

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable William P. Keesley, Circuit Court Judge

EDWARD ANTHONY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000628

APPENDIX

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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

2014-GS-02-01000

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 EDWARD RODRIQUEZ ANTHONY,
7 Defendant.

8 HEARD ON TUESDAY, APRIL 14, 2015

9 & WEDNESDAY, APRIL 15, 2015

10 AIKEN, SC

11
12 BEFORE:

13 THE HONORABLE R. LAWTON MCINTOSH

14 AND A JURY

15
16 APPEARANCES:

17 Counsel on behalf of the State:

18 Jeffrey Alan Slocum, Jr. Esq.

19 Cassie W. Hall, Esq. (Wednesday)

20 Ashley Hammack, Esq. (Tuesday)

21 Counsel on behalf of the Defendant:

22 M. Bradley McMillian, Esq.

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25

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1 ON MONDAY, APRIL 14, 2015 AT 11:05 A.M.:

2 THE COURT: Ladies and gentlemen, we're going to
3 take a few minutes break in just a minute but I want to go
4 over a couple rules with you, if I may. These generally
5 apply across the state and sometimes they're different
6 from county to county.

7 But, number one. As a general rule, you're not
8 allowed to have cell phones, beepers or some device that's
9 capable of sounding off a recording in the courtroom.
10 Number one, when you have phones that go off, they
11 typically go off during the most inappropriate times
12 during a trial.

13 Number two, the only person who's allowed to record
14 proceedings in a courtroom is our court reporter. That's
15 by statute unless we have a press-credentialed member
16 here, and he has to get a court order. Otherwise you're
17 not allowed to have any recording-type devices in the
18 courtroom.

19 I don't think -- you don't have a jury
20 qualification room here, do you?

21 THE CLERK: We have a jury assembly room.

22 THE COURT: Do you have a jury assembly room?

23 THE CLERK: Uh-huh.

24 THE COURT: Well, ladies and gentlemen, that makes
25 things a little bit easier. Where I'm from we don't have

1 such a nice courthouse as you do here. We do everything
2 in one big courtroom and so what happens you have chances
3 to where someone may be a party, may be a lawyer that you
4 know or a witness for one of the others, and you see them
5 coming to and from court and you want to stop and chitchat
6 with them. If you happen to know somebody who's appearing
7 this week as a witness, as a defendant, or as an attorney
8 here, it's okay to nod your head and just greet them but
9 don't engage in a conversation. If the other side sees
10 that they may and probably would believe that it's
11 improper ex parte communications going on and will cause
12 us problems.

13 The attorneys, if they see you, their clients know
14 that they cannot speak to you. So if they do the same
15 back, they're not being rude. They're just doing what
16 they're supposed to do.

17 Typically I intend to start trial this week in the
18 mornings around nine or 9:30 depending on scheduling. I
19 will run it to around five or 5:30, also depending on
20 scheduling, what's going on.

21 If you're selected -- I just point that out to you
22 so you can make arrangements to take care of your
23 affairs. Again, if anything comes up, if you're selected
24 or either while you're waiting to be determined if you're
25 selected or not, grab one of these bailiffs and they'll

1 let you know.

2 We have a jury call-in system here?

3 THE CLERK: Yes.

4 THE COURT: And that will be handed out by sheet,
5 or do they have that?

6 THE CLERK: They already have that. It's a half
7 sheet of paper and it has all the information.

8 THE COURT: On the sheet of paper that you have
9 with you, I think I saw some that were green; is that what
10 they were?

11 THE CLERK: They're white.

12 THE COURT: You'd be surprised. Each county that
13 you go to is a little bit different. But the sheet of
14 paper that you have that has the number on it. If you
15 would, if you're not selected to serve on the first trial
16 this week, if you'd call in after six o'clock each evening
17 there will be a message on there telling you whether or
18 not you need to report back and if so when.

19 Okay. Other than that, Madam Clerk, any other
20 rules I need to let them know that are particular to Aiken
21 County?

22 THE CLERK: Not that I can think of.

23 THE COURT: Very good. All right. We'll take
24 about a 10-minute break. And then we're going to come
25 back with jury selection but may I see the attorneys back

1 in my chambers on the next case, please? Ladies and
2 gentlemen, you're free to get out and move around a little
3 bit if you'd like.

4 (Break taken at 11:09 a.m., 11:23 p.m.)

5 THE COURT: All right. Counsel, five and five and
6 one alternate; is that correct?

7 MR. SLOCUM: That's correct, Your Honor.

8 THE COURT: Let me see both of you up here one
9 second. Let me double check something.

10 (Off-the-record discussion.)

11 THE COURT: Are you ready to call the next case?

12 MR. SLOCUM: We are, Your Honor.

13 The people of South Carolina call the State of
14 South Carolina versus Edward Rodriguez Anthony. It's
15 Indictment 2014-GS-02-01000. It is a true billed
16 indictment for shoplifting.

17 THE COURT: Very good. All right. Before we get
18 into that, may I see Juror Number 154 up here, please?

19 It's Nadia Schofield. She's got to have a blood
20 transfusion.

21 THE JUROR: Yes, sir.

22 THE COURT: You don't have a problem with letting
23 her go?

24 MR. SLOCUM: No, sir.

25 MR. McMILLIAN: Okay. Thank you.

1 THE CLERK: Excuse her?

2 THE COURT: Yeah.

3 Ladies and gentlemen, the questions I'm about to
4 ask are not as personal as the other questions that are
5 required for qualification exemptions. So unless you have
6 an absolute need, I'm going to ask that you stand up, give
7 us your responses and your juror number, if you can recall
8 it, if the information being requested applies to you.

9 The first question I have is: Has anyone ever been
10 related by blood or marriage to Anthony -- Edward R.
11 Anthony? If so, would you please stand?

12 Has anyone, any member of the jury panel ever had a
13 close personal or social relationship with Edward R.
14 Anthony? If so, would you please stand?

15 All right. Ladies and gentlemen, the following are
16 potential witnesses who may testify in this matter. I'm
17 going to go through the list of potential witnesses and
18 then ask you questions.

19 One would be Daniel Smith, North Augusta Department
20 of Public Safety; Tonetta Buggs, Aiken County Sheriff's
21 Office; Patsy Singletary, Belk's loss prevention. Did
22 everyone get those names? Very good.

23 Has anyone ever been related by blood or marriage
24 to any of the folks I just read to you as potential
25 witnesses? If so, would you please stand?

1 Has any member of the jury panel ever had a close
2 personal or social relationship with any of the potential
3 witnesses I've just read to you? If so, would you please
4 stand?

5 Defense counsel, would you stand up and introduce
6 yourself and the attorneys with you in the courtroom and
7 your client, please, sir?

8 MR. McMILLIAN: My name is Bradley McMillian and
9 this is Mr. Barry Thompson. We represent the Defendant in
10 this case.

11 THE COURT: Okay. Mr. Anthony, would you stand?

12 THE DEFENDANT: (Complies.)

13 THE COURT: Very good. You're with the public
14 defender's office?

15 MR. McMILLIAN: Yes, sir, Your Honor.

16 THE COURT: Very good. The State?

17 MR. SLOCUM: Thank you, Your Honor. My name's Jay
18 Slocum. Ms. Ashley Hammack. And we represent the State
19 in this matter.

20 THE COURT: All right. Ladies and gentlemen, has
21 any member of the jury panel ever been represented by any
22 of these attorneys here in the courtroom or has ever been
23 represented by any members of the Aiken County Public
24 Defender's Office or the Aiken County Solicitor's Office?
25 If so, would you please stand.

1 Has any member of the jury panel ever had a close
2 personal or social relationship with any of these
3 attorneys here in the courtroom or any member of the Aiken
4 County Public Defender's Office or the solicitor's
5 office? If so, would you please stand.

6 Has any member ever or do you now -- or are you now
7 related by blood or marriage to any of these attorneys
8 here in the courtroom or any member of the Aiken County
9 Public Defender's Office or the solicitor's office? If
10 so, would you please stand.

11 Has any member of the jury panel read, heard, or
12 seen, or spoken with anyone about the case of the State of
13 South Carolina versus Edward Rodriguez Anthony prior to
14 coming to court today? If so, would you please stand.

15 Has any member of the jury panel formed or
16 expressed an opinion about any issue or matter involved in
17 the case of the State of South Carolina versus Edward
18 Rodriguez Anthony? If so, would you please stand.

19 Is any member of the jury panel aware of any bias,
20 or prejudice they may hold either to the State of South
21 Carolina or to the Defendant in this matter or their
22 attorneys? If so, would you please stand.

23 Is there any member of the jury panel that was a
24 member of the Aiken County Grand Jury that issued the
25 indictment in this matter? If so, would you please

1 stand.

2 Is there any member of the jury panel who is a
3 member of or a contributor to any group which has as its
4 primary purpose the promotion of law enforcement or
5 victim's rights? An example, but certainly not an
6 exhaustive list of such groups, would be MADD, SADD or
7 CAVE. But, if you are a contributor to or a member of any
8 group which has as its primary purpose the promotion of
9 law enforcement or victim's rights, would you please
10 stand.

11 Does any member of the jury panel know of any
12 reason whatsoever why you should not be selected to serve
13 in the trial of this matter with particular emphasis being
14 placed on your ability to be fair and impartial to both
15 the State of South Carolina and to Mr. Anthony in this
16 matter, the Defendant? If you know of any reason
17 whatsoever why you can't be fair and unbiased, please
18 stand.

19 Has any member of the jury panel or close friend or
20 acquaintance or a family member been impacted by the crime
21 of theft? If so, would you please stand.

22 Does any member of the jury panel believe that
23 anyone charged with the crime involving shoplifting is
24 more likely than not guilty? If so, would you please
25 stand.

1 Has any member of the jury panel, any member of
2 their family or close personal friends ever been falsely
3 accused of committing a crime? If so, would you please
4 stand.

5 Has any member of the jury panel, family member or
6 close personal friends ever been employed as a loss
7 prevention associate? If so, would you please stand.

8 Okay. Ma'am, what is your Juror Number?

9 THE JUROR: 84.

10 THE COURT: 84?

11 THE JUROR: (Nods head.)

12 THE COURT: You're Ms. Kelly?

13 THE JUROR: Yes.

14 THE COURT: And was it you or a family member or a
15 friend?

16 THE JUROR: My daughter Tracy was loss prevention
17 with Lowe's.

18 THE COURT: With Lowe's?

19 THE JUROR: Yes.

20 THE COURT: Is that where she currently works?

21 THE JUROR: No, she's in Nebraska now.

22 THE COURT: How long ago was that?

23 THE JUROR: Probably about two years ago.

24 THE COURT: Would that experience of your daughter
25 prevent you from listening to the testimony and evidence

1 presented in this courtroom and making your decision based
2 on that evidence and according to the law as I give it to
3 you?

4 THE JUROR: No.

5 THE COURT: Thank you very much. And, counsel, if
6 you wish any additional voir dire, just let me know
7 otherwise I'll assume you don't.

8 MR. SLOCUM: May we approach, Your Honor?

9 THE COURT: Yes.

10 (Off-the-record discussion.)

11 THE COURT: All right. Has any member of the jury
12 panel or any member of their family or close personal
13 friends ever been employed at a retail sales establishment
14 in any capacity? If so, would you please stand. Retail
15 sales.

16 I had a feeling. Okay. I'm going to start with
17 the coach over here. Give me your juror number and name,
18 please.

19 THE JUROR: 108, James McDonald.

20 THE COURT: 108.

21 THE JUROR: Yes, sir.

22 THE COURT: Where did you work?

23 THE JUROR: That's what I do now, retail sales.

24 THE COURT: Okay, sir. And for whom?

25 THE JUROR: For myself.

1 THE COURT: For yourself. That's right. You told
2 me that earlier. What's your juror number?

3 THE JUROR: 117.

4 THE COURT: And do you or did you work in the
5 retail sales --

6 THE JUROR: At Belk's Department Store.

7 THE COURT: Belk's. Is that today or is that
8 formerly?

9 THE JUROR: What?

10 THE COURT: You do that now?

11 THE JUROR: I do that now.

12 THE COURT: Coach, if you don't mind standing up
13 for me just a second, I'll be good. All right, sir. What
14 is your juror number?

15 THE JUROR: 57.

16 THE COURT: 57. And where did you work?

17 THE JUROR: Well, I misunderstood the question.
18 You said a family member also.

19 THE COURT: Okay.

20 THE JUROR: My wife worked at Wal-Mart.

21 THE COURT: Your wife was at Wal-Mart. Is she
22 there currently?

23 THE JUROR: No.

24 THE COURT: How long ago was she there?

25 THE JUROR: It's been about six years.

1 THE COURT: Six years ago?

2 THE JUROR: Yes.

3 THE COURT: The gentleman in the shirt right behind
4 you.

5 THE JUROR: Juror Number Eight. I used to work for
6 Wal-Mart about six years ago.

7 THE COURT: About six years ago?

8 THE JUROR: Yes, sir.

9 THE COURT: Ma'am? In the darker shirt.

10 THE JUROR: Juror Number 157. I have many, many,
11 many friends that have worked in various retail positions.

12 THE COURT: Okay. And let me go right in front of
13 this lady in the dark shirt right here.

14 THE JUROR: Me?

15 THE COURT: Yeah, that's you. What's your juror
16 number?

17 THE JUROR: 63.

18 THE COURT: Okay. Go ahead.

19 THE JUROR: In high school and college I worked in
20 retail. I don't remember the stores.

21 THE COURT: Okay. Now I'm going to ask you -- tell
22 you what. Y'all go ahead and after you respond be seated
23 but I want you all to stay with me because I'm going to
24 ask you some follow-up questions. Okay?

25 Sir, in the plaid.

1 THE JUROR: Yes, sir. Juror Number 61. I worked
2 at Wal-Mart in the late '80s, early '90s.

3 THE COURT: And, ma'am, in the blue -- you can be
4 seated. Ma'am, in the blue?

5 THE JUROR: Yes, I worked at Wal-Mart for 25 years.

6 THE COURT: What is your juror number?

7 THE JUROR: Ninety-six.

8 THE COURT: Sir, in the plaid, what was your juror
9 number?

10 THE JUROR: 61.

11 THE COURT: I'm sorry. In the black?

12 THE JUROR: Juror Number 38. Retail sales at
13 Tidwell Jewelers. That's where my husband works --

14 THE COURT: Okay. And, sir?

15 THE JUROR: -- as a young girl I was there.

16 THE COURT: Thank you. I'm sorry. I didn't mean
17 to cut you off. Sir, in the white?

18 THE JUROR: 104. My wife used to work at True
19 Value about six, eight years ago.

20 THE COURT: Six or eight?

21 THE JUROR: Yes.

22 THE COURT: Okay. In the pink right behind him.

23 THE JUROR: Number 80. I worked at a Dollar Tree
24 in high school and college.

25 THE COURT: Okay. Sir?

1 THE JUROR: 159. My wife used to work at
2 Walgreen's about 12, 13 years ago.

3 THE COURT: Okay. Ma'am, in -- the next one over.

4 THE JUROR: Number 177. I worked for Payless for
5 about --

6 THE COURT: Could you mind you speaking up just a
7 tad? I'm sorry.

8 THE JUROR: 177.

9 THE COURT: Okay.

10 THE JUROR: I worked for Payless for about, like, a
11 year ago, maybe.

12 THE COURT: Okay. Thank you, ma'am. Next to her.

13 THE JUROR: I worked at Craig's and I also worked
14 at Dillard's. Year would be 2002 to 2005.

15 THE COURT: And what is your juror number?

16 THE JUROR: 189.

17 THE COURT: Thank you, ma'am.

18 THE JUROR: 181. I'm sorry.

19 THE COURT: 181?

20 THE JUROR: Uh-huh.

21 THE COURT: Okay. Thank you. Yes, ma'am?

22 THE JUROR: Juror 187. I worked for Lowe's for
23 three years.

24 THE COURT: Okay. Sir?

25 MR. McMILLIAN: What was her juror number?

1 THE COURT: I thought I heard it. Go ahead. What
2 is your juror number? The last lady who --

3 THE JUROR: 187.

4 MR. McMILLIAN: Thank you.

5 THE COURT: Okay. Sir?

6 THE JUROR: Number 86. Both of my kids worked at
7 White's and GNC during college. It's more than five years
8 ago.

9 THE COURT: Yes, ma'am?

10 THE JUROR: Both my daughters. Aiken Motorcycle,
11 high school, older daughter, Lerner's at the mall. It's
12 been over 10 years.

13 THE COURT: Okay. Yes, ma'am? Oh, do you have
14 your number?

15 THE JUROR: Juror Number --

16 THE JUROR: Yes, sir, 127.

17 THE COURT: 127. What is your number?

18 THE JUROR: 125.

19 THE COURT: Okay.

20 THE JUROR: In high school and college I worked in a
21 number of retail shops.

22 THE COURT: Okay.

23 And, sir, what's your number?

24 THE JUROR: I'm Juror Number 25. I currently work
25 at the Gun Rack. I worked at Publix two years ago. I

1 worked at Best Buy five years ago, and I worked at a
2 T-shirt shop eight years ago.

3 THE COURT: I'm going to follow up. For each of
4 you who stood up and responded, would the fact that you
5 had the prior experience, the current experience, or a
6 family member or friend who had experience working at a
7 retail store, would that make you unable to listen to the
8 testimony and evidence that's going to be presented during
9 the course of this trial and not be able to make -- be
10 fair to the State and fair to the Defendant if the
11 testimony involves alleged theft from a retail or box-type
12 store? Would that affect your ability to be fair and
13 impartial to both sides?

14 If it will, would you please stand up. If not,
15 remain seated.

16 Let the record reflect no one responded.

17 With that said, ladies and gentlemen, let me just
18 point out to you, we have the indictment that was read
19 out. Any criminal defendant who's charged, arrested and
20 indicted, these documents don't make -- don't raise a
21 presumption of guilt or inference of guilt. Those are
22 simply the mechanisms by which we bring defendants before
23 a jury such as yourselves for a trial and that
24 determination.

25 With that being said, let me follow up with a few

1 more questions.

2 Does any member of the jury panel, family member or
3 close personal friends have anyone that works at the
4 sheriff's office, State Law Enforcement Division or
5 employed with the Solicitor's Office of the Second
6 Judicial Circuit, the Attorney General's Office, federal
7 law enforcement agency, or any other law enforcement
8 agency or prosecutor's office? If so, would you please
9 stand.

10 Okay. On the front row in the blue shirt. What is
11 your juror number?

12 THE JUROR: 41.

13 THE COURT: Sir?

14 THE JUROR: 41.

15 THE COURT: And who is it that you have that's in
16 law enforcement or prosecution?

17 THE JUROR: Brother-in-law.

18 THE COURT: And where is he?

19 THE JUROR: Aiken County Sheriff's Department.

20 THE COURT: Sir?

21 THE JUROR: Aiken County Sheriff's Department.

22 THE COURT: Aiken County Sheriff's Department?

23 THE JUROR: Yes, sir.

24 THE COURT: Would that relationship with your --
25 with the sheriff's department prevent from you listening

1 to the testimony and evidence in this case and making your
2 decision based on that testimony and according to the law
3 as I give it to you?

4 THE JUROR: No, sir.

5 THE COURT: Thank you, sir. You may be seated.

6 All right. What is your juror number?

7 THE JUROR: Juror 180. My brother-in-law is a
8 Veteran's police officer in the Columbia Veteran's
9 Hospital.

10 THE COURT: In Columbia?

11 THE JUROR: Yes.

12 THE COURT: And would that relationship impact your
13 ability to give both sides a fair trial in this matter?

14 THE JUROR: No.

15 THE COURT: Thank you, ma'am. Yes, sir?

16 MR. McMILLIAN: Juror Number 44. Up to just
17 recently I had a nephew that was with the City of North
18 Augusta Police Department

19 THE COURT: Okay, sir. And would that connection
20 prevent you from being fair and impartial to both the
21 State and to the defense in this matter?

22 THE JUROR: No, sir.

23 THE COURT: Thank you very much.

24 Okay. What is your juror number?

25 THE JUROR: Juror 108.

1 THE COURT: Give me your --

2 THE JUROR: Juror 108. And my best friend is a
3 Richmond County Police Officer.

4 THE COURT: And would that impact your ability to
5 be fair and impartial to both sides in this matter?

6 THE JUROR: No, sir.

7 THE COURT: Thank you very much. Ma'am?

8 THE JUROR: Number 169. My niece's boyfriend works
9 with the Aiken County Sheriff's Department.

10 THE COURT: Okay. And, again, my question to all
11 of you, I'm just going to have you identify yourselves by
12 juror number, and I'm going to ask -- before you do, if
13 the relationship with law enforcement that you have either
14 through yourselves or through your friends or family or
15 other relations, would that impact your ability to make
16 such that you cannot give the State a fair trial or the
17 Defendant a fair and impartial trial, I'm going to ask
18 that you remain standing. Otherwise I'm going to ask that
19 you give your juror number, identify the connection and
20 then have a seat. Okay. Ma'am?

21 THE JUROR: It would not.

22 THE COURT: Thank you. Sir, give me your juror
23 number and the connection.

24 THE JUROR: Number 111. And my brother is a
25 Richmond County Deputy Sheriff in Augusta.

1 THE COURT: Would that impact you?

2 THE JUROR: (Shakes head.)

3 THE COURT: Okay, sir. In the white shirt?

4 THE JUROR: My aunt works for the County and my
5 brother-in-law works for the City.

6 THE COURT: And your juror number?

7 THE JUROR: Oh, 104.

8 THE COURT: Would that impact your ability?

9 THE JUROR: No, sir.

10 THE COURT: Okay. Ma'am?

11 THE JUROR: Juror 84, Sue Kelly. My husband was a
12 reserve county sheriff. And I also have a neighbor that's
13 involved with law enforcement. I'm not sure what
14 capacity, but ...

15 THE COURT: Okay. Would that impact your ability
16 to give both sides a fair trial?

17 THE JUROR: No.

18 THE COURT: Okay. In the green?

19 THE JUROR: Juror Number Five. My niece's husband
20 is an officer with the City of Aiken.

21 THE COURT: I can't hear you. Did the attorneys
22 get that?

23 THE JUROR: Juror Number Five. My niece's husband
24 is with the City of Aiken as an officer, and it won't
25 impact me.

1 THE COURT: Okay. And it will not impact you.
2 Thank you very much. Okay, sir?

3 THE JUROR: 123. I have a cousin for Lexington
4 County Police Department.

5 THE COURT: Okay. Would that impact --

6 THE JUROR: No, sir.

7 THE COURT: Thank you. And finally in the stripes.

8 THE JUROR: Juror Number 56. My husband's been in
9 law enforcement his whole life and I do think it would
10 impact -- I do think it would impact my ability because my
11 husband's been in local and federal law enforcement.

12 THE COURT: Okay. What is your juror number
13 again?

14 THE JUROR: 56.

15 THE COURT: 66?

16 THE JUROR: 56.

17 THE COURT: 56. Ms. Ginn, I'm going to excuse you
18 from the trial of this matter but I'm going to ask you to
19 stick around for a little bit. Okay? Anyone else? Yes,
20 sir?

21 THE JUROR: Number 86. My wife's a traffic court
22 administrator. She works with Michael Hunt. It won't
23 affect me.

24 THE COURT: Thank you. Yes, ma'am?

25 THE JUROR: Juror Number 125. And I have a close

1 friend that is -- works in the Aiken County Sheriff's
2 Department, and I don't believe it would impact my
3 ability.

4 THE COURT: You don't believe it would or --

5 THE JUROR: I don't.

6 THE COURT: Okay. Thank you. Very good.

7 All right. Ladies and gentlemen, those are the
8 questions that we have for you in this matter. What we're
9 about to do is to select a jury of 12 with one alternate.

10 Back in the day before I had gray hair and Judge
11 Gravely still had hair on his head, we would have somebody
12 who would stand up in the courtroom who could not read or
13 write and would select your names out of a spindle. Then
14 you would be called forward and you'd come back and stand
15 right here in front of our clerk. You'd look at the
16 State, you'd look at the defense, and they'd make a
17 determination as to whether or not you'd be selected.

18 Now we have a computer that will do the same
19 thing. So you'll be blindly selected out of the crowd of
20 you who were qualified.

21 If you are selected and your name and juror
22 number's called out, if you'd bring your personal
23 belongings, come up here and stand right here in the
24 middle of the desk in front of our clerk, face the State,
25 face the defense, and the decision will be made as to

1 whether or not you'll be selected to serve in this trial.

