biggers. Okay, I don't know what I
22 would call it at that point in time, but if there's an
23 objection that would have been preserved for the
24 record.

25 THE COURT: And that's totally different from

1 there should have been a pretrial hearing. What I
2 keep hearing over and over again, that there should
3 have been pretrial hearing. There should have been a
4 pretrial hearing, but what I've also heard is that
5 there was no basis for a pretrial hearing. Now
6 whether during the course of the trial this should
7 have been some additional actions taken is a different
8 issue all together. But that's not to say that it
9 should have been done before the trial started and it
10 wasn't preserved at that particular point I would have
11 to disagree.

12 Now whether or not during the course of the trial
13 when some information came to his attention he should
14 have done something different then what he did that's
15 another issue.

16 MS. MOODY: Well, I mean, I guess I am trying to
17 argue just generally the issue should have been
18 preserved for the record. So that at the end of day
19 Mr. Altman is prejudiced in that he does not get to
20 have the Court of Appeals to review.

21 THE COURT: And I heard that argument about four
22 or five times. I think -- I think you made the
23 argument that it should have been preserved at some
24 particular point when it came to light that there was
25 a difference in the testimony. Okay, and I think you

1 made that argument.

2 Is there anything else? The only thing I would
3 ask is when I read the transcript, page 105 in my
4 transcript, it was basically like there is two pages
5 of information copied on it.

6 MR. JOHNSON: It looks like the court reporter's
7 signature combined -- I see the exact same thing --
8 combined with page 105. So I will try to -- it's the
9 beginning of the trial, combined with the direct and
10 cross examination.

11 THE COURT: I think to pick out what is suppose to
12 be on that page and I think it is got caption page,
13 along with a page of testimony.

14 MR. JOHNSON: Yes, ma'am.

15 THE COURT: See if you can find a clean copy. If
16 not, I think what's wrong there it relates to the
17 beginning of cross examination. Some testimony of Mr.
18 Altman, and I think what I can make out in his
19 testimony is that Miss Williams must have seen his --
20 he claims he has a twin brother named Ronny and she
21 must have seen Ronny and he had another brother named
22 Scotty and then there's some answers and then there is
23 cross examination relating to the Taurus, the white
24 Ford Taurus. And that's where it becomes a little
25 more difficult to read.

1 MR. JOHNSON: Yes, ma'am.

2 THE COURT: All right. What I would like to do is
3 pull the Court of Appeals's opinion and review
4 portions of the transcript. I think I've written down
5 most of the notes that I have on some of the testimony
6 but I'm interested in particular as it relates to
7 those exhibits that are referred to as the -- whatever
8 the tickers are. Whether they are inventory tickets
9 or something else. I would like to review the
10 witness's testimony as to those and then I'm sure I'll
11 at that time provide you my findings and most likely
12 ask someone to prepare an Order on my behalf.

13 MR. JOHNSON: Thank you, Your Honor.

14 MS. MOODY: Thank you, Your Honor.

15 END OF TRANSCRIPT
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 19th day of November, 2014.

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

May 3, 2016

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Donald Altman, #261468,

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-46-02535

ORDER OF DISMISSAL

DAVID HAMILTON
C.C.P. # 16-05
YORK COUNTY, SC

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This matter comes before the Court by way of an application for Post-Conviction Relief ("PCR"). Applicant Donald Altman ("Applicant") filed the application on August 22, 2013. The State of South Carolina ("Respondent") made its Return and moved to dismiss the application on December 3, 2013. A hearing was convened November 19, 2014, at the York County Courthouse. Applicant was present at the hearing and was represented by counsel, Leah B. Moody, Esquire. Respondent was represented by Assistant Attorney General J. Rutledge Johnson, Esquire. After reviewing all of the testimony and evidence presented at the hearing, along with a review of all records provided to the Court, the Court finds that there are no constitutional deprivations or other grounds on which to grant relief and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant presently is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the July 2001 term of the York County Grand Jury for Shoplifting, four counts of Possession of Stolen Goods, and Altering or Possessing an Altered License Plate. Erik Delaney, Esquire, ("Delaney") represented Applicant on his charges. On July 26, 2011, Applicant proceeded to a jury trial before the Honorable John C. Hayes, III. Applicant was found guilty and sentenced to confinement for ten years for Shoplifting, 3rd or subsequent offense; ten years, consecutive, for Possession of Stolen Goods, 3rd or subsequent offense; ten years, concurrent, for the other Possession of Stolen Goods charges; and five years, concurrent, for Altering or Possessing an Altered License Plate. A notice of appeal was filed on Applicant's behalf. The South Carolina

Court of Appeals affirmed the Applicant's conviction and sentence. *See State v. Altman*, 2013 WL 8539478, at *1 (Ct. App. Aug. 7, 2013). The Remittitur was issued on August 23, 2013.