2 It will take just a second and then we'll go
3 through the jury selection process. Madam Clerk?

4 THE CLERK: Five, five?

5 THE COURT: Yeah, five-five. Two and one. The
6 defense gets two and the State gets one.

7 THE CLERK: And you said one alternate?

8 THE COURT: Yeah.

9 MR. SLOCUM: Can we approach?

10 THE COURT: Yes, sir.

11 (Off-the-record discussion.)

12 THE COURT: Let me see you all back up here.

13 (Off-the-record discussion.)

14 THE COURT: Sometimes, ladies and gentlemen, it's a
15 lot more time consuming than when we didn't have a
16 computer taking care of things over here. But bear with
17 us, we'll be right with you.

18 (Pause.)

19 THE CLERK: Number 61, Craig Hale.

20 (White male comes forward.)

21 THE CLERK: What say you for the State?

22 MR. SLOCUM: Please present Mr. Hale.

23 THE CLERK: What say you for the defense?

24 MR. McMILLIAN: Please seat the juror.

25 THE CLERK: Please have a seat in the jury box to

1 my left.

2 THE BAILIFF: Right here, sir.

3 THE CLERK: Number 42, Cynthia Ferst.

4 (White female comes forward.)

5 THE CLERK: What say you for the State?

6 MR. SLOCUM: Please present Ms. Ferst.

7 THE CLERK: What say you for the defense?

8 MR. McMILLIAN: Please seat the juror.

9 THE CLERK: Please have a seat in the jury box.

10 Number 10, Jill Blair.

11 (White female comes forward.)

12 THE CLERK: What say you for the State?

13 MR. SLOCUM: Please seat Ms. Blair.

14 THE CLERK: What say you for the defense?

15 MR. McMILLIAN: Please seat the juror.

16 THE CLERK: Please have a seat in the juror box.

17 Number 190, Elizabeth Webb.

18 (White female comes forward.)

19 THE CLERK: What say you for the State?

20 MR. SLOCUM: Please present Mrs. Webb.

21 THE CLERK: What say you for the defense?

22 MR. McMILLIAN: Please seat the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Number 23, Barbara Clements.

25 (White female comes forward.)

1 THE CLERK: What say you for the State?
2 MR. SLOCUM: Please present Mrs. Clements.
3 THE CLERK: What say you for the defense?
4 MR. McMILLIAN: Please seat the juror.
5 THE CLERK: Please have a seat in the jury box.
6 Number 44, Nicholas Flouras.
7 (White male comes forward.)
8 THE CLERK: What say you for the State?
9 MR. SLOCUM: Please present Mr. Flouras.
10 THE CLERK: What say you for the defense?
11 MR. McMILLIAN: Please excuse the juror.
12 THE CLERK: Please return to your seat.
13 Number 57, Demetris Goldwire.
14 (Black male comes forward.)
15 THE CLERK: What say you for the State?
16 MR. SLOCUM: Please excuse Mr. Goldwire from this
17 case.
18 THE CLERK: Please return to your seat.
19 121, Charles Nesbitt.
20 (White male comes forward.)
21 THE CLERK: What say you for the State?
22 MR. SLOCUM: Please present Mr. Nesbitt.
23 THE CLERK: What say you for the defense?
24 MR. McMILLIAN: Please seat the juror.
25 THE CLERK: Please have a seat in the jury box.

1 Number 84, Sue Kelly.

2 (White female comes forward.)

3 THE CLERK: What say you for the State?

4 MR. SLOCUM: Please present Mrs. Kelly.

5 THE CLERK: What say you for the defense?

6 MR. McMILLIAN: Please excuse this juror.

7 THE CLERK: Please return to your seat.

8 139, William Reese.

9 (White male comes forward.)

10 THE CLERK: What say you for the State?

11 MR. SLOCUM: Please present Mr. Reese.

12 THE CLERK: What say you for the defense?

13 MR. McMILLIAN: Please seat the juror.

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

15 Number 134, Jessica Prupis.

16 (Unknown race female comes forward.)

17 THE CLERK: What say you for the State?

18 MR. SLOCUM: Please present Ms. Prupis.

19 THE CLERK: What say you for the defense?

20 MR. McMILLIAN: Please seat the juror.

21 THE CLERK: Please have a seat in the jury box.

22 Number 169, Sandra Stewart.

23 (White female comes forward.)

24 THE CLERK: What say you for the State?

25 MR. SLOCUM: Please present Mrs. Stewart.

1 THE CLERK: What say you for the defense?
2 MR. McMILLIAN: Please seat the juror.
3 THE CLERK: Please have a seat in the jury box.
4 Number 179, Shaniqua Thomas.
5 (Black female comes forward.)
6 THE CLERK: What say you for the State?
7 MR. SLOCUM: Please excuse Ms. Thomas from this
8 case.
9 THE CLERK: Please return to your seat.
10 86, Mark Key.
11 (White male comes forward.)
12 THE CLERK: What say you for the State?
13 MR. SLOCUM: Please present Mr. Key.
14 THE CLERK: What say you for the defense?
15 MR. McMILLIAN: Please excuse this juror.
16 THE CLERK: Please return to your seat. Two
17 strikes for the State and three for the defense.
18 Number 119, John Murray.
19 (White male comes forward.)
20 THE CLERK: What say you for the State?
21 MR. SLOCUM: Please present Mr. Murray.
22 THE CLERK: What say you for the defense?
23 MR. McMILLIAN: Please seat the juror.
24 THE CLERK: Please have a seat in the jury box.
25 Number 140, Charles Reeve.

1 (White male comes forward.)

2 THE CLERK: What say you for the State?

3 MR. SLOCUM: Please present Mr. Reeve.

4 THE CLERK: What say you for the defense?

5 MR. McMILLIAN: Please seat the juror.

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

7 Number 156, Tasha Scriven.

8 (Black female comes forward.)

9 MR. McMILLIAN: 156?

10 THE CLERK: 156. What say you for the State?

11 MR. SLOCUM: Please excuse Ms. Scriven from this
12 case.

13 THE CLERK: Please return to your seat.

14 Number 35, Patricia Dufour.

15 (White female comes forward.)

16 MR. McMILLIAN: What was that number?

17 THE CLERK: 35. What say you for the State?

18 MR. SLOCUM: Please present Ms. Dufour.

19 THE CLERK: What say you for the defense?

20 MR. McMILLIAN: Please seat the juror.

21 THE CLERK: Please have a seat in the jury box.

22 THE COURT: This will be for the alternate.

23 THE CLERK: Number 127, Margarette Page.

24 (White female comes forward.)

25 THE CLERK: What say you for the State?

1 MR. SLOCUM: Please present Mrs. Page.
2 THE CLERK: What say you for the defense?
3 MR. McMILLIAN: Please excuse this juror.
4 THE CLERK: Please return to your seat.
5 Number 117, Tracey Mozone.
6 (Black female comes forward.)
7 THE CLERK: What say you for the State?
8 MR. SLOCUM: Please present Mrs. Mozone.
9 THE CLERK: What say you for the defense?
10 MR. McMILLIAN: Please excuse this juror.
11 THE CLERK: Please return to your seat.
12 181, Tosha Toney. Natasha Toney.
13 (Black female comes forward.)
14 THE CLERK: What say you for the State?
15 MR. SLOCUM: Please present Ms. Toney.
16 THE CLERK: What say you for the defense?
17 MR. McMILLIAN: Please present the juror.
18 THE CLERK: Please have a seat in the jury box.
19 THE COURT: Any motions to -- as to jury selection
20 from the State?
21 MR. SLOCUM: None from the State, Your Honor.
22 THE COURT: From the defense?
23 MR. McMILLIAN: Yes, sir, Judge.
24 THE COURT: All right. Just one second.
25 All right. Ladies and gentlemen of the jury, I'm

1 going to ask that you go back to the jury room with the
2 bailiff. And I'm also going to ask that the bailiffs get
3 the rest of our panel, take them in the foyer. We have to
4 clear the courtroom for a matter and then we'll bring you
5 back. If you'd take them back to the jury room, and if
6 the rest of the jury panel will follow our bailiffs,
7 please.

8 (Jury exits courtroom and the jury panel exits
9 courtroom at 12:07 p.m.)

10 THE COURT: Mr. Bailiff, would you make sure that
11 door is shut for me, please?

12 THE BAILIFF: Yes, sir.

13 THE COURT: Counsel, what's your motion?

14 MR. McMILLIAN: At this time, Judge, the defense
15 would make a motion under Batson that this jury selection
16 be set aside, that we restrike a jury.

17 THE COURT: Number one, tell me first which jurors
18 you feel like the State exercised in a
19 racially-discriminatory manner.

20 MR. McMILLIAN: The State exercised one strike for
21 Juror 57, one strike for Juror 179, and one strike for
22 Juror 156. Aside from the alternate, Judge, they were the
23 only African-American jurors called.

24 THE COURT: Okay, sir. Be glad to hear your
25 race-neutral reason for your strikes.

1 MR. SLOCUM: Your Honor, in regards to Number 57,
2 Mr. Goldwire.

3 THE COURT: Let's take them one at a time. 57?

4 MR. SLOCUM: Yes, sir.

5 THE COURT: Okay.

6 MR. SLOCUM: He has a conviction from 1995 for
7 petty theft, common dishonesty.

8 THE COURT: Okay.

9 MR. SLOCUM: In regards to 156, Ms. Screvin.

10 THE COURT: No, go to 169 next, please.

11 MR. SLOCUM: Oh, I'm sorry. One seventy-nine,
12 Judge?

13 THE COURT: 169, Sandra C. Stewart -- no. It's
14 179. I circled the wrong number. I'm sorry.

15 MR. SLOCUM: Ms. Thomas is 179.

16 THE COURT: Yeah. You're correct. I'm sorry.

17 MR. SLOCUM: She has shoplifting convictions, three
18 from 2011, and a list of other crimes but specifically the
19 three shopliftings from 2011 being crimes of dishonesty.

20 THE COURT: None of those rose to the level of
21 being excluded as a juror in this case?

22 MR. SLOCUM: No, sir.

23 THE COURT: Really?

24 MR. SLOCUM: They're all magistrate. I can read
25 them if you would like.

1 THE COURT: No, no.

2 MR. SLOCUM: And then 156.

3 THE COURT: Okay.

4 MR. SLOCUM: Ms. Scriven. She has a fraudulent
5 check from 1997. All three that were struck have prior
6 arrests or convictions for crimes of dishonesty.

7 MR. McMILLIAN: Judge, the only dispute I would
8 have would be with Ms. Scriven. On the jury list I have,
9 the fraudulent check from '97 has an unknown disposition.

10 MR. SLOCUM: And that's why that's arrests or
11 convictions for those crimes.

12 THE COURT: Sir?

13 MR. SLOCUM: That's why I wanted to make clear it
14 was for the arrests or convictions for those three crimes.

15 THE COURT: Okay. Well, those certainly were
16 race-neutral explanations. So the burden falls on you at
17 this juncture to say that or prove that those are
18 pre-textual.

19 MR. McMILLIAN: I don't have anything further,
20 Judge.

21 THE COURT: I didn't think you would. Thank you
22 very much. I had those same ones marked, by the way.

23 All right. Let's bring the jury in here, excuse
24 them. Then I'm going to bring this jury in here and ask
25 them to go pick a foreperson and then excuse them. We can

1 start our hearing.

2 Any problem with that, from the State?

3 MR. SLOCUM: Not from the State.

4 THE COURT: From the defense?

5 MR. McMILLIAN: (Shakes head.)

6 THE COURT: Bring them back.

7 MR. SLOCUM: Judge, could we have a two-minute
8 restroom break?

9 THE COURT: Oh, yeah.

10 (Break taken at 12:12 p.m. until 12:13 p.m., and
11 the trial resumed as follows:)

12 THE COURT: So that concludes all the motions for
13 jury selection; right?

14 MR. McMILLIAN: Yes, sir, Your Honor.

15 (Jury enters courtroom at 12:14 p.m.)

16 THE COURT: Ladies and gentlemen, thank you. And
17 I'm sorry for the inconvenience.

18 I know sometimes as jurors you're wondering what in
19 the world are those folks doing up there but I can assure
20 you that it was for good cause that we had to excuse you
21 from the courtroom.

22 The good news is that I'm going to excuse you for
23 the remainder of the day. I'm advised that you may be
24 done for the week. I don't know because your presence in
25 other cases have pled out that they're claiming they were

1 going to go to trial on. So you've been doing your work
2 even though you didn't know you were doing your work.

3 However, I'm not going to excuse you for the week
4 yet. If you would call in tonight after, after six
5 o'clock there will be a message as to whether or not we
6 need you to return and, if so, when. And until that
7 message says that you've been released for the week, I'm
8 going to ask that you call in each night after six o'clock
9 for that message.

10 With that being said, thank you for your attendance
11 here today. And you're excused for the remainder of the
12 day.

13 (Jury panel exits courtroom at 12:15 p.m. Jury
14 enters courtroom at 12:16 p.m.)

15 THE COURT: Thank you. Are you our alternate?

16 THE BAILIFF: Yes.

17 THE COURT: Very good. The lady in the blue right
18 here.

19 THE JUROR: Yes.

20 THE COURT: If you would, each time you come in and
21 out of the courtroom if you'd use that seat there. It
22 helps us keep up some administrative matters. Thank you
23 very much.

24 But, ladies and gentlemen, what I'm going to do is
25 get you to go back to your jury room for just a few

1 minutes. You want you to select a foreperson who will
2 preside over your deliberations at the end of the case,
3 who also will be charged with the responsibility for
4 communicating with the Court throughout the course of this
5 trial if the need arises.

6 Once that person is selected, and our alternate has
7 a right to vote but you may not serve as the foreperson
8 since you are the alternate, I'm going to ask that person
9 write their name down on a piece of paper that the bailiff
10 will give to you, then poll your fellow jurors to
11 determine whom if anyone would like to have pad and pencil
12 to take notes with during the course of this trial.

13 Once that's done if you'd write that numeric number
14 below your name, knock on the door, we'll receive you here
15 in the courtroom and dismiss you for a lunch break, and
16 then bring you back this afternoon for opening
17 statements.

18 So if you'll go with the bailiff one more time,
19 please, and then we'll excuse you.

20 (Jury exits courtroom at 12:19 p.m.)

21 THE COURT: All right.

22 Take a quick break and let's come back and do the
23 Jackson-Denno hearing. Okay?

24 MR. SLOCUM: Yes, sir.

25 THE COURT: Just let us know when y'all come back,

1 please.

2 MR. SLOCUM: Will do.

3 (Jury enters courtroom at 12:26 p.m.)

4 THE BAILIFF: Jury present, Your Honor.

5 THE COURT: Do we have a foreperson? You are?

6 FOREPERSON OF THE JURY: Yes, sir.

7 THE COURT: And your juror number, please?

8 FOREPERSON OF THE JURY: 134, Your Honor.

9 THE COURT: Very good.

10 And did you determine how many, if any, of your
11 jurors would like to have a pad and pen?

12 FOREPERSON OF THE JURY: All of us, Your Honor.

13 THE COURT: Very good. All right. Madam Clerk,
14 Madam Bailiff, would you take care of that when we come
15 back?

16 THE BAILIFF: I'll be glad to.

17 THE COURT: If you have a seat. I'm going to just
18 give you a couple preliminary instructions and then I'm
19 going to excuse you for lunch.

20 Number one. Let me just say this. At this point
21 forward you're not allowed to speak with anybody about
22 this case. I don't think it's going to be very long but
23 you can't even speak amongst yourselves about this case
24 until you've been given clear word that you're to begin
25 your deliberations.

1 Until that time when we have a break, like we're
2 about to have, you may not walk out and say, What do you
3 think about that testimony that you heard right there, or,
4 What do you think about this person. And it's either
5 face-to-face or e-mail or some other form, Twitter or any
6 type of communication. The reason being, we don't want
7 you to come to a preliminary idea about the weight of the
8 evidence or what the facts are in this case until you've
9 had an opportunity to hear all of the evidence and you've
10 had a chance to hear the law that you must apply to those
11 facts in this case.

12 Also all trial judges are required to instruct
13 jurors that they may not engage in what is called
14 independent jury research. And what that simply means is,
15 until this trial is over with and you're dismissed from
16 this case, you may not look up anything about any party or
17 court official, myself, during the course of this trial,
18 any issue that you may hear about during the course of
19 this trial that you think may be helpful or that you're
20 not sure about, or any issue that you think would help
21 clarify. It's up to the parties to present their cases to
22 you in a clarified fashion so that you understand what the
23 facts that they contend are. It's up to me to educate you
24 on the law.

25 That's why once you're sworn in as jurors, after

DANIEL SMITH - DIRECT BY SLOCUM

1 lunch before we begin opening statements, you will no
2 longer have your phones back there during the course of
3 the trial. So, you can't use them to do research with.
4 Okay? That's the basis behind it.

5 With that being said, ladies and gentlemen, I'm
6 going to ask that you follow our bailiff out and be back
7 in your jury room -- it's 12:30 now -- 2:30 would be a
8 good time to start. Okay. And I promise you, I'll try to
9 keep you from sitting back there as much as I can when
10 we're in here working. Okay.

11 Thank you very much. Have a nice, good lunch
12 break.

13 (Jury exits courtroom at 12:30 p.m.)

14 THE COURT: All right. Any additions or exceptions
15 from the State?

16 MR. SLOCUM: None from the State.

17 THE COURT: From the defense?

18 MR. McMILLIAN: None, Your Honor.

19 THE COURT: All right. Would you call your first
20 witness on the Jackson-Denno aspect, please?

21 MR. SLOCUM: Yes, sir, Your Honor. The State calls
22 Officer Daniel Smith of the North Augusta Department of
23 Public Safety.

24 DANIEL SMITH, having been duly sworn, was examined
25 and testified as follows:

DANIEL SMITH - DIRECT BY SLOCUM

1 THE CLERK: Be seated.

2 DIRECT EXAMINATION

3 BY MR. SLOCUM:

4 Q. Officer Smith, good morning.

5 A. Good morning.

6 Q. Where are you currently employed?

7 A. I work for the North Augusta Department of Public
8 Safety, North Augusta, South Carolina.

9 Q. How long have you been there?

10 A. I've been employed with the City of North Augusta
11 since October 2011.

12 Q. So were you working on March 16th of 2014?

13 A. Yes, sir, I was.

14 Q. And on that date, did you come in contact with the
15 Defendant, Mr. Edward Anthony?

16 A. Yes, sir, I did.

17 Q. And at some point during your contact with him that
18 day, were you provided with an opportunity to advise him
19 of his Miranda warnings?

20 A. Yes, sir, I did.

21 Q. And how did you go about doing that?

22 A. I read it to him from a card that I keep on my
23 person at all times at work.

24 Q. And you read it from this printed card?

25 A. Yes, sir, I did.

DANIEL SMITH - DIRECT BY SLOCUM

1 Q. Do you have that card on you?

2 A. Yes, sir, I do.

3 MR. SLOCUM: Permission to approach, Judge?

4 THE COURT: Yes, sir.

5 BY MR. SLOCUM:

6 Q. Officer Smith, I'm handing you Court's Exhibit
7 Number One. Is that in fact a copy of the Miranda Card
8 that you have in your hand?

9 A. Yes, sir, it is.

10 Q. Has it been changed, altered or deleted in any way,
11 shape or form?

12 A. No, sir.

13 Q. And is it same card that you used on March 16th,
14 2014, to read to Mr. Edward Anthony?

15 A. Yes, sir.

16 Q. Would you read that for the Court, please?

17 A. Off my card?

18 Q. (Nods head.)

19 A. Okay. You have the right to remain silent.

20 Anything you say can and will be used against you in a
21 court of law. You have the right to talk to an attorney
22 and have him present with you while being questioned. If
23 you cannot afford a lawyer to hire a lawyer, one will be
24 appointed to represent you before any questioning if you
25 wish. You can decide at any time to exercise these rights

DANIEL SMITH - DIRECT BY SLOCUM

1 and not answer any questions or make any statements.

2 Q. And that's the same information that's on Court's
3 Exhibit One?

4 A. Yes, sir.

5 MR. SLOCUM: Your Honor, for purposes of this
6 hearing, the State moves to admit Court's Exhibit Number
7 One into evidence.

8 THE COURT: Any objection?

9 MR. McMILLIAN: None, Judge.

10 THE COURT: Admitted.

11 (Court's Exhibit No. 1, Miranda, received into
12 evidence.)

13 BY MR. SLOCUM:

14 Q. Where did you read those Miranda rights to
15 Mr. Anthony on March 16th, 2014?

16 A. We were in the rear of the store near the --
17 outside the loss prevention office.

18 Q. Who is We?

19 A. I'm sorry. It was myself, Public Safety Officer
20 Nichols and Public Safety Officer Peterson.

21 Q. And where is Belk's located?

22 A. 1163 Knox Avenue.

23 Q. In Aiken County?

24 A. Yes, sir.

25 Q. Why were you called to Belk's?

DANIEL SMITH - DIRECT BY SLOCUM

1 A. I was dispatched to Belk's in reference to a
2 shoplifting.

3 Q. Prior to the reading of those Miranda rights, was
4 Mr. Anthony under arrest?

5 A. No, sir, he was not.

6 Q. Was he being detained?

7 A. Yes, sir, he was.

8 Q. And why was he being detained?

9 A. Further investigation into the shoplifting call.

10 Q. The reason you were called to Belk's; right?

11 A. Yes, sir.

12 Q. And did he match the description given to you by
13 dispatch?

14 A. Yes, sir, he did.

15 Q. And was Ms. Patsy Singletary there from Belk's loss
16 prevention?

17 A. Yes, sir, she was.

18 Q. Is she the lady behind me in the courtroom?

19 A. Yes, sir.

20 Q. Based on all the information together that you
21 received from Ms. Patsy, you detained Mr. Anthony for
22 further investigation?

23 A. Yes, sir.

24 Q. Did he make any statements prior to being arrested?

25 A. Excuse me just one second. Mr. Anthony, when he

DANIEL SMITH - DIRECT BY SLOCUM

1 first made contact with me his statements, his initial
2 statement to me was, I didn't do nothing. He again
3 stated, I ain't got nothing. As I was getting ready to
4 perform a weapons frisk on him, he said --

5 THE COURT: I'm sorry. Say that again. He said, I
6 ain't got nothing as he was beginning to do what, please?

7 THE WITNESS: I was beginning -- prior to
8 performing my weapons frisk on him for officer safety
9 purposes, he stated, I ain't got nothing, you can check my
10 underwear. And he -- when I advised him of his rights
11 under Miranda, he did state to me that he understood the
12 rights.

13 BY MR. SLOCUM:

14 Q. Okay. So those statements you're talking -- you
15 just said for the Court were pre-Miranda?

16 A. Yes, sir.

17 Q. Is that correct?

18 A. Yes, sir.

19 Q. And then once you were back at the loss prevention
20 office, Miranda was read. And you said he did acknowledge
21 his understanding of those rights?

22 A. Yes, sir.

23 Q. Okay. After the Miranda -- let me back up. How
24 did the Defendant appear on the 16th? Have you had any
25 experience dealing with someone under the influence of

DANIEL SMITH - DIRECT BY SLOCUM

1 drugs or alcohol?

2 A. Yes, sir.

3 Q. How did he appear to you that day?

4 A. He did not appear impaired to me.

5 Q. Was his eyes bloodshot?

6 A. No, sir.

7 Q. Language slurred?

8 A. No, sir.

9 Q. Was he, in your training and experience, under any
10 influence of narcotics or alcohol?

11 A. No, sir.

12 Q. Did the Defendant say anything else after the
13 reading of Miranda?

14 A. After, after I advised Mr., -- or after I advised
15 the Defendant of his rights under Miranda, he continued to
16 talk without answering if I asked that he wished to speak
17 with me without his attorney present.

18 Q. Anything in particular that you remember?

19 A. No, sir. Nothing in particular that I remember.

20 Q. How about on the way to the jail?

21 A. On the way to the jail the Defendant said to me
22 that, Could have would have thought about it, that was not
23 the same thing as shoplifting.

24 Q. At any point did you interrogate Mr. Anthony? Did
25 you ask him any questions at all after the reading of

DANIEL SMITH - CROSS BY McMILLIAN

1 Miranda?

2 A. No, sir. I didn't interrogate him after Miranda.

3 Q. Even on the way to the jail?

4 A. No, sir.

5 MR. SLOCUM: Beg the Court's indulgence, Judge.

6 That's all the questions we have for Officer Smith
7 and all the questions we have in reference to Jackson-
8 Denno.

9 THE COURT: Let me make sure I understand before
10 cross-examination, if I may. Essentially we have three
11 statements: I didn't do nothing; I ain't got nothing;
12 Could have would have thought about it not the same as
13 shoplifting. That's it?