In his PCR application, Applicant alleges that he is unlawfully being held in custody because of the ineffective assistance of his trial counsel in failing to request a *Neil v. Biggers* ("Biggers")¹ hearing concerning the identification of Applicant; prosecutorial misconduct for failure to provide certain evidence; and constitutional violations under both the South Carolina Constitution and the United States Constitution.²

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, the Court had before it Applicant's trial transcript, the records from the York County Clerk of Court regarding the convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant first testified on his own behalf. Applicant testified that Delaney failed to object to testimony from a State witness, Michelle Williams, concerning her identification of Applicant based upon a photograph. According to Applicant, Officer Ryan Thomas, the investigating officer, ("Officer Thomas") testified at trial that he never showed witness Michelle Williams, manager of Family Dollar ("Williams"), any photos of Applicant. Williams, however, testified at trial that Officer Thomas did show her a photograph of Applicant the day after Applicant's alleged shoplifting from Family Dollar. Applicant testified that Delaney should have objected to Williams' testimony concerning Applicant's identification because no photograph actually existed. Applicant testified that he was prejudiced by an identification based upon a photograph that does not exist. Applicant stated that Respondent used Williams' testimony regarding the alleged photograph to convict him. Applicant also testified that Delaney failed to ask for a mistrial based upon Williams' identification. According to Applicant, the Court of Appeals held that Delaney failed to preserve the issue by not objecting to the identification at the time it was provided.

¹ 409 U.S. 188, 93 S. Ct. 375 (1972).

² Applicant's grounds for PCR included, *inter alia*, "violat[i]ons of the 5th and 14th Amendment[s] of the Constitution." During his PCR hearing, Applicant specifically focused on his trial counsel's ineffective assistance and Respondent's alleged *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), violation. The Court, thus, will interpret Applicant's claims of constitutional deprivations as specifically including his trial counsel's ineffective assistance and Respondent's *Brady* violation.

Applicant, further, testified that Delaney improperly failed to request a *Biggers* pre-trial identification hearing concerning the alleged photograph before the trial began. Applicant also testified that Respondent's failure to provide the photograph to Applicant constituted a *Brady v. Maryland*³ ("Brady") violation.

Delaney testified that he did not think a *Biggers* hearing was necessary because he did not believe a photograph existed at the beginning of the trial. Delaney, moreover, testified that the assistant solicitor, Mr. Johnson, informed the trial court that a photograph, in fact, did not exist. Delaney further testified that, at trial, Williams explained that she knew Applicant from seeing him multiple times in the store and that he stole items from the store. Delaney also testified that he moved for a directed verdict based upon the reliability of Williams' testimony.

Delaney testified that he did not file a Rule 29 Motion for Reconsideration. Delaney testified, however, that he filed an appeal but could not remember its basis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony provided at the PCR hearing. This Court, further, has had the opportunity to observe the witnesses presented at the hearing, pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

A. Ineffective Assistance of Counsel

Applicant submits Delaney rendered ineffective assistance of counsel because Delaney failed to request a *Biggers* hearing related to witness identification. In a PCR action, the applicant bears the burden of proving the allegations in his application. *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012). 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, 687, 104 S. Ct. 2052, 2064 (1984). Claims of ineffective assistance of counsel are evaluated under a two-prong test. See *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). First, the applicant must prove that counsel's performance was deficient. *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011). Under this prong, the court measures an attorney's performance by its "reasonableness under

³ 373 U.S. 83, 83 S. Ct. 1194 (1963).

professional norms.” *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). To receive relief, a PCR applicant must overcome this presumption. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (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.” *Suber*, 371 S.C. at 558, 640 S.E.2d at 886.

“A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification.” *State v. Taylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). “An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.” *State v. Moore*, 343 S.C. 282, 286, 540 S.E.2d 445, 447 (2000).

“In *Neil v. Biggers*, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification.” *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012). Under *Biggers*, courts are required to assess, under the totality of the circumstances, whether an eyewitness identification “resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed.” *Id.* In determining the reliability of an identification obtained through an unduly suggestive procedure, the Court considers the following factors: (1) the witness’s opportunity to view the defendant at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the defendant; (4) the level of certainty exhibited by the witness during the identification procedure; and (5) the length of time between the alleged criminal action and the identification procedure. *See Neil v. Biggers*, 409 U.S. 188, 199–200, 93 S. Ct. 375, 382 (1972).

Applicant testified that Delaney should have requested a *Biggers* hearing concerning Williams’ testimony about being presented a photograph of Applicant the day after the alleged shoplifting. Applicant also alleges Delaney was ineffective in that he failed to object to Williams’ testimony regarding the identification.

During trial, Williams testified that Officer Thomas presented her with a photograph of Applicant the day after the alleged shoplifting. See Transcript of Record at 84:2-23. In fact, Officer Thomas had never been trained on how to conduct a photo line-up. *Id.* The assistant solicitor, Mr. Johnson, also informed the trial court that he was not aware of any single photo showing, *id.* at 97:3-4, and that there was no photograph at trial, *id.* at 99:19-23. Delaney objected to Williams' testimony by making a directed verdict motion at the end of Respondent's case. Delaney specifically argued that an identification based upon a single photograph would be overly suggestive. Delaney further contended that without Williams' identification, Respondent did not have an identification of Applicant. The trial court ruled against Delaney's motion for directed verdict finding that although a single photo identification was suggestive, the reliability of Williams' identification would not be affected because Williams testified she had seen Applicant on numerous occasions before the subject incident. See Transcript of Record at 97:13-21.

Delaney did not provide ineffective assistance of counsel in the instant matter. At the time of discovery, Delaney was not provided with any evidence indicating that a photograph was presented to Williams to identify Applicant. See Transcript of Record at 98:24-25 to 99:1-7. Delaney, thus, would not have been alerted to request a *Biggers* hearing concerning Williams' identification of Applicant. Delaney testified during the PCR hearing, that he was not aware of any photograph being presented to Williams. Officer Thomas, moreover, testified, during trial, that he did not perform a photo line-up in this case. Transcript of Record at 75:2-4.

Furthermore, concerning Delaney's failure to simultaneously object to Williams' testimony concerning the alleged photograph, Delaney cross-examined Williams on the suggestiveness of being presented a single photo of Applicant. Transcript of Record 84:6-25. Delaney also made a directed verdict motion that focused specifically on the alleged suggestiveness of the single-photo identification procedure once he was aware of Williams' testimony which contradicted Officer Thomas' testimony.

However, assuming, *arguendo*, that Delaney was deficient in not requesting a *Biggers* hearing and by failing to timely object to Williams' testimony, Applicant would not be able to satisfy the second prong of the ineffective assistance of counsel analysis. Applicant cannot show that, "but for" Delaney's alleged unprofessional conduct, the trial result would have been different. Williams' testimony regarding being shown a photograph of Applicant was only part

and
#5

of her testimony. Williams testified that she saw Applicant steal the subject items from Family Dollar on the day in question. Transcript of Record 78:12-14. Williams was about 12 feet away from Applicant when Applicant allegedly stole the items. *Id.* at 79:15:25. Williams then attempted to locate Applicant after he left the store. *Id.* at 79:4-10. She wrote down his license plate number and provided it to Officer Thomas. *See id.* Williams also provided Officer Thomas with a description of Applicant: white male with a tan "odd shape . . . railroad hat." *Id.* at 80:1-7. Officer Thomas similarly testified that Williams informed him that Applicant shoplifted from Family Dollar and was a white male wearing a tan hat. *See* Transcript of Record 53:8-21.