14 MR. SLOCUM: That's correct.

15 THE COURT: Okay.

16 MR. SLOCUM: And we can address --

17 THE COURT: That's all right. I just wanted to
18 make sure I captured it. Cross-examination?

19 MR. McMILLIAN: Please, Judge.

20 CROSS-EXAMINATION

21 BY MR. McMILLIAN:

22 Q. Officer Smith, after you read Miranda to
23 Mr. Anthony, you said that he responded that he
24 understood?

25 A. Yes.

DANIEL SMITH - CROSS BY McMILLIAN

1 Q. And you asked if he wanted to waive those rights
2 and speak with you?

3 A. I asked him -- after asking if he understood his
4 rights under Miranda, I asked if he wished to speak with
5 me without an attorney present.

6 Q. And did he ever respond to that question?

7 A. No, sir. He continued speaking without
8 acknowledging.

9 Q. So he never voluntarily waived his rights to
10 counsel?

11 A. He just continued making spontaneous statements.

12 Q. Okay. And do you remember what exactly he was
13 talking about while y'all were in or right outside the
14 loss prevention office?

15 A. No, sir. I do not recall.

16 Q. Nothing in particular, nothing stands out?

17 A. No, sir.

18 Q. Do you remember the conversation y'all had on the
19 way to the jail?

20 A. Vaguely, yes. And what's in my report.

21 Q. Did you reply to any statements that Mr. Anthony
22 made in the car or --

23 A. Again, I do not recall. Nothing stands out; no,
24 sir.

25 Q. So is it your testimony that he spontaneously

1 explained, Could have would have thought about it was not
2 the same as shoplifting?

3 A. Yes, sir.

4 MR. McMILLIAN: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. McMILLIAN: I don't have any further questions,
7 Judge.

8 THE COURT: Any redirect for this witness?

9 MR. SLOCUM: Nothing from the State, Judge.

10 THE COURT: Thank you, sir. You may step down.

11 THE WITNESS: Yes, sir.

12 THE COURT: Be glad to hear you. Let me focus on
13 the first two statements made.

14 MR. SLOCUM: Yes, sir.

15 THE COURT: Clearly the third statement whether or
16 not this Defendant voluntarily waived his right to counsel
17 is not necessary. Once he's advised, he says he
18 understands, he has to assert his right to counsel. So,
19 the third statement's in.

20 Tell me why the first two should be.

21 MR. SLOCUM: Judge, the first two the Defendant was
22 not in custody. And he was not being interrogated. The
23 two main elements needed were not there. It was just
24 some --

25 THE COURT: Okay.

1 MR. SLOCUM: -- spontaneous statements by the
2 Defendant and under Miranda they're not even applicable.
3 We would take the position that Miranda doesn't apply
4 because of him not being investigated or interrogated.

5 THE COURT: What would be your position on that?

6 MR. McMILLIAN: Judge, we don't object to the first
7 two statements.

8 THE COURT: Okay. Then we're clear. All three
9 statements come in. I'm noting defense objection to my
10 ruling on the third aspect of that statement, placement of
11 Miranda warning. Other than that, let's go through your
12 Lyle.

13 MR. SLOCUM: Yes, sir. State calls Ms. Patsy
14 Singletary-Siso.

15 PATSY SINGLETARY-SISO, having been duly sworn, was
16 examined and testified as follows:

17 THE CLERK: Please have a seat in the witness box.
18 State your full name for the Court, spelling your last.

19 THE WITNESS: Okay. My name is Patsy Singletary-
20 Siso. Last name is spelled S-I-S-O.

21

22

23

24

25

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

DIRECT EXAMINATION

BY MR. SLOCUM:

Q. Ms. Singletary, is it all right if I call you Ms. Patsy?

A. It is.

Q. Where do you currently work?

A. Lowe's Department Store in North Augusta.

Q. And where did you work back in March 2014?

A. Belk Department Store in North Augusta, South Carolina.

Q. All right. And is that at 1163 Knox Avenue?

A. It is.

Q. What were you -- how were you employed with Belk's?

A. Loss prevention.

Q. And what does that entail?

A. It entailed apprehending internal-external shoplifting cases.

Q. Okay. And did you have the opportunity to be involved in any shopliftings while you were working at Belk?

A. Yes, sir. I was the only certified employee that could make the apprehensions with shoplifters. So we were trained through Belk and once we receive all of our training, then we were able to make apprehensions.

Q. Okay. And were you working in that capacity on

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 March 16th of 2014?

2 A. Yes, sir.

3 Q. And do you -- did you have an opportunity to come
4 in contact with Mr. Anthony, the Defendant in this case?

5 A. Yes, sir, I did.

6 Q. And just for the record, can you point out what
7 he's wearing?

8 A. He has on a blue shirt with pattern and a light
9 blue T-shirt underneath.

10 Q. Thank you. For the record, Judge, she's identified
11 the Defendant.

12 THE COURT: So noted.

13 BY MR. SLOCUM:

14 Q. What happened on March 16th, 2014, for you to
15 become involved in this case today?

16 A. I observed Mr. Anthony enter the store. Prior
17 to -- there had been about three other incidents where
18 Mr. Anthony entered the store where I witnessed him
19 shoplifting. The MO was the same. He's in and out five
20 minutes or less. But on this particular day, March 16th,
21 I had gotten the pattern of Mr. Anthony to where he
22 entered the front door and immediately went into the men's
23 department.

24 Q. Okay. Let me back up to those times, those three
25 prior times you talked about --

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 A. Uh-huh.

2 Q. -- before March 16th, when were they?

3 A. They were consecutively about 30 days or so within

4 the month or half of each one probably.

5 Q. Do you not know the dates specifically?

6 A. No, I don't, sir.

7 Q. But you do know it was Mr. Anthony?

8 A. Yes, sir.

9 Q. How are you able to determine that? How many times

10 have you witnessed this?

11 A. I witnessed it about three times prior to March

12 16th.

13 Q. Okay. Through the surveillance cameras or actually

14 being on the floor?

15 A. Yes. Twice through surveillance which we called

16 CC-TV monitoring. It's through the IntelSystem that

17 operate. And then the third time I was actually on the

18 floor passing by Mr. Anthony.

19 Q. Okay. And of the times prior to March 16th, what

20 time of day was it?

21 A. Always in the evening is his MO. That's when our

22 store is short staffed or the majority of the staff is

23 released. So it's a very high-theft time of the evening,

24 after six p.m.

25 Q. And what time of day on March 16th, 2014?

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 A. It was after six p.m.

2 Q. How was he dressed on the times prior and on March
3 16th, 2014?

4 A. The same clothing. He usually come in with
5 oversize sweatshirt on, baggy jeans, Polo-style collared
6 shirt.

7 Q. Okay. And where, what area of the store would you
8 see him go to on the times prior and on March 16th?

9 A. His pattern stayed the same. He would immediately
10 enter the men's department and then cross over to the Polo
11 department and then to --

12 THE COURT: Cross over to which department?

13 THE WITNESS: Polo department.

14 THE COURT: Polo?

15 THE WITNESS: Yes, sir. Polo, Chaps. And then at
16 that Polo department there's a side dressing room that he
17 would enter.

18 BY MR. SLOCUM:

19 Q. What was it about his activity in that area that
20 caught your eye?

21 A. Having missed him three times prior I was pretty
22 familiar with his pattern. He select items, without
23 looking at the size nor price, very quickly. He select
24 several of the same items. He usually concealed those
25 items with another piece of clothing on top of those

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 particular items selected. And then he makes his way
2 into the back fitting room.

3 Q. And you said you saw this on the three times prior
4 to March 16th?

5 A. Yes, sir.

6 Q. As well as on March 16th?

7 A. Yes, sir.

8 Q. And was this all done at the same store, at 1163
9 Knox Avenue?

10 A. Yes.

11 Q. And you witnessed these three prior incidents
12 yourself; correct?

13 A. I did.

14 Q. Did you get any other information from any other
15 employees?

16 A. No.

17 Q. How quickly did you realize it was Mr. Anthony on
18 March 16th, 2014?

19 A. Immediately. I happened to be in the eppy.
20 (phonetically) office on camera monitoring the store.
21 There's a fixed camera on the entrance door so immediately
22 when he walked in I zoomed in on him.

23 MR. SLOCUM: Beg the Court's indulgence, Judge.

24 THE COURT: Yes, sir.

25 MR. SLOCUM: That's all the questions I have for

1 you, Ms. Patsy. Please answer any Mr. McMillian has for
2 you.

3 THE WITNESS: Okay.

4 THE COURT: Cross-examination?

5 MR. McMILLIAN: Please, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. McMILLIAN:

8 Q. Ms. Singletary, what are the store hours on Sunday?

9 A. They vary depending on the season but usually
10 they're from nine to six, but they have holiday sales,
11 also pre-sales which they can open at six a.m. So it
12 varies within the season.

13 Q. Was this a Sunday?

14 A. I'm not for sure if March 16th was a Sunday or not.

15 Q. But you are sure about the hours, that they were
16 from nine to six?

17 A. Nine to six or nine to seven. I'm not for sure.
18 It just depends on what Sunday. If that was an Easter
19 Sunday they stay open later. I would have to go back and
20 view what hours that they were open on that particular
21 Sunday, but they vary.

22 MR. McMILLIAN: I don't have anything further.
23 Just argument, Judge.

24 THE COURT: Redirect?

25 MR. SLOCUM: No, sir, none from the State.

1 THE COURT: All right. Thank you, ma'am. You may
2 step down.

3 THE WITNESS: Yes, sir.

4 THE COURT: Next witness?

5 MR. SLOCUM: In terms of State -v- Lyle and Rule
6 404(B), the State has no further witnesses.

7 THE COURT: Okay. Sir, be glad to hear your
8 argument.

9 MR. SLOCUM: Thank you, Judge.

10 In regards to the prior bad acts and Rule 404(B)
11 and the accompanying cases, the State takes the position
12 that we know these crimes, these alleged prior bad acts
13 have to be relevant. And we would take the position that
14 the same, same time of day, same witness, Ms. Patsy being
15 the one that views all three prior incidents, she obtained
16 this information herself not only through surveillance but
17 also on the floor in live action, same store, same area of
18 the store, same department. We have the same type of
19 clothes being selected. Same MO all the times prior.

20 And the fact that she was able to identify him
21 immediately when he came in the door just not only goes to
22 the common plan or scheme but also the identity of the
23 Defendant himself on March 16th, Your Honor. It's the
24 same pattern of behavior, Judge. And, I may have
25 mentioned this earlier but all on the same time of day,

1 all in the evening.

2 We feel like with those factors in totality it's
3 very relevant, and the probative value of those would
4 outweigh any prejudicial effect the Defendant might
5 allege. It's very related to what's going on here today.

6 THE COURT: Essentially you're going under common
7 scheme or plan; right?

8 MR. SLOCUM: That's correct. That would be the
9 main position but...

10 THE COURT: Does it make a distinction with prior
11 bad acts that are criminal acts, that those acts were not
12 charged or indicted, he was never arrested for them?

13 MR. SLOCUM: It...

14 (Conferring with Ms. Hammack.)

15 MR. SLOCUM: Your Honor, in terms of the burden of
16 proof, I don't believe there has to be any convictions
17 from those prior bad acts. I may be incorrect but I think
18 the burden today is just clear and convincing evidence,
19 not beyond a reasonable doubt.

20 And the State would take the position that based on
21 Ms. Patsy's testimony and those factors we laid out, that
22 she's an eyewitness to the past three herself, that we
23 would meet that burden.

24 THE COURT: Okay.

25 MR. SLOCUM: Thank you, Judge.

1 THE COURT: Thank you. All right?

2 MR. McMILLIAN: Judge, in my reading, my cursory
3 reading of the cases that the State provided prior to this
4 hearing, my biggest complaint under the common plan or
5 scheme, I believe, would be -- or admitting this evidence
6 under the common plan or scheme would be that, I believe
7 one of the cases -- if you give me just a minute I can
8 find it -- requires that these previous bad acts -- bear
9 with me just a moment -- the identity of the suspect at
10 issue necessarily be tied to both incidents.

11 In this case, Judge, the three prior shopliftings
12 are far more prejudicial than probative. To allow this in
13 essentially gives him three additional charges that we
14 have to combat with the jury. To --

15 THE COURT: So you're basically, not basically, you
16 are arguing, number two, that even if these are prior
17 common plan or scheme that they're outweighed by 403, it
18 should be excluded under that?

19 MR. McMILLIAN: That is my fail safe, Judge.

20 THE COURT: What is your argument as to whether or
21 not the prior bad acts in and of themselves as testified
22 to would constitute a common plan or scheme?

23 MR. McMILLIAN: I do not believe they would
24 constitute a common plan or scheme, Judge, because it's
25 not unique. Guilt in one is not necessarily dependent on

1 the other. These are isolated incidents. They are not a
2 common plan or scheme.

3 If I may, Judge, have just a minute to find that
4 language that I was --

5 THE COURT: Sure.

6 (Pause.)

7 MR. McMILLIAN: Judge, if I may.

8 THE COURT: Do you want to look at it at lunch?

9 MR. McMILLIAN: I was going to say, would you allow
10 us over over lunch for me to review these cases briefly
11 and we'll finish up argument after lunch?

12 THE COURT: I will. Go ahead.

13 MR. SLOCUM: Judge, I just wanted to, prior to
14 lunch, alternatively to bring in absence of mistake. I
15 don't know what -- we have to anticipate any arguments and
16 any position. Absence of mistake would fit as well based
17 on the concealment even though he may not have gotten out
18 the door, so to speak.

19 THE COURT: Here's the concern I have. And I've
20 not ruled, but, number one, it's 403 clearly because
21 that's the prejudicial impact. But even not, you got to
22 establish on the case you gave me, as Judge Gravely handed
23 over to me, State versus McCombs, 410 South Carolina 90,
24 that where you just cited to me, to be admissible the
25 un-indicted charge or bad acts have to be established by

1 clear and convincing evidence.

2 MR. SLOCUM: Yes, sir.

3 THE COURT: And in this case while I have no reason
4 to doubt this lady's testimony, I don't have any evidence
5 as to what the contents were he allegedly took and made
6 out the door. It looked very suspicious. It looks like
7 there's evidence there, but I'm not absolutely convinced
8 that there's clear and convincing evidence that he
9 committed these prior acts. Okay.

10 MR. SLOCUM: Right.

11 THE COURT: And that coupled with 403 makes me tend
12 to want to exclude it. I'm not doing that. I'm giving
13 you both my thoughts right now so you all can address
14 those when we get back. Fair enough?

15 MR. SLOCUM: Yes, sir.

16 THE COURT: All right. What time do you guys want
17 to come back? The jury comes back at 2:15. Do you want
18 to be back at -- I mean, 2:30. Do you want to be back at
19 2:15?

20 MR. McMILLIAN: No problem, Judge, absolutely.

21 THE COURT: We have a plea at two. At two, thank
22 you. I forgot. See y'all at two.

23 MR. SLOCUM: Yes, sir.

24 JUDGE GRAVELY: That's why I'm here.

25 MR. McMILLIAN: Judge, if I may put one more thing

1 on the record? May my client remain on bond over lunch?

2 THE COURT: Yes, has he been out?

3 MR. McMILLIAN: Yes, sir.

4 THE COURT: Let me put this on the record, too.

5 It's already on your bond form but if you don't show back
6 up, you do know, Mr. Anthony, that the trial will go on in
7 your absence. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay, sir. I'm going to let you
10 remain out.

11 MR. McMILLIAN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Lunch break taken at one o'clock until 2:13 p.m.:)

14 THE COURT: I want to go ahead and finish up your
15 arguments you have.

16 MR. McMILLIAN: That will be fine.

17 THE COURT: Okay.

18 MR. McMILLIAN: Do you want him to come up here and
19 have a seat?

20 THE COURT: Absolutely.

21 MR. McMILLIAN: Come up here and have a seat,
22 Mr. Anthony.

23 THE DEFENDANT: (Complies.)

24 THE COURT: I want to hear from both parties as to
25 whether there's clear and convincing evidence of prior bad

1 acts that would be a common scheme or plan. In other
2 words, whether or not the conduct was sufficiently proven
3 as to the other three bad acts, alleged bad acts.

4 MR. SLOCUM: Yes, sir.

5 Your Honor, looking at the cases provided to both
6 the defense and to Your Honor, the first one being South
7 Carolina versus Cope, on page 16 the second paragraph
8 begins, Where there's a close degree of similarity between
9 the crime charged and the prior bad act, the prior bad act
10 is admissible to demonstrate the common plan or scheme and
11 when determining whether the evidence is admissible as a
12 common plan or scheme the trial court, Your Honor, must
13 analyze the similarities and dissimilarities between the
14 crime charged, shoplifting here today, and the bad act
15 evidence and determine whether there's a close degree of
16 similarity.

17 Furthermore, it gets into the burden being clear
18 and convincing, not beyond a reasonable doubt. And based
19 on Ms. Singletary's evidence, or testimony and the evidence
20 where we have the same time of day, same victim, same MO,
21 we have the same area of the store, same type of
22 clothes --

23 THE COURT: Well, that --

24 MR. SLOCUM: -- these --

25 THE COURT: Let me ask you this: That's where I

1 was having some problems, too, in my discussion with folks
2 about this is that I know there was a comment by your
3 witness, said there were similar items taken --

4 MR. SLOCUM: Yes, sir

5 THE COURT: -- that was taken in this case.

6 MR. SLOCUM: Yes, sir.

7 THE COURT: What is the similarity?

8 MR. SLOCUM: Well, I've dealt with Ms. Singletary
9 in the past and I know what she's -- her intentions were
10 on this case. If it would be beneficial we could recall
11 her to clear that point up.

12 THE COURT: Well, I don't think you have to have
13 absolute testimony about that issue necessarily, but I'll
14 be glad to take it. But go ahead and tell me what it is.
15 If you want to call her and cross-examine her about it,
16 I'll let you do it. Fair enough?

17 MR. SLOCUM: Do you want me to continue the
18 argument now?

19 THE COURT: Yeah, I do.

20 MR. SLOCUM: Her same area of the store, I believe
21 she mentioned the Polo-Chaps area.

22 THE COURT: She did.

23 MR. SLOCUM: And the clothes that were taken on the
24 prior dates were clothes taken on March 16th. They were
25 similar in nature being that they were Polo items.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 THE COURT: Well, hang on. Polo makes a wide
2 variety of items; right?

3 MR. SLOCUM: Yes, sir.

4 THE COURT: Okay. I mean, were they --

5 MR. SLOCUM: Shirts.

6 THE COURT: -- men's Ts --

7 MR. SLOCUM: Polo shirts.

8 THE COURT: -- men's collared shirts?

9 MR. SLOCUM: Yes, sir.

10 THE COURT: That's what I'm looking for.

11 MR. SLOCUM: Yes, sir. There's actually a -- some
12 more information that I think she could provide to the
13 Court to clear it all up.

14 THE COURT: All right. Come on around. You're
15 still under oath. Okay.

16 MR. SLOCUM: Ms. Singletary.

17 THE WITNESS: Uh-huh.

18 PATSY SINGLETARY-SISO, testified further under oath
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. SLOCUM:

22 Q. In regards to March 16, 2014, what items did you
23 witness Mr. Anthony take from the store or attempt to
24 conceal from the store that day?

25 A. There were Polo style, Polo, Polo-collared shirts

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 on that particular table. There's a display of, of
2 several different styles of Polo short-sleeve spring
3 shirts.

4 There was a prior incident. He went to that
5 particular table, that roundabout we call it, and without
6 looking at size or price, took several of the same shirts,
7 like a stack of those shirts, and concealed it with
8 another shirt. So he did the same act on 3-16. He went to
9 that roundabout circular table that they fold the same
10 different size of style Polo-type shirts. And that's his
11 MO. He gets those type shirts.

12 THE COURT: And the first two prior occasions you
13 were watching through some surveillance system. The
14 second, third one you were down on the ground floor?

15 THE WITNESS: Well, the three prior, the second one
16 I was on the ground floor.

17 THE COURT: Okay.

18 THE WITNESS: But the first I noticed him -- he's
19 really quick, you know. He's in and out before I could
20 even get to the floor.

21 THE COURT: Okay.

22 THE WITNESS. The second time --

23 THE COURT: Was there anything done by you to
24 determine if inventory had changed at all during that
25 time?

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 THE WITNESS: Yes, sir. What we have the ability
2 to do is put in the item number or the SKU number from the
3 shirt and it tells you everything about the shirt, when it
4 was last sold, how many were sold. It keeps track of the
5 inventory.

6 THE COURT: Okay.

7 THE WITNESS: And when it reach a certain amount of
8 inventory, the system automatically reorders. The
9 particular shirt that Mr. Anthony was wearing on 3-16, and
10 I'm not saying that was the shirt but the particular one
11 he had on, I noticed that he had shoplift several of those
12 shirts prior. So I went back and checked the inventory
13 and we had not sold any. So when I confronted him on 3-16
14 the first thing I was telling him was, And you stole the
15 shirt you're wearing today to shoplift in.

16 THE COURT: Now I know I opened that door. So I'm
17 going to let you have some leeway to cross-examine.
18 Okay?

19 MR. SLOCUM: A few follow-ups, Judge?

20 THE COURT: Sure.

21 BY MR. SLOCUM:

22 Q. On this particular day, did Mr. Anthony leave the
23 store with the stuff that he had concealed?

24 A. Mr. Anthony got to the back home door at the time
25 North Augusta pulled up. He opened the door but he

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 immediately turned back around and hit the corner back
2 men's department.

3 Q. What happened after that?

4 A. As he was going to the back home door I was coming
5 from the LP office, coming down the main drive aisle by
6 the men's department. And I witnessed Mr. Anthony in the
7 corner removing items from under his shirt.

8 Q. You saw this on the floor?

9 A. I saw this on the floor.

10 Q. Live as it was happening?

11 A. Live as it was happening.

12 Q. What about the times prior, were you able to make
13 contact with him at all?

14 A. No, Mr. Anthony was -- well, there was one time
15 prior. The time when I was on the floor, the second time,
16 I thought that I had all five steps. And when I say five
17 steps, first I made the apprehension. We have to see them
18 enter, select, conceal, pass all points of sales of
19 merchandise, and then exit Belk to make the apprehension.

20 So the second time when I was on the floor and
21 noticed him, he beat me to the door. And I don't know if
22 he saw me coming behind him at that time but he jumped
23 into a black SUV and sped out of the parking lot.

24 Q. But you didn't ever get a chance to speak to him or
25 encounter him person to person --

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. No.

2 Q. -- until the 16th of March?

3 A. Exactly.

4 MR. SLOCUM: That's all the questions I have.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MR. McMILLIAN:

8 Q. Did you make any reports whatsoever of any of these
9 prior incidents?

10 A. No, sir. Because I made notations but the thing is
11 without a person there I've lost that shoplifter. So
12 there was no reports until I have that person in custody
13 with the LP office or North Augusta getting there at the
14 time they're exiting the building. But he had gone so
15 there was just a notation.

16 Q. Did you provide any of this information to anybody
17 before yesterday?

18 A. Meaning the three priors --

19 Q. Yes, ma'am.

20 A. -- that I noticed him? Yes.

21 Q. Who?

22 A. I just mentioned that I saw him.

23 Q. To whom?

24 A. To Jay.

25 Q. In a prior conversation with Mr. Slocum?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. Yes, that I knew the guy. He asked the question,
2 How I did know it was Anthony walking through the door.
3 And as I said, Because I had encounters with him about
4 three times prior.

5 Q. And when were those conversations?

6 A. Yesterday.

7 Q. So not before -- you had not told anybody prior to
8 yesterday that you had seen him three prior occasions
9 shoplifting?

10 A. My store manager, you know. When I don't get a
11 shoplifter or an incident take place, you know, I
12 communicate with my store manager. Not so much the
13 associates. Everyone is pretty much involved once we do
14 get a shoplifter or make an apprehension. North Augusta
15 come and they see the shoplifter being escorted. So when
16 they see me on the floor in plain clothing they see me
17 moving, they usually know that I'm getting ready to make
18 an apprehension. So I don't remember having a direct
19 conversation with other associates but definitely with my
20 store manager. Every time I say, Hey, you know, he came
21 in, this is what he did and I wasn't able to get him.

22 Q. Now you mentioned several people. None of those
23 people were ever North Augusta Public Safety; correct?

24 A. No. I only spoke with Jay on the priors.

25 MR. McMILLIAN: Judge, I don't have anything

1 further, I don't think.

2 THE COURT: All right. Do you need to do any
3 redirect?

4 MR. SLOCUM: Just quickly, Judge.

5 REDIRECT EXAMINATION

6 BY MR. SLOCUM:

7 Q. Is that your normal process? Do you only notify
8 law enforcement when you can and when you have a person
9 there for shoplifting?

10 A. Yes, because without a shoplifter there's no need
11 for them to come. There's no one to prosecute.

12 MR. SLOCUM: That's all, Your Honor.

13 THE COURT: All right. Thank you.

14 THE WITNESS: Uh-huh.

15 THE COURT: My concern when we left out before the
16 lunch break was that it's just whether or not there's
17 clear and convincing evidence that the crimes had
18 occurred.

19 Looking at the elements of the statute for
20 clarification -- I say crimes, prior bad acts -- my
21 leaning was that they were not admissible. I think that
22 they are admissible. I think they constitute a clear and
23 convincing evidence of a common scheme or plan in that
24 they were committed in the same way. They were in the
25 same part of the store, involving the same merchandise and

1 witnessed by the same witness.

2 Therefore, I think the State has established that
3 it's clear -- by clear and convincing evidence the common
4 scheme and plan, although it clearly is prejudicial.

5 MR. McMILLIAN: Judge, I have a couple of arguments
6 I'll reserve until you think they're appropriate.

7 THE COURT: Okay. I'll stop but I'm about to -- go
8 ahead.

9 MR. McMILLIAN: Judge, in reading 404(B) and the
10 specific language of the rule laid out in McCombs which
11 Your Honor cited earlier, the common scheme or plan
12 exception essentially requires a common scheme or plan
13 embracing the commission of two or more crimes so related
14 that proof of one tends to establish the other.

15 Judge, I don't believe a prior shoplifting, whether
16 or not he committed it, tends to prove this shoplifting.

17 THE COURT: Well, let me ask you in the case of the
18 McCombs case, weren't those rape cases or molestation
19 cases of young girls?

20 MR. McMILLIAN: I believe so, Judge.

21 THE COURT: So how then would a criminal sexual
22 conduct with one person establish criminal sexual conduct
23 with another minor? I mean, any more or less than was
24 done in this case with a shoplifting of similar items by a
25 similar man?

1 MR. McMILLIAN: Judge, I believe in this specific
2 case, in a property like this -- in a property offense
3 like this, the State should have to show that -- I mean,
4 we're not putting identity at issue. So it's certainly
5 not to identify.

6 THE COURT: Sure.

7 MR. McMILLIAN: If this were a common scheme or
8 plan it may be -- if the offense we were at trial here
9 for, Judge, were for receiving stolen goods or selling
10 stolen goods or some sort of issue where he was a fence,
11 he was selling, he was in the business of selling stolen
12 property and these prior shopliftings, maybe that's how he
13 obtained his merchandise, but I don't believe necessarily
14 that --

15 THE COURT: How would the evidence tend to
16 establish the crime at issue versus not to establish the
17 crime at issue? I hear what you're saying. And it has
18 some logical force behind it, but you start looking at the
19 factual cases where they admitted the prior bad acts.
20 They were not indicted. That act alone didn't, wasn't a
21 predicate upon establishing the other current act. Do you
22 understand what I'm saying?

23 MR. McMILLIAN: I do, Judge. And in that case I
24 would fall back on Rule 403(B) and say that the
25 prejudicial value of what the prejudice will be to my

1 client is so much heavier than any probative value that
2 the State can glean from this that it should be denied
3 or --

4 THE COURT: Under 403?

5 MR. McMILLIAN: -- suppressed on that issue.

6 THE COURT: Anything further on that issue? I
7 didn't mean to start before you got a chance to argue your
8 case.

9 MR. McMILLIAN: No, sir, Your Honor.

10 THE COURT: I am -- as I was saying, I do find the
11 State has proved by clear and convincing evidence of
12 these, or a common scheme or plan based on the manner in
13 which the crimes were committed, the actual taking of the
14 goods and that each time the concealment would follow
15 actually a particular part of the statute in shoplifting.
16 So I do think it's been established. It clearly is
17 prejudicial. It's not so much more so that it should be
18 excluded and therefore I'm going to let the prior three
19 acts be, I'll determine that they are admissible under
20 404(B).

21 Now, with that being said, I've got to do a plea.
22 Is the State otherwise ready to go?

23 MR. SLOCUM: We're ready to go, Judge.

24 THE COURT: Defense otherwise ready to go?

25 MR. McMILLIAN: Yes, sir, Your Honor.

1 THE COURT: Okay. Mr. Anthony, do you mind
2 stepping back for one moment? We're going to have one
3 other man come in here.

4 (Pause.)

5 THE COURT: Is the State ready to proceed?

6 MR. SLOCUM: We are, Your Honor.

7 THE COURT: Mr. Anthony, you can come back around.

8 THE DEFENDANT: (Complying.)

9 MR. McMILLIAN: They are not going to do that plea,
10 Judge?

11 THE COURT: They're not at this particular time.
12 Maybe --

13 MR. McMILLIAN: Judge, the only reason I asked is
14 my co-counsel was --

15 THE COURT: Okay.

16 MR. McMILLIAN: -- supposed to be back.

17 THE COURT: I forced you into finishing your
18 argument. Just let me know when he gets here.

19 MR. SLOCUM: Yes, sir.

20 THE COURT: Is he going to be here pretty soon?

21 MR. McMILLIAN: Yes, sir. I told him to run to the
22 post office because I thought that plea was scheduled at
23 two and I thought he would be here for the argument.

24 THE COURT: Okay.

25 MR. McMILLIAN: But I can't imagine he would be

1 very long.

2 THE COURT: Just send for me when he's back.

3 MR. McMILLIAN: Thank you, Your Honor.

4 (Court stood in recess from 2:30 p.m. until
5 2:43 p.m., and the trial resumed:)

6 MR. McMILLIAN: Judge, I know he said he was on his
7 way back.

8 THE COURT: We were going to start at 2:30 and it's
9 almost 15 minutes after. I'm about ready to get started
10 on the case. Okay? State ready?

11 MR. SLOCUM: We are, Your Honor.

12 THE COURT: Would you bring the jury in?

13 (Jury enters courtroom at 2:44 p.m.)

14 THE COURT: Madam Clerk, would you swear the jury,
15 please, ma'am?

16 THE CLERK: Yes.

17 (Jury impaneled.)

18 THE CLERK: Please be seated. The jury is sworn.

19 THE COURT: Do you have that indictment down
20 there?

21 THE CLERK: (Document handed to Judge.)

22 THE COURT: Thank you.

23 Okay. Ladies and gentlemen. We're about to start
24 the trial of the case of the State versus Edward Rodriguez
25 Anthony who's been charged with shoplifting.

1 I don't know if any of you have ever been involved
2 in a trial before either as a spectator or a witness or a
3 participant. I would expect, however, that each and every
4 one of you have watched what appears or purports to be a
5 trial on TV or at the movies. Let me first quickly dispel
6 you from any prior or preconceived notions you may have
7 developed from TV and movies. Trials are not like what
8 you see. They're not disposed of in five-minute
9 vignettes. They're very slow. They're very deliberate
10 and they're very methodical.

11 But they are a fundamental part of our democracy
12 that each person who's a citizen of this country has a
13 right to enjoy. They're a search for the truth to try to
14 see that justice is done.

15 Now these attorneys who are here for both sides to
16 this case, when they were sworn in as attorneys they took
17 an oath that they would zealously represent their client's
18 particular side of the case. And you can expect them to
19 do that in this case. But, at the same time, they are
20 officers of this court. What that means is you can expect
21 that these attorneys will be ethical, fair and impartial
22 with themselves and with myself and any witness that comes
23 before this Court.

24 Now you have taken an oath that you would try to
25 truly deliberate and reach a verdict in this case. I'm

1 certainly paraphrasing it but the parties have a right to
2 expect of you and the Court has a right to expect of you
3 that you will be fair and impartial and ethical in your
4 dealings in this case.

5 With that being said, what I'm telling you now is
6 not the law that you will apply to this case. I will give
7 that to you at the end of this trial. Right now it's
8 basically a road map that you can anticipate following and
9 seeing for the course of this trial so you know where you
10 are.

11 Now I think all of you indicated that you wanted to
12 take notes. Does everyone have pad and pencils?

13 THE JURY (COLLECTIVELY): (Nods head.)

14 THE COURT: Okay. Let me say two things about
15 notes. At the end of the day, Madam Forelady, just
16 because something appears in someone's notes doesn't mean
17 it trumps somebody's memory of that same issue or somebody
18 who doesn't have it in their notes. Some people are
19 better note takers than others and that's why they're
20 called deliberations. You will have to hash out those
21 differences but just because it's written down doesn't
22 mean it's an ace card. Okay?

23 Secondly, part of your function is you're to be the
24 sole judges of the facts. And I'll tell you about that in
25 a second but part of your function in performing your

1 duties as judges of the facts is to determine which
2 testimony you want to believe and which testimony you wish
3 not to believe.

4 And in doing so, you will have to look at the
5 person's demeanor while they're on the witness stand. If
6 they acted in a way that may indicate whether or not
7 they're telling the truth or not telling the truth, if
8 you're engaged in taking your notes you may miss something
9 that's a good indicator as to whether or not you should
10 believe their testimony. I just give you that as a
11 forewarning so you don't get too deep down in your notes
12 that you miss vital stuff here in the courtroom.

13 Now in this case, as I told you, the Defendant is
14 charged with shoplifting. The indictment is not in any
15 sense of the word proof of his guilt. It doesn't raise an
16 inference or a presumption of the Defendant's guilt
17 whatsoever. It is the mechanism by which the State brings
18 the Defendant, such as Mr. Anthony, before the Court and
19 for a trial of the determination of his guilt or
20 innocence.

21 In fact, Mr. Anthony has said, I'm not guilty. That
22 means the State has the burden of proving each and every
23 element of the charge of shoplifting by proof that
24 satisfies you of guilt beyond a reasonable doubt.

25 So let me give you a brief definition of reasonable

1 doubt. I will give it to you again at the end of the
2 case. A reasonable doubt is a kind of doubt that would
3 cause a reasonable, sincere and conscientious person to
4 hesitate to act in an important matter in their own
5 affairs.

6 Now I don't know if you've ever been involved in a
7 civil case where the burden of proof is by a preponderance
8 or greater weight of the evidence. In criminal cases the
9 burden is much higher, it is beyond a reasonable doubt.

10 Now with that being said, there are very few things
11 in this world that we know with absolute certainty. And
12 in criminal cases the State is not required to overcome
13 every possible doubt. At the end of this case if you're
14 firmly convinced that the Defendant is guilty of the crime
15 for which he's been charged, it will be your duty to find
16 him guilty. On the other hand, if you think there's a
17 real chance that the Defendant is not guilty, there's a
18 real possibility that he's not guilty, then you must give
19 him the benefit of the doubt and find him not guilty.

20 Now as I told you, your purpose as jurors is to
21 determine what the facts are. We say you're the sole
22 judges of the facts. If I do anything at any time
23 throughout the course of this trial that seems to indicate
24 to you how you are to find facts, I'm going to ask you,
25 but also instruct you, to disregard it. Our constitution

1 does not allow any trial judge to have a comment or an
2 opinion about the facts of the case.

3 No one can invade your province in determining what
4 the facts are. In other words, what verdict are you going
5 to reach. But, on the other hand, the law that makes you
6 the sole finders of the facts makes me the sole judge of
7 the law. You must accept the law as I charge it to you.
8 You may not be concerned with what you'd like it to be but
9 only what it is. And you apply that law to the facts as
10 you find them to be and hopefully reach your verdict. And
11 you'll determine what those facts are by the testimony you
12 hear from this witness stand, somebody who's sworn and
13 somebody who's subject to cross-examination, and any
14 exhibits that have been admitted.

15 Now, with that being said, I remind you not to
16 begin your deliberations throughout the case until I tell
17 you to. Do not look about at any news or any information
18 about this case.

19 Every case has five phases: You will have an
20 opening statement by the State; you'll have presentation
21 of the evidence by the State; you will have closing
22 arguments by the attorneys; charge on the law by myself;
23 and then you'll begin your deliberations.

24 And the State will get up in just a moment and give
25 their contentions about what their case is and what it's

1 about and what they intend to prove. The State's
2 contentions is not evidence. Their attorneys are not put
3 on the stand. They will not be cross-examined. It's
4 helpful and it's designed to teach you what the case is
5 about but at the end of the day if what you're told by
6 these attorneys differs from your memory of what those
7 facts are, then your memory will control.

8 Likewise, the defense has a right, but no
9 requirement, to make an opening statement. If the
10 Defendant chooses to make an opening statement, the same
11 rules apply. It's just their contention. If your memory
12 differs then your memory will control.

13 And the reason why the defense does not have to
14 make an opening statement is because the burden remains on
15 the State of South Carolina at all times to prove his
16 guilt by proof beyond a reasonable doubt.

17 Finally, ladies and gentlemen, in every case I've
18 ever been involved with as an attorney or as a judge
19 there's been objections. I anticipate there will be some
20 in this case. To the extent I let you stay in here in the
21 courtroom and see my ruling on those objections or the
22 fact that an objection is made, Madam Forelady, it is not
23 a topic for the jury's deliberations when you begin your
24 deliberations. It is for -- granted to say, that's part
25 of the process that you will go through and you go through

1 in every trial. The fact that an objection was raised or
2 my ruling shall not be considered by the jury at any
3 time. Okay?

4 Now just to make sure I didn't misstate anything or
5 omit to tell you something I should have, I'm going to
6 send you back to your jury room very quickly. If I summon
7 you back before you're ready now or at any other time just
8 send word. Otherwise we should get you back in very
9 quickly. Okay? You may go back to the jury room, ladies
10 and gentlemen.

11 (Jury exits courtroom at 2:55 p.m.)

12 THE COURT: Any addition or exceptions from the
13 State?

14 MR. SLOCUM: None from the State, Judge.

15 THE COURT: From the defense?

16 MR. McMILLIAN: None, Your Honor.

17 (Mr. Thompson enters courtroom.)

18 THE COURT: Should I hold him in contempt?

19 MR. McMILLIAN: Judge, I'm going to take the blame
20 for it. I actually told him I thought everything was
21 scheduled such that he could make it back.

22 MR. THOMPSON: And I apologize.

23 THE COURT: That's all right. Do you want to take
24 a quick break before we get started?

25 MR. McMILLIAN: I'd like to use the restroom.

1 THE COURT: That's what I meant.

2 MR. SLOCUM: Yes, sir.

3 MR. McMILLIAN: Yes, sir.

4 THE COURT: Two minutes.

5 (Break taken from 2:55 p.m. until 2:59 p.m., and
6 the trial resumed:)

7 THE COURT: State ready?

8 MR. SLOCUM: State is ready.

9 THE COURT: Defense ready?

10 MR. McMILLIAN: Defense's ready.

11 THE COURT: Are you going to make an opening
12 statement?

13 MR. McMILLIAN: I am.

14 (Jury enters courtroom at 3:00 p.m.)

15 THE COURT: Madam Forelady, ladies and gentlemen.
16 If at any time you cannot hear the testimony or somebody
17 blocks your view, just let us know. If anybody needs a
18 break, if you'll just let us know. Okay?

19 State ready to proceed?

20 MR. SLOCUM: We are, Judge.

21 THE COURT: Defense ready to proceed?

22 MR. McMILLIAN: Yes, sir, Your Honor.

23 THE COURT: Counsel?

24 MR. SLOCUM: Thank you, Judge. May it please the
25 Court.

1 THE COURT: Yes, sir.

2 MR. SLOCUM: Mr. McMillian. Madam clerks. Ladies
3 and gentlemen of the jury. My name is Jay Slocum. I
4 represent the State of South Carolina in this matter. I'm
5 from South Georgia. I'm a transplant, but don't hold that
6 against me, please.

7 Today we're here to talk about shoplifting. And
8 the State is alleging that on March 16th of last year
9 Mr. Anthony shoplifted from Belk's. Now, for me it was
10 home and school and church is where I learned right and
11 wrong. We learned it in some form or fashion from
12 somebody; moms, dads, grandparents, brothers, sisters. We
13 know what it is. We know it when we see it.

14 And shoplifting is taking something from the store
15 that doesn't belong to you without paying for it. Now the
16 legislators in Columbia decided that they thought they
17 better make it a little more formal than just taking
18 something from the store without paying for it.

19 And the law -- I'm paraphrasing here. The Judge is
20 going to give you the law so please go with whatever he
21 tells you. South Carolina codifies the law as taking or
22 concealing or possessing or transferring from one area of
23 the store or causing to be transferred from one area of
24 the store merchandise for sale by a retail establishment.
25 Basically taking something from a store without paying for

1 it.

2 And as the Judge said, our burden. It's the
3 State's burden of proving that. We have to do it beyond a
4 reasonable doubt. Not all doubt. Not for 100 percent
5 certainty, but for reasonable doubt.

6 And, so we have y'all 12 to decide what's
7 reasonable. And we selected y'all for your common sense.
8 We didn't ask you to check your common sense at the metal
9 detector when you came through. And that's all I'm asking
10 you to do is use your common sense today with what you see
11 and what you hear.

12 Now there's two ways you're going to hear from us.
13 There two types of evidence that we have: It's direct,
14 what you see, what you can smell, what you can touch; and
15 then you have circumstantial evidence. An example I like
16 to use is I have three sisters and eight nieces and
17 nephews; Nick, Jake, Kate, Clair, Stella, Davis, Brady and
18 John Allen. And they range from 13 to eight months. And
19 as they get older you can kind of judge who's getting
20 better at getting around their parents. You have a six
21 year old who has crumbs on their face and chocolate on
22 their lips and without even asking them you know that
23 they've been in the cookie jar because you can see the
24 evidence on their face. You didn't see them get into the
25 cookie jar, but you can use your everyday common sense to

1 deduce somebody's been in the cookie jar.

2 Same concept with this room. No mirrors -- I mean,
3 no windows. You got two people come in that back door.
4 The first one's carrying an umbrella. The second one
5 doesn't have an umbrella. And they're both walking in.
6 The first guy's dry, the second guy's soaking wet. You're
7 not outside. You can't see that it's raining, but based
8 on that you can deduce that it's maybe raining outside.

9 So that's all I'm asking you to do is use your
10 everyday common sense. And at the end of this trial I
11 think when you see what Ms. Patsy has to tell you from
12 Belk's and what the officer from North Augusta is going to
13 tell you what happened on March 16th of last year, the
14 only reasonable conclusion is going to show that
15 Mr. Anthony's guilty of shoplifting.

16 Thank you for being here. One thing is great about
17 this state and this country is that there's 12 people in
18 this box. And whether it's shoplifting or murder, it's
19 12. So this is important for everybody. I thank you for
20 being here and I thank you for your service.

21 THE COURT: Does the defense wish to have an
22 opening statement?

23 MR. McMILLIAN: Please, Your Honor.

24 THE COURT: Yes, sir.

25 MR. McMILLIAN: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. McMILLIAN: Ladies and gentlemen. I agree with
3 just about everything Mr. Slocum told you. Just about. I
4 think it's great that you all are here, too, that it's 12
5 people, that y'all are here to decide whether or not my
6 client shoplifted.

7 What I'm not so sure I agree with is that he
8 explained shoplifting to you as moving or transporting
9 merchandise in the store. The fact of the matter is, we
10 do that everyday. Called shopping. When I go into the
11 grocery store, I grab a cart and then I put the things in
12 the cart and I push it around the store. And if I decide
13 at some point that I don't want something, it's okay to
14 put it back. That's got to be okay. That's what shopping
15 is.

16 Now, the part he left out is the intent. The part
17 he didn't tell you about is that you had to move something
18 in the store with intent to steal it. And they've got to
19 prove that to you beyond a reasonable doubt.

20 The other great benefit my client gets sitting
21 before you here today is the presumption of innocence.
22 And I thought for a long time about how I was going to
23 convey the presumption of innocence to y'all. And I don't
24 think it's overstepping to tell y'all, Mr. Slocum and I
25 are friends outside of work. Mr. Slocum and I -- and I

1 don't think anybody in this courtroom would deny that I
2 actually love my eight year old 80-pound labrador. His
3 name is Leroy Brown. The story of why he's Leroy Brown's
4 a story for another day.

5 But last night when I was thinking of how to
6 explain this presumption of innocence to y'all, it
7 occurred to me when he stood up on my couch, just like I'm
8 two front feet, just wagging, just happy to be there, and
9 he dropped the tennis ball. I of course got my pad and my
10 pens and I'm, you know, going a mile a minute. This is
11 really important.

12 And I thought to myself, How am I going to explain
13 this to these people? I want y'all to think about this
14 for a minute. Pretend with me for a few minutes that
15 Leroy Brown's on trial. Okay? The only problem I've ever
16 had out of my dog is I can't keep him off the couch not to
17 save my life. As a matter of fact, I will bet you right
18 now, despite baby gates and everything, he's probably
19 still up there. But we don't know so we're going to have
20 a trial over whether or not he was there.

21 Now I want you to imagine that the State brought
22 somebody in and they said, Well, we collected dog hair off
23 the couch. We collected it. It's yellow, about yea
24 long. You might see some of it on my suit somewhere, I'm
25 not real sure. But we didn't keep any of that yellow dog

1 hair, we didn't hold onto that. We didn't keep it so
2 y'all can touch it, see it, smell it, feel it, compare
3 it. We could do that, but we didn't.

4 Imagine they play a video for you. And that old
5 dog walks around my living room. He touches the couch.
6 And he makes a loop and his tail might even brush the
7 pillows off. Ladies and gentlemen, that's not being on
8 the couch.

9 They want you to use your good sense, your common
10 sense.

11 Ladies and gentlemen, I believe at the close of all
12 of this, you're going to be left with one overwhelming
13 doubt. That's the presumption of innocence. Imagine now
14 sitting here that I told you if you found Leroy guilty,
15 there's a punishment. Maybe I'll just go whop him with
16 the newspaper, you know, like you scold the dog. Did that
17 make your stomach tense up? I'm a dog lover. It hurts me
18 to even think about it. But if you wince up, if you're
19 not sure he was on the couch, he's not guilty.

20 And at the close of all of this, I don't think
21 you'll be sure and I'll ask you to find my client not
22 guilty. Thank you.

23 THE COURT: Call your first witness, please, sir..

24 MR. SLOCUM: Thank you, Judge. The State calls
25 Ms. Patsy Singletary-Siso.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 PATSY SINGLETARY-SISO, having been duly sworn, was
2 examined and testified as follows:

3 THE CLERK: Please have a seat in the witness box.
4 State your full name for the Court and spell your last.

5 THE WITNESS: Okay. My name is Patsy Singletary-
6 Siso, S-I-S-O.

7 DIRECT EXAMINATION

8 BY MR. SLOCUM:

9 Q. Ms. Patsy, good morning. Do you mind if I call you
10 Ms. Patsy?

11 A. That's fine.

12 Q. Where do you currently work?

13 A. Lowe's Department Store in North Augusta.

14 Q. How long have you been with Lowe's?

15 A. Since August 2014.

16 Q. And where were you working before you went to
17 Lowe's in August of 2014?

18 A. Belk Department Store in North Augusta, South
19 Carolina.

20 Q. What's the address of that?

21 A. 1163 Knox Avenue.

22 Q. Is that in Aiken County?

23 A. It is.

24 Q. In what capacity were you working at that Belk's?

25 A. Loss prevention.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 Q. And what all does that entail?

2 A. Loss prevention is where we do the prevention of
3 internal-external thefts. So we basically catch
4 shoplifters.

5 Q. And are you -- do you have any training for that
6 kind of thing?

7 A. Yes, sir.

8 Q. Can you explain that, please?

9 A. Sure. Through Belk program. We go through several
10 trainings before we're certified to make an apprehension.
11 There are tests that we must take and pass. There's
12 handcuff training that we must pass. And before we can
13 make our first apprehension, it's usually done with the
14 area loss prevention manager.

15 Q. And were you working at Belk's last March 16th of
16 2014?

17 A. Yes, I was.

18 Q. How long had you been at Belk at that time?

19 A. July 2013.

20 Q. And you stayed through the following year so to
21 speak?

22 A. Yes.

23 Q. About a year. Are you familiar with the floor
24 plan, the layout of Belk's?

25 A. I am.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 MR. SLOCUM: Permission to approach, Judge?

2 THE COURT: Yes, sir.

3 BY MR. SLOCUM:

4 Q. Ms. Patsy, I'm handing you what has been marked,
5 previously marked for identification purposes only as
6 State's Exhibit Number One. Do you recognize that?