Williams testified several times that she was familiar with Applicant before the date of the underlying incident. Specifically, she had seen Applicant in the days immediately prior to the alleged incident. Transcript of Record at 78:25-79:1 ("[I] had seen him in prior days before [the incident]."). Williams was asked during trial whether she recognized Applicant on the date of the incident in question, to which she responded, "yes, sir." *Id.* at 79:2-3. Williams also testified that she had seen Applicant about 20 times prior to the alleged incident. *Id.* at 118:8-12. She specifically recognized Applicant because of a prior situation involving Applicant and his girlfriend, Brenda Sims ("Sims"). *See id.* at 118:17-19. About a week or two before the alleged shoplifting, Sims needed to use the restroom while at the Family Dollar and, thus, was provided a key to the restroom, which is located in the store's stockroom. *Id.* at 118:21-23. Located in the stockroom is a backdoor to the store. *Id.* Brenda went out the back door and, simultaneously, set off the fire alarm. *Id.* at 118:25-119:1. Upon hearing the fire alarm, Williams thought that Sims and Applicant were attempting to rob her. *Id.* at 119:2-3. Williams, thus, testified that "at that point on, I knew when they both came into the store, I had to watch them [be]cause nobody ever goes out my back door and sounds the alarm. That's why I distinctly remember who he is." *Id.* at 119:6-9.

Respondent, thus, produced ample testimony concerning the identification of Applicant, outside of Williams' testimony about the alleged photograph. Accordingly, the trial record contained sufficient direct and circumstantial evidence for the jury to conclude that Applicant committed the underlying offense. Applicant, therefore, cannot satisfy the second prong that, but for Delaney's unprofessional conduct, the trial result would have been different. Delaney, therefore, did not provide ineffective assistance of counsel.

and
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B. *Brady v. Maryland* Violation

Applicant also contends that Respondent committed a *Brady* violation by not providing Applicant with the alleged photograph during discovery. "*Brady* provides that a criminal defendant is denied due process when the prosecution suppresses evidence that is favorable to him." *State v. Hill*, 368 S.C. 649, 654, 630 S.E.2d 274, 277 (2006). A *Brady* claim "is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). *Brady* governs both impeachment evidence and exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380 (1985).

Williams testified that Officer Thomas showed her a photo of Applicant. Officer Thomas, however, testified that he did not show Williams a photograph. The State's attorney also informed the court there was no photograph. See Transcript of Record at 97:3-4; Transcript of Record at 99:18-23. Applicant, thus, cannot show that the photograph was in Respondent's possession and that it was suppressed by Respondent. Applicant, moreover, cannot demonstrate that even if such photo did exist, that the photo was favorable to Applicant. Therefore, since Applicant has not demonstrated that Respondent had possession of a photograph of Applicant, that Respondent wrongfully suppressed such photo, and that the alleged photo was favorable to Applicant, Applicant has not shown that Respondent committed a *Brady* violation.

CONCLUSION

Based on all of the foregoing, this Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for PCR is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel 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), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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ORDER**IT IS THEREFORE ORDERED:**

1. That the Application for PCR shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of Respondent.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

January 12, 2016
Columbia, South Carolina

af
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WITNESSES

RHPD / Thomas

adm

ARREST WARRANT NUMBER

26203FD

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46- 01973

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 21, Term 2011

THE STATE

vs.

DONALD RAY ALTMAN

Indictment for

ALTERING OR POSSESSING AN ALTERED
LICENSE PLATE

SC Code: 16-21-10

CDR Code: 535

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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2013 AUG 23 AM 9:41

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

ALTERING OR POSSESSING AN ALTERED LICENSE PLATE

That the Defendant, Donald Ray Altman, did in York County, South Carolina, on or about May 10, 2010, alter a vehicle license plate, and/or did possess an altered vehicle license plate, knowing it to have been altered. All in violation of Section 16-21-10 of the Code of Laws of South Carolina (1976, as amended).

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

E B Sprague

ASSISTANT SOLICITOR

WITNESSES

RHPD / Thomas

adm

ARREST WARRANT NUMBER

C-641399

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46- 01974

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 21, Term 2011

THE STATE

vs.

DONALD RAY ALTMAN

Indictment for

POSSESSION OF STOLEN GOODS

SC Code: 16-13-180

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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

X CERTIFIED TRUE COPY

2013 AUG 23 AM 9:41

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC

POSSESSION OF STOLEN GOODS

The Defendant, Donald Ray Altman, did in York County, South Carolina, on or about May 10, 2010, possess stolen goods valued at less than Two Thousand Dollars (\$2,000), and the goods were stolen from Lowe's store located at 1950 Springdale Road in Rock Hill, South Carolina. And the said Defendant knew or had reason to believe such goods had been stolen. All in violation of Section 16-13-0180, Code of Laws of South Carolina, (1976, as amended), and the Defendant has already been convicted two or more times for offenses for which the term of imprisonment is contingent upon the value of the property involved.