7 A. Yes, sir, I do.

8 Q. And what is it?

9 A. It's the floor plan of Belk.

10 Q. How were you able to recognize it?

11 A. I initial here and there. And I am familiar with
12 seeing it on numerous occasions.

13 Q. You've seen it before today?

14 A. Yes, sir.

15 Q. When you made those marks on that piece of paper,
16 has anything else changed from the last time you saw it?

17 A. No, sir.

18 Q. Does it represent the floor plan on March 16th of
19 2014 --

20 A. Yes, sir.

21 Q. -- at Belk? Has anything else been changed,
22 altered or taken off of that piece of paper?

23 A. No. I can identify it's the same.

24 MR. SLOCUM: Your Honor, at this time the State
25 moves to enter Exhibit One into evidence.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 THE COURT: Any objection?

2 MR. McMILLIAN: Without objection, Judge.

3 THE COURT: Admitted.

4 (State's Exhibit No. 1, Belk floor plan, received
5 into evidence.)

6
7 BY MR. SLOCUM:

8 Q. Ms. Patsy, what caused you to become involved in
9 the case today?

10 A. I was the one that made the apprehension with
11 Mr. Edwards on 3-16.

12 Q. Okay. What -- what were you wearing? What's your
13 uniform like? On March 16th, what is your daily uniform?

14 A. Plain clothing as I am now. It is to disguise as
15 if I am a shopper. So, plain clothing.

16 Q. And do you walk the floor? Do you stay in an
17 office? What are your daily activities?

18 A. I do both. I walk the floor. I monitor. We use a
19 system called IntelSystem. It's several cameras where we
20 have full view of the store. So we operate a CC-TV
21 monitoring system as well as we walk the floor.

22 Q. And in your time at Belk's, did you ever have a
23 chance to be involved in other shoplifting cases?

24 A. Yes, sir. Numerous.

25 Q. How many would you say over your year have you been

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 -- in your year with Belk's that you were involved with?

2 A. Over 50.

3 Q. And what are the ways that you notice shoplifting,
4 how do you pick up on it?

5 A. Shoplifting become a pattern. You -- there are
6 things you observe. A shoplifter enters, they usually
7 don't look at size or cost of items.

8 MR. McMILLIAN: Judge, at this time I'm going to
9 object to her testimony as opinion based.

10 THE COURT: Just one second. Would you take the
11 jury to the jury room, please?

12 (Jury exits courtroom at 3:15 p.m.)

13 MR. SLOCUM: Judge, I think I can fix this problem
14 real quick.

15 THE COURT: Okay.

16 MR. SLOCUM: With one question. Just ask her in
17 her experience in dealing with shoplifting cases how has
18 she seen them personally, not what usually happens. I
19 think that may cure any concern.

20 THE COURT: Let me make sure. I thought when you
21 objected you said I object on it being pen based. I
22 wasn't sure what you said.

23 MR. McMILLIAN: Opinion-based testimony.

24 THE COURT: Opinion-based. Okay.

25 MR. McMILLIAN: She's speaking in generalities.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 THE COURT: Sustain your objection as to the
2 question, but you just re-question the witness.

3 MR. SLOCUM: Yes, sir.

4 THE COURT: Rephrase your question. All right.
5 Would you bring the jury back?

6 (Jury enters courtroom at 3:17 p.m.)

7 THE COURT: Rephrase your question.

8 MR. SLOCUM: Thank you, Judge.

9 Q. Ms. Patsy, in your experience how have you seen
10 shopliftings occur in Belk's?

11 A. Okay. In my experience numerous of times I
12 observed a shoplifter making selection of items where they
13 are not looking at the size or the cost, selecting several
14 of the same kind, usually entering the fitting room with X
15 amount of items, coming out with less than, once checking
16 the fitting room those items are no longer there. I've
17 experienced shoplifters on the floor placing the items
18 under their clothing that they're wearing or in bags.

19 Q. Okay. And what led you to become involved on March
20 16, 2014, in this case?

21 A. When Mr. Edwards entered the door --

22 Q. Would you please point Mr. Edwards out in the
23 courtroom?

24 A. The gentleman with the blue pattern shirt and the
25 light blue T-shirt underneath.

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1 MR. SLOCUM: For the record, Your Honor, she's
2 identified the Defendant.

3 THE COURT: So noted.

4 BY MR. SLOCUM:

5 Q. Please go on.

6 A. I had observed Mr. Edwards, like, three times
7 prior.

8 MR. McMILLIAN: Objection, Judge.

9 THE COURT: Overruled.

10 BY MR. SLOCUM:

11 Q. Please continue.

12 A. Inside of Belk. Mr. Edwards was -- always worked
13 very quickly. When I say that, he entered the same MO.
14 He would enter the men's department, he would select
15 several items of Polo, Polo meaning like Polo collared
16 shirts with the brands Polo or Chaps.

17 Q. Ms. Patsy, when did these previous times occur?
18 When did you see him in the store before?

19 A. Within a couple months or so. The time before the
20 16th, probably a couple weeks even before.

21 Q. And what was he doing in those three times?

22 A. The same thing. He entered the store. He select
23 several items, Polo items, in the men's department,
24 concealed them over with another shirt, like a longer
25 shirt. I get a count on the items. He immediately go

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1 into the men's dressing room, come out with those items --
2 no, come out without the items and immediately hit the
3 door. I was unsuccessful in obtaining him those three
4 prior times.

5 So I knew him immediately when he walked in the
6 fourth time.

7 Q. And that would be on the 16th of March?

8 A. Yes, sir.

9 Q. How did you view these prior incidents?

10 A. CC-TV.

11 Q. What does that mean?

12 A. On the monitor on the camera system we have the
13 capabilities of zooming in to the items piece by piece.
14 So there's five steps that we have to have with Belk to
15 make apprehension: We have to see you enter; we have to
16 see you select the items; conceal the items; pass all
17 points of sales without paying for the merchandise; and
18 then exit.

19 So on the numerous times I witness Mr. Edwards get
20 the items, he was very quick. By the time I got from the
21 LP office he was already out the door with the merchandise
22 unpaid for.

23 Q. What time of day were these prior three incidents?

24 A. It was usually in the evening. Evening time is
25 generally when the store is less staffed. In my

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1 experience that's when most shoplifters enter. Less
2 associates on the floor, easier accessibility to the
3 dressing rooms and corners.

4 Q. Do you recall what Mr. Edwards was wearing on those
5 three prior occasions?

6 A. Yes, I do. He had on a stripe Polo shirt, numerous
7 of colors, yellow, green, red; baggy jeans and a black
8 hooded sweatshirt, very similar to what he had worn
9 before. But this particular day, 3-16 --

10 Q. What day are you talking about, the 16th, now?

11 A. Uh-huh, 3-16. Prior to one of the times he had
12 came in, those were shirts that -- or, I'm not saying this
13 particular shirt was one of them, but he shoplift that
14 pattern of a shirt prior to 3-16. So when Mr. Edwards
15 walked in the store on 3-16 it was obvious to me that that
16 was the same shirt that was shoplift prior.

17 Q. He had on a shirt similar to the one that had been
18 missing from Belk's; is that right?

19 A. Exactly.

20 Q. The three prior incidents, you said CC-TV and then
21 one was live you saw on the floor?

22 A. Yes. It's closed-circuit television is what we
23 use. And then the second time it was live on the floor.
24 And that time I actually made it to the door right as he
25 was leaving out. I'm not for sure if he saw me coming

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1 behind him or not. And he immediately jumped into a dark
2 SUV and sped off through the parking lot.

3 Q. Did you ever have a chance to encounter him on
4 those three prior occasions?

5 A. No, sir. That was the first -- the second time on
6 floor was the first time I had got as close to him before
7 the date of 3-16.

8 Q. You mentioned the five steps. One of them being
9 you had to wait until they pass all points of sale?

10 A. Yes.

11 Q. What does that mean?

12 A. No registers. Where you can't be a buyer in the
13 direction of being able to pay for the merchandise. The
14 way the home store is set, the register going out to the
15 doors to the left, the register is to the right. And the
16 other registers are in the men's department. So the door
17 that he was leaving out, there was no point where he could
18 have paid for the merchandise.

19 Q. I'm going to show you back State's Exhibit One.
20 You've marked on this two separate occasions. Will you
21 please tell us what your marks are?

22 A. Okay.

23 Q. And what they indicate?

24 A. One of the marks is the LP office. This is where
25 we work from, where our closed circuit television system

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1 is. And the other mark that I made is the home door where
2 Mr. Anthony exited from.

3 Q. And we'll show it a little later. Can you tell us
4 on what end of the store both of those locations are?

5 A. Sure. If I'm facing the front of the store, on the
6 right-hand side through the children's department is the
7 LP office. And then if you -- on the back left-hand side,
8 front side of the store is the home exit door.

9 Q. What does LP mean?

10 A. Loss prevention.

11 Q. That you were working in --

12 A. Yes.

13 Q. -- in March of last year?

14 A. Yes.

15 Q. What type of items or clothing specifically did you
16 see Mr. Edwards take on those three prior dates?

17 A. The same style of clothing. When you come through
18 the --

19 MR. McMILLIAN: Judge, may we approach?

20 THE COURT: Yes, sir.

21 (Off-the-record discussion.)

22 MR. McMILLIAN: Thank you, Your Honor.

23 BY MR. SLOCUM:

24 Q. Ms. Patsy, you can continue. What type of shirt
25 did you see him take --

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1 A. Polo shirts. When you come through the main
2 entrance inside of Belk, the Polo department is right --
3 located in the men's department. And that is the
4 merchandise that he usually went for on the priors that I
5 witness him taking. Again, he takes several stacks of the
6 same kind, different sizes and without observing price.
7 He selects them and then conceals with another shirt. So
8 he didn't change his pattern on 3-16.

9 Q. Did you notice any discrepancy in inventory from
10 the prior three --

11 A. Yes.

12 Q. -- events? How so?

13 A. The second time once I missed Mr. Anthony as he
14 went out the door and I observed the striped Polo shirt
15 again, several of them missing, I went to our inventory,
16 our system, where we can track to see if we have any of
17 those shirts sold, how many were sold, the dates that they
18 were sold, even the customer that they were sold to if
19 they were not cash or debit transactions. At that time we
20 were missing several and had not sold any.

21 Q. But you weren't able to confirm that the shirt he
22 had on on the 16th was one of the ones missing, were you?

23 A. It was the shirt that was indicated that we had not
24 sold any. It was also the shirt that I witnessed, the
25 second time, Mr. Anthony selecting and exiting the store

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1 without paying for it.

2 Q. But you didn't have a way to link it back at
3 Belk's, is what I'm asking, as being one of your
4 inventory. Just that it was similar?

5 A. Just similar. Well, the SKU number on the shirt
6 indicates that that shirt, the brand and the cost of the
7 shirt, the maker of the shirt. So that particular shirt
8 that he had taken the second time, I was able to retrieve
9 one of those same shirts from the floor. And that's how I
10 was able to do the inventory on it. When he returned on
11 3-16, he had on that particular shirt that was missing in
12 inventory.

13 Q. Were you able to confirm the shirt he had on -- was
14 what I'm asking. Was there a bar code on it for you to
15 confirm with the second shoplifting?

16 A. No. There wasn't -- well, he was wearing the
17 shirt. I didn't get close enough to --

18 Q. Right. That's all.

19 A. No.

20 Q. Okay. When did you first notice Mr. Anthony in the
21 store on March 16th, 2014?

22 A. Immediately. Immediately.

23 Q. When you say immediately, what do you mean?

24 A. Immediately when he walked through the door. I
25 mean literally when he opened the door to enter I zoomed

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1 the camera in on him. I happened to be in the office.
2 That's a fixed camera. And when I observed Mr. Anthony
3 which I have -- which I at this point know him by face so
4 when he walked through the door I immediately zoomed the
5 camera in on him.

6 Q. So you were in the office?

7 A. Yes.

8 Q. And what did you see?

9 A. I observed Mr. Anthony walk past the junior's
10 department. Again go into the men's department. He
11 selected several pairs of blue jeans, a large oversize
12 plaid shirt. He crossed back over to the Polo department,
13 back to the round table where we fold and have the
14 Polo-style shirts. He selected several of those, again
15 without looking at price or size, a stack of those for --
16 as well as another pair of jeans, I believe.

17 At that point he went to the back dressing room and
18 then I observed Mr. Anthony coming out with none of the
19 red and white -- the shirts are red and white striped Polo
20 shirts. Very visible to see on camera. I observed
21 Mr. Anthony exit without any of the merchandise.

22 Q. Okay. At what point did you notify law
23 enforcement?

24 A. Immediately then I contacted --

25 Q. When?

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1 A. Once Mr. Anthony exit the dressing room without the
2 merchandise and the dressing room was checked and there
3 wasn't any merchandise left in the dressing room.

4 Q. Did you check the dressing room?

5 A. No. At that point I called an associate to check
6 as I'm coming down the aisle. We usually work together.

7 Q. You call on a cell phone, walkie-talkie? How does
8 it work?

9 A. Just on the regular store phone; dressing room,
10 men's, do you see and I identify the item and it was a
11 clear no, no items. And I could tell that Mr. Edwards had
12 a bulge in the front of his black sweatshirt.

13 Q. Did Mr. Anthony make it out of the doors?

14 A. Mr. Anthony was proceeding to the doors at this
15 time. He got to the door exiting and North Augusta pulled
16 up at that exact moment. He immediately turned back
17 around and came back to the side back wall of the men's
18 department.

19 Q. And where were you at this point?

20 A. I was coming down the main drive aisle, passing the
21 Polo department, heading towards Mr. Anthony's direction
22 where I observed him removing articles of clothing.

23 MR. SLOCUM: Permission to approach, Judge?

24 THE COURT: Yes, sir.

25 BY MR. SLOCUM:

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1 Q. Ms. Patsy, I'm showing you what's been marked
2 previously for identification purposes as a State's
3 Exhibit Two and Four.

4 A. Okay.

5 Q. Can you take a look at those, please, and tell me
6 if you are able to recognize them.

7 A. Yes, sir. Exhibit Two are the items, the red Polo
8 shirts and a pair of denim jeans. And Exhibit Four are
9 the Polo shirts that I retrieved. And I can identify them
10 because they had been altered with a --

11 Q. Don't testify to them just yet.

12 A. Oh, okay.

13 Q. Do you recognize them?

14 A. Yes, sir.

15 Q. Exhibit Two, what is that specifically?

16 A. This is the receipt of the merchandise retrieved
17 back from Mr. Anthony.

18 Q. And is it from March 16th of 2014?

19 A. Yes, sir. The receipt indicates.

20 Q. And the picture, is that from the clothes you saw
21 Mr. Anthony discard?

22 A. Yes, sir.

23 Q. All right. Have those pictures been altered,
24 changed, anything deleted from them to your knowledge?

25 A. No, sir. I photographed these pictures.

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1 MR. SLOCUM: Okay. Your Honor, at this time the
2 State moves to enter Exhibits Two and Four into evidence?

3 THE COURT: Any objection?

4 MR. McMILLIAN: Yes, sir, Your Honor. There's been
5 no testimony about when those pictures were taken.

6 THE COURT: Lay a little more foundation, please,
7 sir.

8 BY MR. SLOCUM:

9 Q. When did you take those pictures?

10 A. Immediately. After every case we have to
11 photograph the evidence.

12 THE COURT: Okay. They'll be admitted subject to
13 objection.

14 (State's Exhibit Nos. 2 and 4, photographs,
15 received into evidence.)

16 BY MR. SLOCUM:

17 Q. Can you please tell the jury what you see in
18 Exhibit Number Two?

19 A. Yes, sir. The receipt. Once we retrieve the items
20 I had Julian, which is the store manager, go and make a
21 receipt because we have to submit a receipt along with
22 pictures of the evidence for our records.

23 Q. And what about State's Exhibit Number Four?

24 A. These are the Polo shirts I described that I
25 photographed. I positioned them to where I could get the

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1 tag. And you can see the holes inside of them. These are
2 where the alarms were removed from. The EAS alarms were
3 removed from the shirts.

4 Q. Can you explain what an EAS alarm is, what it looks
5 like and what it does?

6 A. Yeah. It's tan. In size, it's two parts about
7 this long (indicating). It's like, it's collapsed
8 together. It's an alarm that we place on the clothing.
9 The pedestors {sic} sit at the door so if you're taking
10 merchandise and we forgot to remove the EAS alarm from it,
11 it beeps and notifies you that we forgot to remove the tag
12 from the clothing. So it's an alarm system that Belk use.

13 Q. Okay. And did those Polo shirts have those EAS
14 tags on them?

15 A. Yes, sir.

16 Q. Who puts those out on the floor?

17 A. Merchandising associates.

18 Q. And who determines what gets tagged and what
19 doesn't?

20 A. Polo is an item that does, the company. High-end
21 merchandise.

22 Q. Did you find any tags from March 16th, 2014, either
23 in the dressing room or on the floor somewhere?

24 A. An associate brought tags to me.

25 Q. Do you have any way to determine if they came from

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1 those shirts?

2 A. Not really. They just mentioned that these tags
3 was on the floor from where I retrieved the shirts from.

4 MR. McMILLIAN: Objection, Judge.

5 THE COURT: Sustained.

6 MR. McMILLIAN: Move to strike that last comment
7 from the record.

8 THE COURT: Overruled.

9 BY MR. SLOCUM:

10 Q. Those were the shirts you saw Mr. Anthony pull out
11 of his --

12 A. Yes, sir.

13 Q. -- underneath his clothes? Okay.

14 Your Honor, permission to have the witness step
15 down so she can, we can publish Exhibits One and Four to
16 the jury?

17 THE COURT: Yes, sir.

18 THE WITNESS: You want me to step down?

19 MR. SLOCUM: Yes, for a second.

20 THE WITNESS: (Complying.)

21 BY MR. SLOCUM:

22 Q. This is -- Patsy, this is State's Exhibit One.

23 Would you show the jury where you have indicated on
24 this -- can you show them on the TV where that is?

25 A. Yes, sir. It's right here.

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1 Q. And what is that?

2 A. This is the loss prevention office.

3 Q. And is that where you have the closed-circuit
4 television cameras?

5 A. Yes, sir.

6 Q. What's the other mark?

7 A. That's the home exit right here. Home exit doors.

8 Q. All right. Where are the doors that you saw
9 Mr. Anthony go towards on March 16th, 2014?

10 A. The home exit doors.

11 Q. And where were you?

12 A. I was coming from the LP office here.

13 Q. All right. At what point -- or did you have a
14 chance to make an encounter with him?

15 A. When I came from the LP office here I took the main
16 drive out here. Mr. Anthony had already turned from the
17 doors here and I met right here in this area as he was
18 removing the merchandise, but I was here with clear view
19 of that corner.

20 Q. You were on this aisle so to speak --

21 A. Yes.

22 Q. -- or roadway in other words --

23 A. Yeah.

24 Q. -- inside Belk's? And you had a shot to see him
25 pull the clothes from --

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1 A. Yes.

2 Q. -- under his shirt?

3 A. Yes.

4 Q. About how far if you had to guess?

5 A. I'm not for sure. From maybe here to that --

6 Q. From me to you?

7 A. Yeah.

8 Q. Okay. Where did you find those shirts?

9 A. Right in the area that I witnessed him remove.

10 Q. When did you get those shirts?

11 A. After he got to the LP office, I immediately came

12 back to the floor and retrieved them.

13 Q. And State's Exhibit Number Four, what is that?

14 A. These are the shirts that I witnessed Mr. Anthony

15 selecting. And these are the photographs that I took of

16 the shirts once I got them back to the LP office. These

17 are the tears that I was describing where the EAS alarm

18 was ripped. Here and here.

19 Q. So these holes aren't normally in the shirts?

20 A. No, sir. We could not sell them. They're ruined

21 at that point.

22 Q. And these Polo shirts did have those EAS tags on

23 them?

24 A. Yes, sir.

25 Q. They're supposed to have them on them?

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1 A. Yes, sir.

2 Q. And these shirts you saw him pull him out of his
3 clothing?

4 A. Yes, sir. I photographed them so I could make sure
5 the holes were visible.

6 Q. You can have a seat.

7 MR. SLOCUM: Permission to approach, Judge?

8 THE COURT: Yes, sir.

9 BY MR. SLOCUM:

10 Q. Are there video cameras at Belk's?

11 A. Yes, sir. There are.

12 Q. About how many?

13 A. I want to say about 30.

14 Q. Did you provide video from March 16th, 2014, to law
15 enforcement in this case?

16 A. Yes, sir. I did.

17 Q. I'm showing you what's been marked State's Exhibit
18 Number Three. Do you recognize what that is?

19 A. This would be the videotape of Anthony.

20 Q. From March 16th, 2014?

21 A. Yes, sir.

22 Q. Have you viewed that before?

23 A. I have. Those are my initials.

24 Q. Indicating you have viewed it?

25 A. Yes, sir.

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1 Q. Has anything changed from March 16th, 2014?

2 A. Not to my knowledge.

3 Q. Anything been deleted, altered, removed, edited?

4 A. Not to my knowledge, no.

5 MR. SLOCUM: State moves to enter this into
6 evidence at this time, State's Exhibit Number Three.

7 THE COURT: Any objection?

8 MR. McMILLIAN: No, sir, Your Honor.

9 THE COURT: Admitted.

10 (State's Exhibit No. 3, video on CD, received into
11 evidence.)

12 MR. SLOCUM: Permission to publish, Judge?

13 THE COURT: Yes, sir.

14 BY MR. SLOCUM:

15 Q. While we're waiting, did you ever notify law
16 enforcement of those three prior incidents of Mr. Anthony?

17 A. No, sir.

18 Q. Why was that?

19 A. I didn't have a person. There was no need. There
20 was no apprehension to be made.

21 Q. Okay.

22 A. Mr. Anthony had already exited and left.

23 Q. So as part of your protocol, you did not notify law
24 enforcement?

25 A. No, we don't notify them unless we have the subject

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 in custody with us.

2 Q. How are these videos kept?

3 A. They're kept inside the loss prevention office.
4 They are saved 30 days automatically to the CC-TV, the
5 IntelSystem. We place them in a file labeled with the
6 shoplifter's information, and then they are locked inside
7 the LP office cabinets.

8 Q. Ms. Patsy, if I could, I'm going to ask you some
9 questions as this video is going. We may start and stop
10 it, but are you able to see from where you are?

11 A. I am. Would you like for me to come down or --

12 Q. If you can see, if everyone else can see, I think
13 we're okay.

14 A. Okay.

15 Q. What is this that we're seeing right now?

16 A. The first shot you saw was Mr. Anthony entering the
17 main doors through Belk. Right now I'm following
18 Mr. Anthony on closed-circuit television down towards the
19 men's department. He's passing the junior's department.

20 Q. Tell me this. Why is the camera so, not only jumpy
21 with frame but why is it jumpy in time?

22 A. That picture is the call-up. And what it does, it
23 takes all the frames. I'm going from camera to camera.
24 I'm going from the main entrance camera, the junior's
25 camera, perhaps the men's camera, and then the Polo

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1 camera. And it makes it all one video until I -- so it
2 records each camera to one video. So I'm using several
3 cameras to follow him throughout the store.

4 Q. Did you pull any of the footage from the three
5 prior incidents?

6 A. No, I did not.

7 Q. Why is that?

8 A. At this point without having Mr. Anthony
9 apprehended it's just a mental note that we make to
10 ourselves, you know, just jot down known theft, take down
11 description and just, just kind of keep it. But we don't
12 prosecute unless we have a person.

13 Q. So you don't notify law enforcement or pull the
14 video unless you're able to make contact with someone?

15 A. Yes, sir. Unless it's an apprehension.

16 Q. What area of the store are we in right now?

17 A. That's Polo. That roundabout table, that circle
18 table is where the Polo shirts where Mr. Anthony favors,
19 where he go to.

20 Q. Are there multiple places in that area with Polo
21 shirts?

22 A. Those particular shirts are the high-end shirts and
23 they're stack fold which means the ones on the -- the red
24 and white shirts would be on that table, the spring
25 shirts.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 Q. Okay. Those hanging up and those on this table,
2 are they the same shirts?

3 A. They're long sleeve Polo shirts.

4 Q. The ones hanging up?

5 A. Yes, sir.

6 Q. But these on the table and the one in his hand are
7 the short sleeve?

8 A. Yeah. Those would be the short-sleeve shirts. Now
9 I'm not saying that they would not hang others, perhaps --

10 Q. Right.

11 A. -- but usually the newer shirts, the new line of
12 Polo is right there because they want the shopper to go to
13 that table first.

14 Q. So we just jumped views. Why did we stop on the
15 fitting rooms?

16 A. Right there I'm getting concealment. At this point
17 I have entrance and selection of the merchandise. So I'm
18 waiting for concealment which means for Mr. Anthony to
19 enter without that merchandise, and that's when I notified
20 North Augusta because that's when the shoplifting took
21 place.

22 Q. How did you know that he hadn't left some items in
23 the dressing room?

24 A. I had men to go and check the dressing room. We
25 work together.

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1 Q. So did you an internal investigation?
2 A. Yes.
3 Q. Ms. Patsy --
4 A. Uh-huh.
5 Q. -- on your statement to law enforcement, you said
6 there were four Polo shirts --
7 A. Yes, sir.
8 Q. -- and a pair of jeans. But the receipt just has
9 two Polo shirts and a pair of jeans. Why is that?
10 A. The other shirts were damaged where the EAS, again
11 some shirts aren't -- we try to have all of them tagged
12 but those are damaged and non-sellable and those other
13 jeans were the ones that I retrieved back.
14 Q. Is it here on camera?
15 A. Yes, I'm following him. And as you can see, he did
16 exit with the items.
17 Q. What do you mean The Items?
18 A. The shirts. They were concealed on him at that
19 point.
20 Q. The shirts in Exhibit Four?
21 A. Yes, sir. And this is where I stopped and come out
22 the LP office.
23 Q. Okay. So you still have to man the camera right
24 now?
25 A. Yes. And the main fixed camera picks up

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1 Mr. Anthony getting ready to exit. I'm coming out the LP
2 office at this point. That's a fixed camera. So he exits
3 out, he sees North Augusta and he comes back in.

4 Q. Does this camera angle move --

5 A. It doesn't.

6 Q. -- from here anymore?

7 A. It doesn't. That's a fixed camera there. And I'm
8 no longer in the LP office to operate it at this point.

9 Q. You're on the way?

10 A. Yes, sir.

11 Q. You're coming down that main aisle?

12 A. Yes, sir. I'm on the way.

13 Q. Why wasn't there a camera on Mr. Anthony when he
14 was discarding all this stuff?

15 A. There wasn't a camera in that particular corner.
16 That's a camera that we operate and move, as you saw me
17 before. I was able to move with the camera but I'm out
18 the office and I'm on the floor now. So there isn't a
19 fixed camera there. And I was no longer operating the
20 camera, I was now on floor.

21 Q. Okay. (Video played.)

22 What did do you after law enforcement got there?
23 You saw him walk in the door. What happened?

24 A. Immediately Mr. Anthony and I were meeting like
25 this and I informed him, I said to him, I just saw you

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1 discard stuff. And he was saying, I don't have anything,
2 I don't have anything. And, Check me, Check me, Look
3 inside my underwear, I think was his comment at that
4 time.

5 And I said, Well, you got -- you're leaving out the
6 door and you just threw all the stuff back out when you
7 saw North Augusta. So he and I were kind of exchanging
8 words at that point.

9 Q. Okay. I want this whole thing to play out. I
10 don't want to leave anything out and then we have some
11 lags here, but in just a minute we're going to see you
12 come on the screen. Here you are. What are you looking
13 for?

14 A. I'm just tracking back his steps to see if he
15 dropped anything else or if I missed anything. I'm just
16 collecting evidence at this point.

17 Q. Did you find anything over there?

18 A. I came back and I found shirts.

19 Q. But anything over here in this area?

20 A. No, I don't recall finding anything over there.

21 Q. So you just went looking around to see what you
22 could find?

23 A. Yeah. I just kind of track. What we do's track
24 the way that they went. (Video played.)

25 Q. Ms. Patsy, what video are we seeing here?

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1 A. That's the home shot of the corner area. Well,
2 that's the front part of the Polo area. You should be
3 seeing if it's following North Augusta and Mr. Edwards and
4 I.

5 Q. What does that MMS2 mean?

6 A. Men's department, camera two.

7 Q. Camera two?

8 A. Yes, sir.

9 Q. How are -- you said the call-up camera was a bunch
10 of cameras jumbled into one shot?

11 A. Yes, sir.

12 Q. Are the single individual cameras just -- they're a
13 steady stream of recording video, it's not a bunch of
14 cameras together?

15 A. Yes, sir. They're just fixed cameras just
16 positioned in those particular departments.

17 Q. And the first video we saw was grabbing from a
18 bunch of different cameras?

19 A. PVT, pivot tilt, where we can pivot, tilt or we can
20 move those cameras throughout the store, close shots,
21 far-back shots, whatnot, but they'll also have fixed
22 cameras that do not move.

23 Q. So are you in the back kind of driving a joy
24 stick-type thing?

25 A. Yes, sir.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 Q. For all the cameras?

2 A. For the ones that move, what we call the PVT, the
3 pivot cameras.

4 Q. Because this one's one continual stream, is that
5 why it's smoother in play?

6 A. Yes, sir.

7 Q. What are we watching here? Are you watching this
8 camera as it's --

9 A. Yes, sir. I'm watching the selection so I have
10 several, I have two monitors. One monitor holds the fixed
11 cameras and so they are already stationed so you can watch
12 without moving those. And then the other monitors are the
13 PVT cameras where I move those.

14 Q. You're simultaneously driving one camera while this
15 one's constantly recording from one spot?

16 A. Yes, sir.

17 Q. (Video played.) Are you mainly moving that camera
18 right there?

19 A. I'm probably -- if I'm moving it it's me moving the
20 PVT.

21 Q. You jumped the PVT?

22 A. Yes.

23 Q. And that's the shot we saw from the other camera as
24 well?

25 A. Yes, exactly.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 Q. Ms. Patsy, how long is footage stored on the server
2 for Belk's?

3 A. I think about 30 days. No, I'm sorry. About 90
4 days, three months.

5 Q. How is it cleaned?

6 A. It automatically erases itself.

7 Q. So if you don't drop it --

8 A. No.

9 Q. -- it erases itself?

10 A. Yes.

11 Q. Where were you working before Belk's?

12 A. I was a law enforcement officer. I'm a certified
13 police officer for the State of Georgia.

14 Q. What county?

15 A. Richmond County.

16 Q. (Video played.) Sorry to have to make you watch
17 the whole thing. I didn't want to leave anything out.

18 Do you know if any other pictures were taken of the
19 other items, the original four that were listed or the
20 four that you mentioned to law enforcement but only two
21 that ended up making that picture? Do you know why the
22 other two didn't make it?

23 A. No, sir. Not for sure.

24 Q. But do you know if you took pictures of it?

25 A. Yes. I take pictures of the total -- or that

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 depict merchandise all together, all the items that have
2 been shoplift. So it should be a picture of the shirts
3 that show the alarms removed. And then it should be
4 another picture that shows all the merchandise that were
5 concealed.

6 Q. But that didn't make it in the file, did it?

7 A. I'm not for sure what happened to it. And this is
8 the exit after the concealment in the dressing room. And
9 as you can see, he placed one pair of pants down only.

10 Q. Now the first video we saw, we jumped cameras right
11 to that view out the door?

12 A. Yes, sir.

13 Q. That was you moving the PVT --

14 A. Yes, sir.

15 Q. -- thing? Did you tell law enforcement about the
16 three prior incidents on this date?

17 A. No, sir.

18 Q. Did you tell anybody before yesterday?

19 A. No, I just discussed with my store manager. As far
20 as in the store, when we get shoplifters or we don't get
21 them, I just make him aware of this-is-what-happened-today
22 kind of stuff, give him a report.

23 Q. You didn't tell law enforcement?

24 A. No, if you don't get them you just go to the next
25 case.

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 Q. Okay. That's you there?

2 A. Yeah. That's me and Mr. Anthony going -- telling
3 the officer he just, you know, I just saw him remove the
4 items and the officer, he's raising up his jacket.

5 Q. What are you saying to Mr. Anthony?

6 A. I'm saying to him, you know, I saw you remove the
7 merchandise. You got all the way to the door here. You
8 know, I don't have anything on me. And I said, Yeah, you
9 already exit. You saw North Augusta. You came back in.
10 He's like, Well, I don't have anything on me. You can
11 check me. You can check me. You can check my underwear.
12 You can check me. So he began to lift up his shirt and
13 whatnot. And I explained him to, Once you made it to the
14 door you had already committed the act.

15 Q. How long did it take you to get from loss
16 prevention to right here?

17 A. You're moving at that point. Adrenalin is pumping.

18 Q. You move pretty quick?

19 A. Yeah.

20 Q. The shirt he's got on, why did that catch your
21 attention?

22 A. Because that was the shirt that he shoplift prior
23 that I was able to go back and do the inventory, the one I
24 witnessed him taking. But I wasn't able to catch him at
25 that time. By the time I made it back to the front door

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 Mr. Anthony had already exited and got into a dark vehicle
2 and sped off. He's very quick. He's in, and out quickly.

3 Q. And you have to wait until you have all five steps;
4 correct --

5 A. We do.

6 Q. -- before you can encounter?

7 A. Exactly. We must have all five steps before Belk
8 will prosecute.

9 Q. Now where are you walking to right now?

10 A. I'm just tracking to see if he dropped anything
11 along the way. Alarms just kind of back --

12 Q. Is that what we saw on that last camera?

13 A. Yes, sir.

14 Q. Do you find those shirts in Exhibit Four?

15 A. In the back corner where he came from, the home
16 door. Once he saw North Augusta he came around the back
17 clearance to the back corner in men's is where I witnessed
18 him discarding and where I found the shirts in that same
19 area.

20 Q. Do we see that on the video?

21 A. It should be there. I'm not for sure. Actually --

22 Q. Did you --

23 A. -- no, I would have -- because that corner, that's
24 another area where I would have to operate the camera to
25 get to that corner as I was doing prior. There's no fixed

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 camera on that area.

2 Q. So this footage doesn't have a shot of that area?

3 A. No, sir. It doesn't. You have to actually
4 manually zoom into that area, and I was on the floor at
5 that time.

6 Q. You were the only one working in loss prevention
7 that day?

8 A. Yes, sir. I'm -- there's only one loss prevention
9 in Belk store.

10 Q. What's the Defendant saying right now?

11 A. I don't have anything. They were removing a magnet
12 and some pliers at this time. And they were asking, you
13 know, he was saying, I don't have anything. And he was
14 showing them actually the pliers and the alarm magnet at
15 the time.

16 Q. You actually saw them?

17 A. Yes.

18 Q. How would you describe your demeanor right now?

19 A. I'm excited. I was even loud at this point because
20 it's like, you know, you want to catch the shoplifter and
21 he was so quick the other times so when I finally had him,
22 I was just confident that I had all my five steps and that
23 this was going to be a prosecution so, but I calmed down
24 quickly.

25 Q. What's the value of the items on that receipt show?

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 A. The value are -- it's 149.77 but it says you saved
2 one-o-one-o three (101.03). So it gives the sale price as
3 well.

4 Q. And the actual price and the sale price?

5 A. Yes, sir.

6 Q. Ms. Patsy, I'm going to ask you to step down one
7 more time.

8 A. Okay.

9 Q. And can you show us again on this map where, where
10 you were when you saw the shirt Mr. Anthony come back in
11 the store and discard the shirts?

12 A. Yes, sir. I was coming down the main drive here
13 and he was over here.

14 Q. This angle here?

15 A. Yes, sir. About here.

16 Q. To that cart?

17 A. Yes, sir.

18 Q. Okay. You can go back.

19 A. Okay.

20 Q. Ms. Singletary, a couple more questions.

21 A. Okay.

22 Q. The receipt, that amount you just showed or just
23 testified to --

24 A. Yes, sir.

25 Q. -- is different than the total amount of all four

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 of the items, or five of the items, other two pair of
2 shirts, the other two shirts and the jeans. That just has
3 two pair of shirts and jeans, not four pair of shirts and
4 jeans. Why is that? Why were two left off of that; do
5 you know?

6 A. Those two were the ones that the alarms were on so
7 they're non-re-sellable so what we can sell we place it
8 back to the floor.

9 Q. So that's why they're not scanned on that?

10 A. Yeah.

11 Q. Okay.

12 Beg the Court's indulgence, Judge.

13 Ms. Patsy, that's all the questions I have. Please
14 answer any Mr. McMillian has.

15 THE COURT: Just one second. Ms. Forelady, if you
16 would, let's go ahead and take a quick afternoon break.
17 Okay? We'll bring you back out here for cross-examination
18 in just a moment. If you'll let the bailiff know if you
19 need anything. Okay? If you go back with her at this
20 point then.

21 (Jury exits courtroom at 4:06 p.m.)

22 THE COURT: It's okay if you step down, you just
23 can't speak with anybody. Okay?

24 THE WITNESS: Yes, sir.

25 THE COURT: Cell phones need to be put up, please.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 All right. Let's take about a 10-minute break.

2 (Break from 4:06 until 4:20 p.m., and the trial
3 resumed:)

4 THE COURT: Are you ready with your cross-
5 examination?

6 MR. McMILLIAN: Yes, sir, Your Honor.

7 THE COURT: State's ready?

8 MR. SLOCUM: We are, Judge.

9 THE COURT: Would you bring the jury in, please,
10 ma'am?

11 (Jury enters courtroom at 4:20 p.m.)

12 THE BAILIFF: Jury's present, Your Honor.

13 THE COURT: Thank you, ma'am. Cross-examination?

14 MR. McMILLIAN: Yes, sir, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. McMILLIAN:

17 Q. Ms. Patsy, how long did you say you've been in loss
18 prevention?

19 A. July 2013.

20 Q. So at this point that's coming up on two years?

21 A. Yes, sir.

22 Q. And you said you were a law enforcement officer
23 prior to that?

24 A. Yes.

25 Q. When did you go through the academy?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. 2007, February 2007. East Georgia Regional Police
2 Academy in Blythe, Georgia.

3 Q. And as part of going through the academy, you
4 learned all the basics that a police officer should learn?

5 A. Yes, sir. It was a basic.

6 Q. You learned report writing?

7 A. Yes, sir.

8 Q. You learned evidence preservation?

9 A. Yes, sir.

10 Q. And how important it is to keep those things and
11 preserve those things for later?

12 A. Yes, sir.

13 Q. For exactly a situation like this?

14 A. No, sir. And the reason being, I work in the
15 capacity of loss prevention and not law enforcement. It's
16 very important that we don't cross those two. I'm
17 certified in the State of Georgia as a police officer, but
18 I was trained through Belk as loss prevention.

19 So regardless of what I feel as a law enforcement
20 officer, I have to do it Belk's way. I have to follow
21 five steps. I can't go on a hunch or an idea. I have to
22 have evidence to support while I'm making this
23 apprehension so the report writing as a cop is much
24 different from the report writing as loss prevention. I
25 do it the Belk way or I did it the Belk way.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Q. Okay. While you were employed at Belk's, would you
2 say you split your time between the loss prevention office
3 and the floor about 50-50?

4 A. No, sir. I would say 75-25.

5 Q. Which way?

6 A. Seventy-five is loss prevention office versus about
7 25 percent on the floor. But it just depends on how busy
8 we are, what season it is. All those factors play whether
9 you want to be on the floor or you want to be on the
10 camera but for the majority of the time I'm on camera
11 because I have more eyes at that point.

12 Q. So you spent a lot of time watching customers and
13 moving with that neat PVT camera system?

14 A. Oh, yes, sir. It's part of my job description but
15 other -- we also have the paperwork side. We look for
16 cash-over, shortages. We make sure that the facility is
17 safe. So it's part of --

18 Q. Well, I want to move and talk to you a little bit
19 about that floor plan. And, Investigator Norwood, could
20 we raise this back up for the jury?

21 (Pause.)

22 MR. McMILLIAN: Permission to approach, Judge?

23 THE COURT: Yes, sir.

24 MR. McMILLIAN: Would you mind stepping down?

25 THE WITNESS: Sure.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 BY MR. McMILLIAN:

2 Q. Thank you. Now, correct me if I'm wrong at this
3 point but most of the events occurred right here near the
4 home door but in this men's department?

5 A. Yes, sir. This is the men's department here. This
6 is Polo here. And this is the main exit there.

7 Q. Now, the view we're looking at is a top-down view;
8 correct?

9 A. I'm not for sure, sir. I'm just --

10 Q. Well, it's a floor plan?

11 A. Okay.

12 Q. It doesn't show the racks and it doesn't show three
13 dimensionally. What was in this space right here,
14 right --

15 A. Well, I didn't design it, sir. I can only go with
16 just the basic floor plan.

17 Q. But when you were walking through here everything's
18 not flat like it is on this picture.

19 A. It's flat to the point -- when I say Flat, you can
20 see through each aisle as you're walking through. You can
21 see -- if I'm on the main drive, I can see to the back
22 walls of the department --

23 Q. Okay.

24 A. -- if I'm in that department. So it's clear rack
25 view.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Q. Okay. And there are racks?

2 A. Yes, sir.

3 Q. How tall are those racks?

4 A. They're average height so you can shop, you know --

5 Q. So --

6 A. -- comfortable.

7 Q. -- chest, shoulder-ish?

8 A. Yes, sir. Average.

9 Q. Are some of them taller than others and some

10 of them shorter than others?

11 A. No, they're about the same size where you can

12 comfortably move close along the hangers and whatnot.

13 Q. How wide are they?

14 A. Some are circular. The taller ones will be back

15 wall chest but they're -- you can look over them.

16 Q. Do some of the racks obstruct views?

17 A. It depends. The ones in the corners, if you are in

18 the corner -- if you're coming down the main drive aisle,

19 the ones in the corner, Polo corner, that one does. But

20 the rest of them, they do not. They are eye level. Like

21 I said, very accessible for the customer to move hangers

22 about and whatnot. So you can look over them.

23 Q. Okay. And I may come back to this in just a

24 second. So if we could leave it up. Do you want to

25 return to the stand? I said that.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. (Complying.)

2 Q. Let's -- Investigator Norwood, if we could queue up
3 the video just in case. You have an extra copy of it.

4 Ms. Singletary, were you the actual associate who
5 turned over the video to North Augusta?

6 A. Yes, sir.

7 Q. And you turned over how many disks?

8 A. I should have turned over maybe one or two, not for
9 sure.

10 Q. You can't be certain how many disks you turned
11 over?

12 A. No, sir. It depends on how many frames I had.

13 Q. Okay. And these video, or these disks or this disk
14 that you turned over contain all the video of the incident
15 that we have?

16 A. Yes, sir.

17 Q. And the fact of the matter is the video that we
18 watched is a video that you essentially put together using
19 that software and that joy stick?

20 A. Yes, sir.

21 Q. And so our view is limited to what you saw then or
22 what you wanted us to see?

23 A. Well, no, sir, it's actually the movement of
24 Mr. Edwards. So my main objective is to stay with the
25 shoplifter because, again, we have to be able to prove the

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 five steps. So concealment -- so the enter and the
2 selection, concealment, exiting without paying for the
3 merchandise; we have to be able to show it.

4 So with that being said our objective is to stay on
5 the shoplifter. So, where he moves I move. So that's why
6 you saw me moving in the direction of Mr. Anthony.

7 Q. Okay. But you used a control to follow Mr. Anthony
8 through the store?

9 A. Yes, sir. And fixed cameras as well.

10 Q. Okay. Are we queued up?

11 Let's start with the call up. I think it was the
12 video that kind of follows him through the store. If
13 you'll pause it for just a second.

14 You indicated to North Augusta Public Safety that
15 my client picked up seven items as he walked through the
16 store?

17 A. Whatever the report reads, sir. I remember visibly
18 seeing four striped Polo shirts, two pair of jeans and a
19 striped shirt; so, yes, seven.

20 Q. Seven items?

21 A. Yes, sir.

22 Q. Okay. Let's let it play through just a little
23 bit. (Video played.) And in watching this, it looks like
24 you followed him to the jeans department first?

25 A. Yes, sir. That's part of the men's, where -- the

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 men's department.

2 Q. Okay. If you'd pause it. Okay.

3 And how tall are those racks?

4 A. Those will be back wall racks. So they're like
5 book chest size height, but the racks themselves -- you
6 have some on the table, you have some on the spin. So it
7 just, it varies, but the jeans rack is a low table.

8 Q. Okay. Would you step down?

9 A. Uh-huh.

10 Q. Specifically here, is this blue jeans rack, to my
11 client's right, is it taller or shorter than he is?

12 A. It looked like it is the height or so of
13 Mr. Edwards.

14 Q. Okay.

15 A. The table is lower.

16 Q. Okay. And I believe you testified earlier that you
17 left the loss prevention office at the time that you saw
18 him go through the doors or attempt to exit the doors?

19 A. No. I saw him come back from the door and go
20 around the corner, back to the men's right by the dressing
21 room as I was coming down the main aisle. So I had
22 visibility right there.

23 Q. No. I'm asking -- if we let this play through,
24 Investigator Norwood. Would you indicate at what point
25 you left loss prevention?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. I left loss prevention when I saw him turn from the
2 exit door.

3 Q. Okay. Now, I think we can probably shortcut some
4 of this. If you can fast forward to maybe the men's
5 department, maybe. It's half-way right prior to the exit
6 at the -- right there.

7 If we let it play here -- and, Norwood, this is
8 going to be really particular. Can you hit the pause
9 button - right - now?

10 What's on this rack right here?

11 A. Looks like shirts.

12 Q. What kind of shirts?

13 A. Not really for sure. They will not be Polo
14 shirts. I don't remember the brand how Belk laid their
15 brands out, but the Polo shirts will be at your Polo
16 department.

17 Q. Okay.

18 A. Those may be -- those may be Chaps but they're kind
19 of the lower end. You start off with the less-expensive
20 items and then the merchandise go up.

21 Q. Would they be dress shirts, sort of like folded and
22 whatnot?

23 A. It would be, like, maybe golf shirts.

24 Q. Okay. So at this point that should be nothing but
25 shirts right there?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. That should be nothing but shirts there. But
2 customers move things, so I can't say.

3 Q. Absolutely.

4 A. Customers mix up items.

5 Q. If you'll let it play through. (Video played.)
6 And pause -- well, back it up.

7 Is it -- it's entirely possible, correct, that he's
8 dropped two pair of pants right there?

9 A. I'm not for sure. I can't see.

10 Q. Well, in just a few minutes you've come back and
11 picked something up from right here; right?

12 A. Yeah. I picked up a pair of jeans from there.

13 Q. Okay. And as we progress forward, Norwood, if you
14 would play it again. In just a few minutes you -- well,
15 can you pause it?

16 Do you know the man exiting the store there?

17 A. Customer.

18 Q. But you don't have any idea who he is?

19 A. Probably a regular shopper. I talk to a lot of
20 people. I pretend like I'm shopping, so I'm probably
21 talking to a lot of people. If I could see the face. I
22 only see the back of a person, so I can't honestly say I
23 can tell from their back.

24 Q. Okay. And, Norwood, if you'd let it play through
25 one more. (Video played.)

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Now you testified earlier that he left the fitting
2 room and headed for the home doors. That's not in fact
3 the case. He in fact came over here to the sheets
4 department; correct?

5 A. Well, this is the home area. He tracked across
6 here, around that corner into the home goods.

7 Q. Okay. But he was over here in the home goods
8 section?

9 A. In the back section.

10 Q. Okay.

11 A. Yeah, it's all -- home and men's are together. So
12 when you leave out of homes -- out of men's you're right
13 at the home.

14 Q. Okay. And I think you can let that play for just a
15 few minutes.

16 Now, in a few minutes you come back on, over here
17 in this area and then back over here?

18 A. Uh-huh.

19 Q. Where specifically did you pick up any additional
20 merchandise?

21 A. By the fitting room of the men's home -- the men's
22 department dressing room.

23 Q. By the fitting room of the men's department?

24 A. Uh-huh.

25 Q. Okay. But not here by this exit?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. No, not by that exit. I just was tracking to see
2 if I saw anything at that point.

3 Q. And you didn't find any merchandise over here?

4 A. No, I didn't, no.

5 Q. So when you returned back after he being detained
6 and questioned by police, you don't have anything in your
7 arms but the jeans that you picked up?

8 A. Well, see, as he was coming back to the men's
9 department once he spotted North Augusta, I witnessed him
10 removing the jeans.

11 Q. I understand.

12 A. Those are the ones that I had. But the shirts, not
13 at that time.

14 Q. You picked up a pair of jeans off of that rack
15 right there?

16 A. I picked up the jeans that he dropped by -- in the
17 men's department. So those were the jeans you see me pick
18 up from the men's department.