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

E B Sprague

ASSISTANT SOLICITOR

WITNESSES

RHPD / Thomas

adm

ARREST WARRANT NUMBER

K-641400

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46-01975

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 21, Term 2011

THE STATE

vs.

DONALD RAY ALTMAN

Indictment for

POSSESSION OF STOLEN GOODS

SC Code: 16-13-180

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.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

CERTIFIED TRUE COPY

2013 AUG 23 AM 9:48

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

POSSESSION OF STOLEN GOODS

The Defendant, Donald Ray Altman, did in York County, South Carolina, on or about May 10, 2010, possess stolen goods valued at less than Two Thousand Dollars (\$2,000), those goods having been stolen from the CVS Pharmacy located at 1746 Heckle Boulevard in Rock Hill, South Carolina. And the said Defendant knew or had reason to believe such goods had been stolen. All in violation of Section 16-13-0180, Code of Laws of South Carolina, (1976, as amended), and the Defendant has two or more convictions already for offenses for which the term of imprisonment is contingent upon the value of the property involved.

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

EBSprague

ASSISTANT SOLICITOR

WITNESSES

RHPD / Thomas

adm

ARREST WARRANT NUMBER

<641401

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46- 01976

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 21, Term 2011

THE STATE

vs.

DONALD RAY ALTMAN

Indictment for

POSSESSION OF STOLEN GOODS

SC Code: 16-13-180

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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2013 AUG 23 AM 9:41

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC

POSSESSION OF STOLEN GOODS

The Defendant, Donald Ray Altman, did in York County, South Carolina, on or about May 10, 2010, possess stolen goods valued at less than Two Thousand Dollars (\$2,000), those goods having been stolen from the Big Lots store located at 2349 Cherry Road in Rock Hill, South Carolina. And the said Defendant knew or had reason to believe such goods had been stolen. All in violation of Section 16-13-0180, Code of Laws of South Carolina, (1976, as amended), and the Defendant has already been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved.

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

E B Springfield

ASSISTANT SOLICITOR

WITNESSES

RHPD / Thomas

adm

ARREST WARRANT NUMBER

C-641402

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46-01977

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 21, Term 2011

THE STATE

vs.

DONALD RAY ALTMAN

Indictment for

POSSESSION OF STOLEN GOODS

SC Code: 16-13-180
CDR Code: 2877After 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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2013 AUG 23 AM 9:41

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC

POSSESSION OF STOLEN GOODS

The Defendant, Donald Ray Altman, did in York County, South Carolina, on or about May 10, 2010, possess stolen goods valued at less than Two Thousand Dollars (\$2,000), the goods having been stolen from the WalMart store located at 2377 Dave Lyle Boulevard in Rock Hill, South Carolina. And the said Defendant knew or had reason to believe such goods had been stolen. All in violation of Section 16-13-0180, Code of Laws of South Carolina, (1976, as amended), and the Defendant has already been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved.

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

E B Sprang

ASSISTANT SOLICITOR

WITNESSES

RHPD\Thomas

tr

ARREST WARRANT NUMBER

K-641398

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

8-19-10

VERDICT

GUILTY

Foreperson of Petit Jury
Date:

7/26/2011

DOCKET NO. 2010-GS-46-02900

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 19, Term 2010

THE STATE

VS.

DONALD RAY ALTMAN

Indictment for

SHOPLIFTING

SC Code: 16-13-110
SC Code: 16-1-57
CDR Code: 2877After 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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

NOTIFIED TRUE COPY

2013 AUG 23 AM 9:42

At a Court of General Sessions, convened on August 19, 2010, the Grand Jurors of York County present upon their oath:

The Defendant, Donald Ray Altman, did on or about May 10, 2010, feloniously take possession of or carry away merchandise, valued at less than One Thousand (\$1000.00) Dollars, 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. Said Defendant has two or more prior convictions in which the term of imprisonment is contingent upon the value of the property involved. Said incident occurred in York County, South Carolina, all in violation of Sections 16-13-110 and 16-1-57, Code of Laws of South Carolina, (1976) as amended.

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


 ASSISTANT SOLICITOR