19 Q. Can we cut to the men's, too?

20 MR. BODIE: I'm sorry?

21 MR. McMILLIAN: (Conferring with Norwood Bodie.)

22 If we could skip ahead to where he enters the fitting
23 room. It's like 17:52 if that's more help. Right there.

24 Q. Now, so this is where or approximately where you
25 say that you found the merchandise?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. Yeah, it's on this side.

2 Q. Okay. If we watch here as he exits...

3 A. Uh-huh.

4 Q. I have these times in my head but watching it it's
5 like watching paint dry.

6 As we watch him exit here --

7 A. Uh-huh.

8 Q. -- he could have very well discarded those shirts
9 or put them down right now; right? I mean, he's looking
10 at other items. He could have very well sat them down
11 then. We can't see because of the racks; right?

12 A. No. When he exit the dressing room right when I
13 called North Augusta, I had to make sure that there was no
14 evidence of shirts in the dressing room and by that area.
15 And as you can see coming out of the dressing room you
16 could have saw those shirts. Those shirts were there once
17 he came back. They were not disturbed once he came back.

18 Q. And, you can take the stand. I've got a few
19 questions about that.

20 A. Okay.

21 Q. Now, you explained that you called and had another
22 associate go out and check that area?

23 A. Yes, sir. That's what we do. We call whatever
24 associate's in that department or if we have the time
25 we'll run in and check, but I knew I was moving quickly

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 with Mr. Edwards.

2 Q. Did you give North Augusta the name of that
3 individual?

4 A. No, it's just --

5 Q. Do you remember who that individual is today?

6 A. Whoever was on schedule in that men's department.
7 There's several associates that work that department.
8 It's just very common where we call and, you know,
9 whoever's working that department will call and say, Hey,
10 check dressing room, Check, you know, ladies' fitting
11 room, whoever works that department that day.

12 Q. And so in the matter of those few minutes, it's
13 your testimony that somebody came in, swept the dressing
14 room for items, swept the general area right there for
15 items, and then the rest of those events occurred?

16 A. Well, for sure they checked the dressing room
17 because I wouldn't have made the call without, like --

18 Q. Well, I only want you to testify about what you're
19 sure of.

20 A. Well, what I'm sure of is that they checked the
21 dressing room and that there was no merchandise in the
22 dressing room. And that's the point when I called North
23 Augusta because I have to have concealment before I can
24 notify that there's a shoplifting. So I'm for sure that
25 the shirts were not in the area.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Q. That you were not sure that they were not in the
2 area that we just discussed?

3 A. I discovered them in that area, I did --

4 Q. Sometime later?

5 A. -- LP. I'm going to say after North Augusta got
6 there.

7 Q. But they certainly could have been there earlier?

8 A. To be honest, I'm not for sure if they could have
9 been there.

10 Q. Okay.

11 A. But what I did witness him for sure is him removing
12 the jeans from his sweatshirt. I'm for sure about that.
13 Now the shirts, they could have been there or not but they
14 were not in the dressing room.

15 Q. You saw him remove those jeans --

16 A. I saw him tossing shirts --

17 Q. -- through or over or around all of those racks?

18 A. Yes. I had visual. I was right there with him at
19 that point. As you're passing by the racks here, the
20 point that I was at I had a clear shot of Mr. Anthony.

21 Q. Well, if you would step down right here where you
22 were a few minutes ago.

23 A. Okay.

24 Q. I believe you just testified that you have a clear
25 view here to here; right?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. Uh-huh.

2 Q. But earlier you testified when you saw Mr. Anthony
3 that he was approximately this far away and that's when
4 you saw him discard the jeans.

5 A. No. What I said was when you're walking the
6 aisles -- because you asked how tall they are. So what I
7 was describing was as you're walking, there are racks that
8 you can see straight over and you can see about from here
9 to the wall, but when I saw Mr. Anthony I was about here
10 to there.

11 Q. Okay. I hate to keep dragging you up and down. I
12 know that you already got that distance out.

13 A. Did you want me to go back up here?

14 Q. Please.

15 A. Okay.

16 MR. McMILLIAN: Beg the Court's indulgence just a
17 moment. (Pause.)

18 Q. Now at some point on March 16th you provided a
19 written statement for North Augusta; correct?

20 A. Yes, sir.

21 Q. And in that written statement you say that you saw
22 him conceal and pass all points of sale?

23 A. Yes, sir.

24 Q. And that you observed him via surveillance select
25 four Polo shirts, two pair of jeans, and one plaid shirt?

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 A. Yes, sir.

2 Q. And that you saw him exit with two items when he
3 exited the dressing room?

4 A. Yes.

5 Q. What two items were those?

6 A. It appeared to be a plaid shirt and a pair, one
7 pair of jeans. I did not see the red and white shirts
8 which would have been very visible on camera because
9 they're bright shirts.

10 Q. But it's possible, though, he discarded those in
11 that side area there?

12 A. To be honest, I'm not for sure, I just noticed or
13 witnessed him removing the jeans once he attempted to exit
14 and turned back around when he saw North Augusta. I
15 cannot honestly say that I saw him remove the shirts but I
16 did see him remove the jeans.

17 MR. McMILLIAN: Beg the Court's indulgence just a
18 moment.

19 Q. I just have a couple more questions.

20 A. Uh-huh.

21 Q. You mentioned recognizing him because he had been
22 in on prior instances, on these prior occasions.

23 A. Yes, sir.

24 Q. And you made no mention of that to anybody?

25 A. No, sir. Well, I mentioned it to Jay on yesterday.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Q. And that was yesterday?

2 A. Yeah. It's one of those -- if there's no
3 shoplifter, you have no case. So you get over it and you
4 just go to the next case. He was faster than I.

5 Q. You mentioned earlier that you might make mention
6 of that to the manager or that you might make some sort of
7 brief daily report or something like that?

8 A. Yes, but I wouldn't have known who he was. I would
9 generally say, Hey, I missed a shoplifter today. He was
10 fast, or kind of fill him in on the day. But at the time
11 I didn't know who Mr. Anthony was. I could only just say,
12 This is what I had and this is what's happened.

13 Q. Now, you did also make a loss prevention report as
14 a part of this; correct?

15 A. Yes, sir.

16 MR. McMILLIAN: If I may examine the Court's
17 Exhibit.

18 Q. I'm going to hand you something to see if you
19 recognize it. That's what was provided to me.

20 A. Okay.

21 Q. Do you recognize that?

22 A. Yes, sir. It's a system we use called Lasagua
23 (phonetically) where we track our shoplifting cases.

24 Q. I want to make sure I didn't give you my
25 highlighted copy. Whose name is in the upper right-hand

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 corner there as created by?

2 A. My name, Patsy Singletary.

3 Q. And is this the report you would have generated as
4 a result of this shoplifting?

5 A. It is.

6 Q. So, all of this material would be things that you
7 generated and are familiar with?

8 A. Yes, for the most part. It's not 100 percent but
9 it's information we put in to track our shoplifters in the
10 moment to get the data in.

11 MR. McMILLIAN: At this point, Judge, I move to
12 enter the report in its entirety into evidence.

13 THE COURT: Any objection?

14 MR. SLOCUM: No objection, Judge.

15 THE COURT: Did -- would you get it marked,
16 please?

17 MR. McMILLIAN: Absolutely. For record this will
18 be Defense Exhibit One.

19 (Defendant's Exhibit No. 1, report, marked and
20 received into evidence.)

21 BY MR. McMILLIAN:

22 Q. If I can direct you to the second page of that
23 report under the heading Merchandise Data, stolen goods in
24 parentheses. How many items are listed there?

25 A. One pair of Levis and two -- four Polo shirts.

PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Q. That's different from what you testified to
2 earlier, the seven items; correct?

3 A. That's five. It could have been a typo there.
4 This report, again, it is used to kind of do the case
5 report, get the information in but --

6 MR. McMILLIAN: Permission to approach, Judge?

7 THE COURT: Yes, sir.

8 BY MR. McMILLIAN:

9 Q. And then there inside your report there, there is a
10 smaller version of this same picture. I believe it's on
11 the third page.

12 A. Uh-huh.

13 Q. And as a part of that report there's a date on that
14 file name. Can you read that date for the jury?

15 A. Where about? I'm sorry.

16 Q. On the third page. It's here.

17 A. Uh-huh.

18 Q. Just under the date there.

19 A. 3-31-14.

20 Q. Is that the date you would have taken the picture
21 or the date you added the file?

22 A. It could have been the date I added the file, but I
23 took the picture immediately.

24 Q. Okay.

25 A. But we go back, we make -- add more notes and

PATSY SINGLETARY-SISO - REDIRECT BY SLOCUM

1 whatnot. But the official report is the report we give to
2 North Augusta.

3 Q. Okay. And I believe the State did move the receipt
4 for the goods in which is I believe the fourth page of
5 that report?

6 A. Uh-huh.

7 Q. What's the date of that receipt again? Up in the
8 upper right-hand corner.

9 A. This says 5-21-14.

10 Q. So those items weren't rang up until May 21st?

11 A. No, they were rung that day. I'm not for sure why
12 that date is indicating.

13 Q. But you would agree that receipt that was part of
14 this report that was provided to us reflects that they
15 were rung up on May 21st?

16 A. Well, the system, the cash register could have been
17 off or Julian probably -- I'm not for sure. I can't
18 answer for him, but we submit every time a receipt of
19 items and video. I'm not for sure why the receipt reads
20 that date.

21 MR. McMILLIAN: Okay. One more time, Judge.

22 (Pause.) I don't have any further questions, Your Honor.

23 THE COURT: Redirect?

24 MR. SLOCUM: Briefly, Judge.

25 REDIRECT EXAMINATION

1 BY MR. SLOCUM:

2 Q. Ms. Patsy, I asked you earlier about pictures for
3 the other items. Do you have any reason why they weren't
4 taken?

5 A. No.

6 Q. You didn't do it intentionally, did you?

7 A. No, sir. Things happen, they get lost.

8 Q. I understand. But this receipt and these two
9 shirts --

10 A. Yes, sir.

11 Q. -- are the shirts you found?

12 A. Yes, sir.

13 Q. With the holes in them?

14 A. Yes, sir. And the -- so he could have used the
15 register in the back. I'm not for sure why the date
16 didn't reflect.

17 MR. SLOCUM: That's fine. That's all the questions
18 I have, Judge.

19 THE COURT: That you, ma'am. Will you step down,
20 please?

21 THE WITNESS: Yes, sir.

22 THE COURT: Madam Forelady, ladies and gentlemen of
23 the jury. I'm going to go ahead and call today's
24 proceedings as far as testimony is concerned. We have a
25 few other things we need to take care of. Is there any

1 reason why any of you can't be here at 9:30 in the morning
2 to resume testimony?

3 THE JURY (COLLECTIVELY): Huh-uh.

4 THE COURT: If you would, Ms. Bailiff, do you
5 normally have them just leave their pads in the jury
6 room?

7 THE BAILIFF: (Nods head.)

8 THE COURT: If you would leave your pads in the
9 jury room with us, they'll be secure. And if you'd be
10 back here by 9:25 tomorrow, we'll try to start at 9:30, as
11 close to that as we can. Okay?

12 Y'all have a nice evening.

13 (Jury exits courtroom at 4:54 p.m.)

14 THE COURT: For scheduling purposes, we're going to
15 do some off bonds at nine o'clock tomorrow and some other
16 miscellaneous things; is that right?

17 (Off-the-record discussion.)

18 THE COURT: I'm going to allow your client to stay
19 out tonight. Remember what I told you at lunchtime.
20 We'll keep going with the show if you don't show up.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Have a nice evening.

23 Let me do one thing for the record I meant to do
24 earlier. Back on this case that we were trying, the
25 Anthony case.

1 Mr. Anthony, hang on for one second.

2 During the course of the trial, Mr. McMillian came
3 up and wanted to know if he had to continue to object each
4 time more testimony came in about the prior bad acts. I
5 told him he did not, that he did not have to continue to
6 object, that it had been permitted to be brought in. And
7 his objection would be deemed to be continuing and
8 therefore he has not continued to object each time that
9 topic is approached here in the courtroom.

10 Anything you want to add to that?

11 MR. McMILLIAN: No, sir, Your Honor.

12 THE COURT: Anything you want to add to that?

13 MR. SLOCUM: No, sir, Judge.

14 THE COURT: Thank you.

15 MR. SLOCUM: Thank you, Judge.

16 MR. McMILLIAN: Thank you, Your Honor.

17 END OF DAY'S PROCEEDINGS: 4:57 P.M.

1 ON TUESDAY, APRIL 15, 2015 AT 9:41 A.M.:

2 THE COURT: Mr. Anthony, good to see you this
3 morning.

4 THE DEFENDANT: (Nods head.)

5 THE COURT: Defense ready to proceed?

6 MR. McMILLIAN: Yes, sir, Judge.

7 THE COURT: State ready to proceed?

8 MR. SLOCUM: We are, Judge.

9 THE COURT: I believe you told me you had two more
10 witnesses; is that correct?

11 MR. SLOCUM: That's correct.

12 THE COURT: Very good. Would you bring the jury
13 in?

14 (Jury enters courtroom at 9:41 a.m.)

15 THE COURT: Good morning.

16 THE JURY (COLLECTIVELY): Good morning.

17 THE COURT: Thank you all for being here and being
18 here on time. We're going to proceed with the testimony
19 at this point in time. Is the State ready?

20 MR. SLOCUM: Yes, sir, Your Honor.

21 THE COURT: Defense ready?

22 MR. McMILLIAN: Yes, sir, Your Honor.

23 THE COURT: Call your next witness, please, sir.

24 MR. SLOCUM: Thank you, Judge. The State calls
25 Officer Daniel Smith with the North Augusta Department of

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 Public Safety.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 DANIEL DAVID SMITH, having been duly sworn, was
5 examined and testified as follows:

6 THE CLERK: Please have a seat in the witness box.
7 State your full name for the Court and please spell your
8 last name.

9 THE WITNESS: Daniel David Smith. Smith is spelled
10 S-M-I-T-H.

11 DIRECT EXAMINATION

12 BY MR. SLOCUM:

13 Q. Officer Smith, good morning, sir.

14 A. Good morning.

15 Q. Would you please tell us where you are employed?

16 A. North Augusta Department of Public Safety.

17 Q. And how long have you been with North Augusta
18 Department of Public Safety?

19 A. Since October of 2011.

20 Q. And in what capacity are you employed there?

21 A. I'm a public safety officer.

22 Q. Okay. What type of training and experience do you
23 have to be an officer?

24 A. I graduated the 12 week law enforcement academy in
25 Columbia and completed the field training officer training

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 that we have in North Augusta along with some advanced
2 courses at the academy.

3 Q. And have you always been in the public safety
4 portion in North Augusta?

5 A. From October 2011 to June 2012 I was employed as a
6 fire fighter, and from June 2012 to present public safety
7 officer.

8 Q. Okay. And were you working as a public safety
9 officer in March, on March 16th of 2014?

10 A. Yes, sir.

11 Q. And how did you become involved in this case today?

12 A. I was dispatched to it.

13 Q. Where were you dispatched to?

14 A. To Belk.

15 Q. And what is the address of that Belk?

16 A. It's 1163 Knox Avenue.

17 Q. North Augusta?

18 A. Yes, sir.

19 Q. Here in Aiken County?

20 A. Yes, sir.

21 Q. And why were you dispatched to Belk's?

22 A. In reference to a shoplifting.

23 Q. And what, if anything, did you know about that
24 shoplifting on your way there?

25 A. I was advised via radio transmission from our

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 dispatcher that the individual we were looking for was a
2 black male approximately six feet tall, weighing
3 approximately 300 pounds, that he was also wearing a blue
4 shirt with yellow stripes and also a blue hat.

5 Q. And what did you observe upon arrival to Belk?

6 A. When I arrived at Belk's I parked approximately 10,
7 20 feet away from the north doors, the home doors we were
8 talking about yesterday. As I pulled up, I prepared to
9 put my vehicle in park. I observed an individual matching
10 the description of the suspect we were looking for
11 approach the doors of the store, opened it, took a step,
12 looked my way and he re-entered the store.

13 Q. And what did you do after that?

14 A. I entered the store to attempt to locate him,
15 unsuccessfully. And as I entered the loss prevention
16 associate pointed him out to me.

17 Q. So you didn't see him when you first walked in?

18 A. No, sir, I did not.

19 Q. At what point did you come to find out who he was?

20 A. As I walked in the store I took an immediate right
21 and loss prevention pointed to him. I turned around and
22 he was standing directly behind me.

23 Q. Do you see that person in the courtroom today?

24 A. Yes, I do.

25 Q. Could you please point him out and tell the jury

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 what he's wearing?

2 A. He's wearing, looks to be a blue and green plaid
3 shirt.

4 MR. SLOCUM: Your Honor, for the record, let the
5 record note that the witness has identified the
6 Defendant.

7 THE COURT: So noted.

8 BY MR. SLOCUM:

9 Q. What did you do after that when you came in contact
10 with Mr. Anthony?

11 A. When I came in contact with him, he immediately
12 raised his hands, his shirt and he began to yell, I didn't
13 do nothing. I had the Defendant place his hands on a
14 clothing rack.

15 Q. Why did you do that?

16 A. I was preparing to perform a weapons frisk. It was
17 for officer safety purposes.

18 Q. Is that normal protocol?

19 A. Yes, sir, it is.

20 Q. Okay. Please continue.

21 A. As I was beginning to -- as I was preparing to
22 begin the weapons frisk, the Defendant told me, I ain't
23 got nothing, You can check my underwear. At that point I
24 understood that as consent to search his person which I
25 did.

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1 Q. What, if anything, did you discover when you
2 searched?

3 A. I located a pair of adjustable channel-lock pliers
4 and also what appeared to be a magnet.

5 Q. Okay. And where did you locate those items?

6 A. They were located in his right front pants pocket.

7 Q. All right. Did you take any pictures of those
8 items?

9 A. No, sir. I did not.

10 Q. Did you seize them for evidence?

11 A. No, sir. I did not.

12 Q. Any reason why you didn't?

13 A. The Defendant at the time was being boisterous and
14 combative, did not want to comply with our commands. We
15 were more concerned with the public safety and officer
16 safety at that point than we were about documenting
17 evidence and investigating the case.

18 Q. Was your main concern controlling the Defendant at
19 this point?

20 A. Yes, sir.

21 Q. Were there other officers there?

22 A. Yes, sir. There were two others.

23 Q. All right. After this search, what happened?

24 A. The loss prevention associate provided her initial
25 statement. At that point I determined that he would be --

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 that I would detain the Defendant and proceed to the loss
2 prevention office to further investigate the case.

3 Q. Was he arrested at this point?

4 A. No, sir. He was not.

5 Q. Was he being combative continually or just your
6 initial approach?

7 A. Yes, sir. He continued to be. Attempted to pull
8 away when we attempted to detain him.

9 Q. All right. Was he under arrest at this point?

10 A. No, sir. He was not.

11 Q. What did you do when you got back to the loss
12 prevention office?

13 A. I advised the Defendant of his Miranda warnings.
14 He stated that he understood his rights under Miranda.
15 And I asked him if he wanted to talk to me without an
16 attorney present and he just continued to talk.

17 Q. At this point was he under arrest?

18 A. No, sir. He was not.

19 Q. At what point did he become under arrest?

20 A. After obtaining the loss prevention associate's
21 statement and viewing video surveillance and seeing that
22 both coincided with one other, I determined that I had
23 probable cause to arrest the Defendant for shoplifting.

24 Q. So you didn't just take the statement of
25 Ms. Singletary, you watched the video to confirm?

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 A. Yes, sir. I did.

2 Q. Is that normal protocol in cases like this?

3 A. Yes, sir.

4 MR. SLOCUM: Permission to approach, Judge?

5 THE COURT: Yes, sir.

6 BY MR. SLOCUM:

7 Q. Officer Smith, this is State's Exhibit Three that's
8 been admitted into evidence. Do you recognize what it is?

9 A. Yes, sir. I do.

10 Q. And how do you recognize it?

11 A. We viewed it.

12 Q. And what is that?

13 A. It's the video surveillance of the incident.

14 Q. Are those your initials on that disk?

15 A. Yes, sir. They are.

16 Q. As well as Ms. Patsy's?

17 A. Yes, sir.

18 Q. And is that the video you viewed on March 16th of
19 2014?

20 A. Yes, sir. It is.

21 Q. Any changes to it that you know of?

22 A. No, sir.

23 Q. Officer Smith, I'm going to hand you what's been
24 previously marked for identification purposes as State's
25 Exhibit Five. Do you recognize what that is?

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 A. Yes, sir. I do.

2 Q. And what is it?

3 A. It's a Miranda warning card that I keep on my
4 person.

5 Q. Is that the Miranda warning card you read to the
6 Defendant on March 16th of 2014?

7 A. Yes, sir.

8 Q. Have there been any changes to it, deletions,
9 additions?

10 A. No, sir.

11 Q. Does it fairly and accurately represent the card
12 that you read to Mr. Anthony on March 16th, 2014?

13 A. Yes, sir. It does.

14 MR. SLOCUM: Judge, at this time the State moves
15 State's Exhibit Five into evidence.

16 THE COURT: Any objection?

17 MR. McMILLIAN: None, Judge.

18 THE COURT: Admitted.

19 (State's Exhibit No. 5, Miranda rights, received
20 into evidence.)

21 BY MR. SLOCUM:

22 Q. After you read Mr. Anthony those rights, did you
23 question him any further?

24 A. No, sir. I did not.

25 Q. What happened?

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 A. I advised the Defendant that he was being placed
2 into -- being arrested for shoplifting. At that point the
3 Defendant began to yell and grabbed -- he was sitting in a
4 chair outside the loss prevention office. He grabbed onto
5 the chair and would not release it even after we commanded
6 him -- or excuse me, after I commanded him to do so.

7 Q. What are you trained to do in these situations?

8 A. In a situation like that with a passive-resistant
9 individual, we're trained to attempt first to contain them
10 without force. If that does not work, we are taught soft,
11 empty-hand control techniques such as pain compliance
12 measures on nerves. I attempted to use a soft, empty-hand
13 control technique on the hypoglossal nerve which is
14 located in the jaw, on the notch right there, with my
15 thumb.

16 Q. What was the result of that technique?

17 A. It was ineffective.

18 Q. What are you trained to do after that?

19 A. At that point we are trained if soft, empty-hand
20 control technique does not work we transition to
21 intermediate weapons such as the X-26 taser.

22 Q. And was that used in this instance?

23 A. Yes, sir. It was.

24 Q. By whom?

25 A. Public Safety Officer Nichols used it.

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 Q. And how was it used?

2 A. The cartridge was removed from the front of the
3 X-26 taser to initiate a drive stun without the prongs
4 being shot into the subject. He initiated it and applied
5 a less-than-or-equal-to one-second burst. And it was
6 applied to -- excuse me for just one second -- applied to
7 the Defendant's left lower-back area.

8 Q. And this was after the soft hand technique failed?

9 A. Yes, sir.

10 Q. And this was after the attempts of multiple
11 officers to ask him to -- escort him outside of the
12 office; right?

13 A. Yes, sir. It was.

14 Q. What happened after the taser was used?

15 A. The Defendant fell to the floor. He was commanded
16 to stand up. He refused to do so. I used the same soft,
17 empty-hand control technique on the hypoglossal nerve. At
18 that point he stood up. I immediately released the
19 technique and we escorted him to the exterior of the
20 building. The entire time we were escorting him he was
21 yelling.

22 Q. What happened after you got outside?

23 A. We approached my patrol vehicle to transport him.
24 When the rear door of the patrol vehicle was open and the
25 Defendant was told to enter, he refused to do so. He

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 locked his legs straight and we could not physically place
2 him in there without using any type of force.

3 Q. Were you able to get him in the car?

4 A. Yes, sir. We were.

5 Q. How did you do that?

6 A. Again soft, empty-hand control techniques were
7 used. Public Safety Officer Pierson used, utilized two
8 knee strikes to the Defendant's common peroneal nerve on
9 the side of his leg. That was ineffective. At that point
10 Public Safety Officer Nichols again removed the prong
11 cartridge from the front of the X-26 taser and delivered,
12 again, a less-than-or-equal-to one-second drive stun burst
13 to the Defendant's right abdominal side near his
14 waistline.

15 Q. Is that the normal procedure to use the least
16 restrictive means possible and gradually move forward if
17 one doesn't work?

18 A. Yes, sir.

19 Q. And where did you go after you finally got
20 Mr. Anthony in the car?

21 A. I had to transport the Defendant directly to the
22 Aiken County Detention Center.

23 Q. Is that normal protocol?

24 A. No, sir. It is not.

25 Q. Why was it done in this case?

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 A. In this case because the Defendant was being
2 combative, for our safety and his safety, we determined
3 that we should transport him directly to the Aiken County
4 Detention Center.

5 Q. And at this point did you ever take the pliers and
6 the magnet off of his person?

7 A. No, sir. They were left on him.

8 Q. Okay. Did you ever take any pictures of the,
9 quote, articles of clothing that he alleged to have
10 concealed?

11 A. No, sir. I did not.

12 Q. Did you ever find any on his person?

13 A. No, sir. I did not.

14 Q. Did you do any type of forensic testing, any DNA or
15 fingerprints on any type of evidence in this case?

16 A. No, sir. I did not.

17 Q. Was there any reason to?

18 A. No, sir.

19 Q. What, if anything, was said on the way to the jail?

20 A. On the way to the jail the Defendant stated -- he
21 was in the back of my patrol vehicle -- that, and I quote,
22 Could have would have thought about it was not the same as
23 shoplifting.

24 Q. And did you ask a question to give this response?

25 A. No, sir. I did not.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 Q. Did you interrogate him at all?

2 A. No, sir. I did not.

3 MR. SLOCUM: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. SLOCUM: Officer Smith, that's all the
6 questions I have for you. Please answer any Mr. McMillian
7 has.

8 THE WITNESS: Yes, sir.

9 THE COURT: Cross-examination?

10 MR. McMILLIAN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. McMILLIAN:

13 Q. Officer Smith, I believe you said you attended the
14 law enforcement academy 2011, or was that after you were a
15 fire fighter?

16 A. It was after I was a fire fighter.

17 Q. So when did you attend the law enforcement academy?

18 A. 2012. I'm not sure of my specific beginning date.

19 Q. Okay. And several additional classes at North
20 Augusta and then some further advanced classes at?

21 A. I went through the FTO program with officers who
22 trained me at North Augusta. They weren't specifically
23 classes put on by the department, but I have taken
24 advanced courses at the South Carolina Criminal Justice
25 Academy.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

- 1 Q. And in those classes you certainly learned the
2 importance of writing a detailed report; correct?
- 3 A. The advanced classes did not pertain to that; no,
4 sir.
- 5 Q. Did you ever take a class on writing reports?
- 6 A. They teach you basic report writing.
- 7 Q. So you understand that it's important that you get
8 all the details and --
- 9 A. Yes, sir. I do.
- 10 Q. -- that you do these things very soon after the
11 incident. And you did in this case; right?
- 12 A. Yes, sir. I did.
- 13 Q. You completed the report that night?
- 14 A. Yes, sir. I did.
- 15 Q. And you wrote all the details you could remember
16 about the incident?
- 17 A. Yes, sir.
- 18 Q. And, in fact, you preserved all the evidence that
19 you thought was relevant to this case?
- 20 A. I was unable to preserve all of it.
- 21 Q. Because he was being boisterous?
- 22 A. Yes, sir. And combative.
- 23 Q. Judge, at this time I'd like to play a portion of
24 the video. I believe it's on there, as the exit.
- 25 THE COURT: Okay.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 BY MR. McMILLIAN:

2 Q. Now, Officer, in just a minute after we get this
3 queued up, can I ask you to come stand maybe right here so
4 you can see real clearly?

5 A. Absolutely.

6 Q. And keep your voice to the court reporter. She
7 scolded me earlier.

8 A. Okay.

9 MR. SLOCUM: Judge, can we approach?

10 MR. McMILLIAN: Can we approach for just a moment?

11 THE COURT: Yes, sir.

12 (Off-the-record discussion.)

13 THE COURT: All right. Madam Forelady, we're going
14 to take a quick break to just get some technical
15 adjustments done and we'll bring you back out here. If
16 you need anything, let the bailiffs know, please.

17 (Jury exits courtroom at 10 o'clock a.m.)

18 THE COURT: All right. Officer, you can step
19 down. Just don't talk about it.

20 THE WITNESS: Yes, sir.

21 (Break taken. At 10:07 a.m., the trial resumed:)

22 THE COURT: Have you tested it to see if it's
23 working?

24 MR. McMILLIAN: Yes. Actually they hit the play
25 button before me, before I could even get my computer

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 hooked up to it. And we found that section, Judge.

2 THE COURT: Okay, great. Would you bring the jury
3 in, please, ma'am?

4 (Jury enters courtroom at 10:07 a.m.)

5 THE COURT: Mr. McMillian, are you ready?

6 MR. McMILLIAN: Yes, sir, Judge.

7 Q. Now Officer, this is the video of y'all exiting the
8 store?

9 A. It appears to be.

10 Q. Okay. Norwood, would you play that? (Video
11 played.)

12 That's the three of y'all, officers that responded
13 escorting the combative Defendant in this case?

14 A. This is him walking out the store.

15 Q. So there's only one officer holding his handcuffed
16 arms?

17 A. At the moment. Yes, sir.

18 Q. In fact -- can you pause that? Well, actually
19 that's the end. Is that you or were you the officer
20 leading him out of the door?

21 A. I'm in the front. Yes, sir.

22 Q. So you actually unlocked the door?

23 A. It appeared that I did so. Yes, sir.

24 Q. So there was one officer escorting him -- I'm
25 finished with that -- might you have taken that

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 opportunity to preserve some of the evidence?

2 A. We were trying to get him into a patrol vehicle,
3 so, no.

4 Q. And it was obviously taking all three of you to do
5 that?

6 A. It just took one officer and the rest of us to be
7 sure he got into the patrol car.

8 Q. Beg the Court's indulgence. I don't want to be
9 responsible for losing some of this.

10 (Pause.)

11 You were present in court earlier when Ms --
12 yesterday, when Ms. Patsy testified that there was another
13 associate involved; correct?

14 A. I don't recall that portion of the testimony. I'm
15 sorry.

16 Q. Did you interview any witnesses regarding this
17 incident?

18 A. No, sir. I did not.

19 Q. Let's talk about once you entered the store. You
20 actually walked right past the -- my client; correct?

21 A. Yes, sir. It would appear I did, looking at the
22 video.

23 Q. And then once Ms. Patsy identified him that's when
24 y'all's interaction began?

25 A. Yes, sir.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 Q. And he, in fact, immediately said, I didn't do
2 anything?

3 A. Yes, sir.

4 Q. And he immediately started lifting his shirt?

5 A. Yes, sir.

6 Q. In fact, he exposed his bare belly --

7 A. Yes, sir.

8 Q. -- to you?

9 A. Yes, sir.

10 Q. There was no merchandise in his waistline?

11 A. No, sir.

12 Q. None in his jacket?

13 A. No, sir.

14 Q. None in his underwear?

15 A. No, sir.

16 Q. You further searched him; correct?

17 A. Yes, sir. I did.

18 Q. Did you find any merchandise in that search?

19 A. No, sir. I did not.

20 Q. Now, obviously during your search you didn't add
21 anything to his person, you didn't put anything in his
22 pockets?

23 A. No, sir. I didn't.

24 Q. You didn't take anything out?

25 A. No, sir.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 Q. And you never did --

2 A. I apologize. I'm sorry. I did remove -- once I
3 located the adjustable channel-lock pliers and what
4 appeared to be a magnet, I did remove those to see what
5 they were.

6 Q. Okay. But at some point you put those back in his
7 pocket?

8 A. Yes, sir. They remained on his person.

9 Q. Okay. So, everything he had on his person is the
10 same stuff he would have had when he got to the jail?

11 A. Yes, sir.

12 Q. Did you ever go back out to Belk's to collect any
13 photographs?

14 A. I did go back out. I'm unsure of the exact date.
15 I have a report if you'd like for me to check.

16 Q. Would you reference that?

17 A. Yes, sir. (Looking at document.)

18 Okay. According to my supplemental report to my
19 original incident, on May 21st, 2014, at seven p.m., I
20 returned to Belk. I obtained a copy of the receipt of the
21 items in question and obtained a video surveillance,
22 dropped it into evidence.

23 Q. May I see what you're referencing?

24 A. Absolutely.

25 MR. McMILLIAN: Permission to approach, Judge?

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 THE COURT: Yes, sir.

2 THE WITNESS: Here's the supplemental.

3 BY MR. McMILLIAN:

4 Q. And in that supplemental you also requested that a
5 copy of your in-car video be added?

6 A. Yes, sir. I did.

7 Q. We were never provided any of that, though, were
8 we?

9 A. No, we were not.

10 Q. So we don't have any proof of this alleged
11 statement that you say he made in the car?

12 A. No, sir.

13 Q. You went back out and collected the video on May
14 21st?

15 A. Yes, sir.

16 Q. Did you collect any other evidence, any broken
17 security tags?

18 A. No, sir. I did not.

19 Q. Any merchandise?

20 A. No, sir. I did not.

21 Q. So when the solicitor asked you earlier if you
22 conducted any forensic stuff, that's because you didn't
23 have anything to conduct any tests on; correct?

24 A. No, sir. I did not.

25 Q. Let's talk for a minute. After he exposed his

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 belly and you searched him, you said he was detained. At
2 that point did you put him in handcuffs?

3 A. Yes, sir.

4 Q. And what's the wording y'all would use? 'Double
5 locked and --

6 A. Check for proper fit and double locked.

7 Q. And y'all escorted him to loss prevention?

8 A. Yes, sir.

9 Q. Did you ever remove those handcuffs?

10 A. No, sir.

11 Q. Now, can you describe the scene in the loss
12 prevention office? How big an office is that?

13 A. I don't know the exact dimensions to describe to
14 you. It's --

15 Q. Bigger or smaller than the jury box?

16 A. I would believe smaller than the jury box.

17 Q. So it's tight quarters?

18 A. Myself and the loss prevention associate were in
19 there.

20 Q. And my client?

21 A. Your client was sitting in the hallway outside.

22 Q. Okay. And are there cameras in the loss prevention
23 area as well?

24 A. No, sir. To the best of my knowledge there are
25 not.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 Q. Now, you said he was seated in a chair?

2 A. Yes, sir.

3 Q. Did the chair have arms?

4 A. I don't recall. I'm sorry.

5 Q. But he was handcuffed this entire time?

6 A. Yes, sir. He was.

7 Q. Now, could I ask you to do something for me? Would

8 you step down here in front of the jury with me? And I

9 assume to apply the pressure, you need to approach the

10 suspect from behind?

11 A. (No audible response.)

12 Q. Can you demonstrate where exactly that is for the

13 jury?

14 A. Yes, sir. It is right here in the notch in your

15 jaw, right where my thumb is.

16 Q. Now do you apply pressure to both sides?

17 A. In this occasion I more than likely would have

18 applied to one side. The other officer was on the other

19 side.

20 Q. And it's with your thumb?

21 A. Yes, sir.

22 Q. Okay. And when that didn't work you claim that he

23 was holding onto a chair with both hands handcuffed behind

24 his back.

25 You can take your seat. I'm sorry.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 A. Can you repeat the question, please?

2 Q. When applying pressure to his hypoglossal nerve,
3 when that didn't work you had to deploy a drive stun, I
4 believe was your testimony?

5 A. Yes, sir. It was.

6 Q. And that was while his hands were behind his back?

7 A. Yes, sir.

8 Q. Okay. Is there any truth to that rumor that you
9 have to be tased before you can carry a taser?

10 A. I mean, it depends on the department, I assume. In
11 my department it is not policy.

12 Q. Okay. So you've never been tased before?

13 A. Yes, sir. I have.

14 Q. You have?

15 A. I volunteered to be tased.

16 Q. What's that feel like?

17 A. Not fun.

18 Q. Not fun.

19 Judge, if I may have just a moment? (Pause.)

20 Judge, I don't think I have any further questions.

21 THE COURT: Okay. Redirect?

22 MR. SLOCUM: Briefly, Judge.

23

24

25

REDIRECT EXAMINATION

BY MR. SLOCUM:

Q. Officer Smith, you testified earlier that --
Mr. McMillian asked you a question. When you walked in
the store you walked right past my client. But you didn't
see him, did you, when you came in the store?

A. No, sir. I didn't.

Q. Not until Ms. Patsy pointed him out?

A. Yes.

Q. And your in-car video, any reason that you know of
why that wasn't dropped?

A. I have no idea.

Q. Do you work for CSI or NCIS?

A. No, sir. I do not.

Q. This is the real world; isn't it?

A. Yes, sir. It is.

Q. Stuff happens?

A. Yes, sir.

Q. Did you do anything outside of North Augusta
Department of Public Safety protocol on this date?

A. No, sir. It was reviewed to ensure I did not.

MR. SLOCUM: That's all the questions I have,
Judge.

THE COURT: Thank you. May this witness be
excused?

TONETTA M BUGGS - DIRECT BY SLOCUM

1 MR. SLOCUM: Yes, sir.

2 MR. McMILLIAN: I don't have any issue with that,
3 Judge.

4 THE COURT: Thank you, sir. Call your next
5 witness.

6 MR. SLOCUM: Thank you, Judge. The State calls
7 Corporal Tonetta Buggs to the stand.

8 TONETTA MONTEEZE BUGGS, having been duly sworn, was
9 examined and testified as follows:

10 THE CLERK: Please have a seat in the witness box.
11 State your full name for the Court and spell your last.

12 THE WITNESS: Tonetta Monteeze Buggs, B-U-G-G-S.

13 DIRECT EXAMINATION

14 BY MR. SLOCUM:

15 Q. Corporal Buggs, good morning.

16 A. Good morning.

17 Q. Would you please tell us where you're currently
18 employed?

19 A. Aiken County Sheriff's Office, Detention Division.

20 Q. And does that mean you work at the jail?

21 A. Yes, sir.

22 Q. Aiken County Detention Center?

23 A. Yes, sir.

24 Q. And how long have you been with Aiken County in the
25 detention center?

TONETTA M BUGGS - DIRECT BY SLOCUM

1 A. Next month will be eight years.

2 Q. So the whole time you've been with the county
3 you've been at the jail?

4 A. Yes, sir.

5 Q. And in what capacity do you work in the jail?

6 A. Right now I'm a corporal in classification but I
7 started off in the housing units and I worked my way up to
8 booking and then I made classification.

9 Q. And how long were you in your first area at the
10 jail?

11 A. I'd say about maybe a year and a half which was --

12 Q. And then how long were you in booking?

13 A. About six years.

14 Q. And then how long have you been in this
15 classification?

16 A. Just a month.

17 Q. Just a month. Were you working back in March of
18 2014?

19 A. Yes, sir.

20 Q. And in what area of the jail were you working on
21 March 16th of 2014?

22 A. The booking area.

23 Q. And could you explain to us what you actually do in
24 the booking area?

25 A. Once the inmate comes to the pre-intake and all of

TONETTA M BUGGS - DIRECT BY SLOCUM

1 the -- their property's confiscated and inventoried. They
2 come over to the booking slash intake area. And the
3 process them. I take the basic information as far as
4 name, date of birth, place of employment. I enter the
5 charging documents and I inventory all of their property.
6 I pretty much prepare their paperwork for bond court the
7 next day.

8 Q. Okay. And on March 16th of 2014, did you come into
9 contact with one Edward Anthony?

10 A. Yes, sir.

11 Q. And where did this contact occur?

12 A. In the booking intake area.

13 Q. Corporal -- permission to approach, Judge?

14 THE COURT: Yes, sir.

15 BY MR. SLOCUM:

16 Q. I'm handing you what's been previously marked as
17 State's Exhibit Six and Seven for identification purposes
18 only. Could you tell us, do you recognize those
19 documents?

20 A. Yes, sir.

21 Q. And without testifying to their contents, what are
22 they?

23 A. The first sheet is a plastic bag, a photo copy of
24 all the items that he had when he entered. And the second
25 sheet is itemized what I entered that he came in with and

TONETTA M BUGGS - DIRECT BY SLOCUM

1 he signed off on and agreeing that everything was his.

2 Q. Now, are those, Exhibits Six and Seven, do they
3 fairly and accurately depict the records of Edward Anthony
4 on March 16th, 2014?

5 A. That's just what I entered.

6 Q. Have they been changed, altered or deleted in any
7 way, shape or form?

8 A. No, sir.

9 MR. SLOCUM: Your Honor, at this time the State
10 moves Exhibit Six and Seven into evidence.

11 MR. McMILLIAN: Without objection.

12 THE COURT: Admitted.

13 (State's Exhibit No. 6, items receipt - ACDC , and
14 State's Exhibit No. 7, property list - ACDC, received into
15 evidence.)

16 BY MR. SLOCUM:

17 Q. Corporal Buggs, could you take a look at Exhibit
18 Six? And please tell us what exactly you're looking at
19 there.

20 A. A photocopy of the plastic bag with his items of
21 inventory in it.

22 Q. Now the plastic bag, have you explained how the
23 items get into that plastic bag?

24 A. Yes. Once they come in the intake officer enters
25 everything that they came in with in this property bag,

TONETTA M BUGGS - DIRECT BY SLOCUM

1 put the inmate's name on, date it, and then they sign off
2 saying that everything that's in there is correct, what
3 they had when they came in.

4 Q. Could you read what's indicated as being inside
5 that bag?

6 A. A wallet, a lighter, some keys, a bracelet, a
7 Georgia driver's license, a condom, a lottery ticket, a
8 cell phone, tools, miscellaneous papers, business cards
9 and some money, \$1,000, \$1,000 -- 1,013.88. Excuse me.

10 Q. Now when you received that bag, is it sealed?

11 A. Yes, sir.

12 Q. And what do you do after you get that bag?

13 A. After I make the photocopy of it, I go ahead and
14 process the inmate in. Once I process him in, I
15 officially look in the bag myself and itemize everything
16 of the second sheet which is the Exhibit Seven and then I
17 give it to the inmate. He verifies that everything is
18 correct and he signs off on it.

19 Q. Do they also initial by each line?

20 A. That's when they get released stating they received
21 everything back.

22 Q. So they sign it on intake and initial it as they
23 leave?

24 A. Correct.

25 Q. And Number Six, is that the photocopy you made of

TONETTA M BUGGS - DIRECT BY SLOCUM

1 Mr. Edward Anthony?

2 A. Yes, sir.

3 Q. And then the list, Number Seven, is the list you
4 generated from maneuvering that bag and looking inside of
5 it; right?

6 A. Correct.

7 Q. So you didn't open anything or take anything out or
8 add anything to that bag?

9 A. No, sir.

10 Q. What does your list say, Number Seven, what all did
11 you inventory on that list you generated?

12 A. A shirt, yellow, red and blue in color, stripe;
13 pants, blue jeans color; shoes pink in color; cash on hand
14 \$1,013.88; a wallet; a lighter; keys; a belt; a Georgia
15 driver's license; a lottery ticket; a cell phone; tools
16 slash pliers; miscellaneous paper slash miscellaneous
17 cards; a hoody, blue in color; two rags; and a hat.

18 Q. Do you remember what those tools or pliers looked
19 like?

20 A. No, sir. I don't.

21 Q. You just know that they were in that bag?

22 A. Yes, sir.

23 MR. SLOCUM: That's all the questions I have,
24 Ms. Corporal Buggs. Please answer any Mr. McMillian has
25 for you.

TONETTA M BUGGS - CROSS BY McMILLIAN

1 THE COURT: Cross-examination?

2 MR. McMILLIAN: Thank you, Judge.

3 CROSS-EXAMINATION

4 BY MR. McMILLIAN:

5 Q. It was Corporal Buggs?

6 A. Yes, sir.

7 Q. You inventoried and actually counted yourself
8 \$1,013.88?

9 A. No, sir. I didn't. Once he came into pre-intake,
10 the pre-intake officer have him to go up to a machine.
11 It's called a kiosk. And he enters his money and the
12 kiosk spits out a receipt telling him how much money he
13 has. I just get the photocopy receipt.

14 Q. Okay. Anywhere on your list that you generated, is
15 there a magnet?

16 A. I don't know if there's a magnet or not.

17 Q. Is there any policy against leaving a magnet in the
18 bag?

19 A. I don't think so.

20 Q. So if he had a magnet on him, it should have been
21 in this bag, it should have been logged?

22 A. I should, but if I didn't see it -- I mean, it
23 could be the tools. It's tools slash pliers. So I try to
24 specify on what it was. I know I said pliers. It could
25 have been magnet, it could have been something that I

1 missed. I don't know.

2 Q. Okay. Now, the miscellaneous papers or
3 miscellaneous cards --

4 A. Uh-huh.

5 Q. -- did anybody actually take those out and look at
6 them?

7 A. The pre-intake officer is supposed to do that. If
8 it's like 17 or 18, we're not going to specifically write
9 down each card. We'll just put miscellaneous because it's
10 a numerous amount.

11 Q. Is it possible that some of these papers or
12 miscellaneous cards were debit cards?

13 A. I have no idea.

14 Q. Or credit cards?

15 A. It's a possibility. It's been a year. I can't
16 recall.

17 Q. Or store charge accounts?

18 A. I can't recall.

19 MR. McMILLIAN: I don't have any further questions,
20 Judge.

21 THE COURT: Redirect?

22 MR. SLOCUM: Nothing from the State, Judge.

23 THE COURT: May this witness be excused?

24 MR. SLOCUM: She may.

25 MR. McMILLIAN: Certainly, Judge.

1 THE COURT: Thank you, ma'am.

2 MR. SLOCUM: Your Honor, at this time the State
3 rests.

4 THE COURT: Very good. All right. Ms. Foreman,
5 ladies and gentlemen of the jury. The State says it rests
6 which means that has ended the presentation of its case in
7 chief. I now have some administrative matters to take up
8 and we will bring you back out. Okay? If you will go
9 back to the jury room, please.

10 (Jury exits courtroom at 10:30 a.m.)

11 THE COURT: Any motions?

12 MR. SLOCUM: Your Honor, the State would like to
13 notice the Court if the Defendant does choose to testify
14 that we under Rule 609(2) would seek to admit evidence of
15 a conviction of three prior shopliftings and we have Rule
16 609 and the case of State -v- Shaw which I'm providing to
17 the defense.

18 THE COURT: Give me that cite.

19 MR. SLOCUM: I have a copy for y'all, Judge. It is
20 328 SC 454 which indicates that shoplifting is considered
21 a crime of dishonesty for Rule 609(2) regardless of the
22 punishment when any witness is testifying.

23 THE COURT: Any other aspects of the Defendant's
24 records which you intend to be used for impeachment
25 purposes other than the three shopliftings?

1 MR. SLOCUM: We have certified convictions from the
2 two shopliftings, one from January of 2012, and one from
3 March of 2012. Certified convictions from the summary
4 court in North Augusta, and I'm not able to read the
5 signature.

6 THE COURT: Are they certified?

7 MR. SLOCUM: They're all certified.

8 THE COURT: What's your position on that?

9 MR. McMILLIAN: Judge, just under Rule 403 any
10 mention of the prior convictions for shoplifting in a
11 trail for shoplifting are more prejudicial than they are
12 probative. We're here today to determine what happened
13 March 16th. I just -- I think these are -- the prejudice
14 far outweighs any probative value.

15 THE COURT: I note that for the record. I'm
16 going to -- I'll allow it.

17 Okay. Mr. Anthony, please -- oh, you haven't had a
18 chance to make a motion. Thank you.

19 MR. McMILLIAN: Please, Judge.

20 THE COURT: Go ahead.

21 MR. McMILLIAN: At this time, Judge, we would make
22 a motion for a directed verdict. Under Rule 19 we believe
23 there's a failure of competent evidence tending to prove
24 the charge in the indictment. I just don't believe the
25 State has provided enough to meet their burden and at this

1 time we'd ask you for a directed verdict.

2 THE COURT: All right. Thank you.

3 I admit there certainly appears to be some gaps or
4 some lapses in the evidence but it's sufficient -- enough
5 evidence to meet the elements of the crime for the jury.
6 It's up to them to determine whether the weight has been
7 met as far as the degree of proof. So I'm going to deny
8 your motion at this time.

9 Any other matters before I go over with Mr. Anthony
10 his Fifth Amendment rights?

11 MR. McMILLIAN: I don't believe so, Judge.

12 THE COURT: Mr. Anthony, would you raise your right
13 hand, please, sir?

14 (Defendant placed under oath.)

15 THE COURT: You can be seated.

16 Now, I would suspect that your attorney or
17 attorneys have gone over with you your rights under the
18 Fifth Amendment to the United States Constitution; is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you feel like you understand those?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Let me just go over with you on the
24 record to make sure. Okay, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now if you don't understand anything I
2 say, stop me.

3 THE DEFENDANT: Uh-huh.

4 THE COURT: And I'll be glad to try to explain
5 it --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: -- such that you do. Okay?

8 THE DEFENDANT: (Nods head.)

9 THE COURT: Now we're at that point in the trial
10 where the State has presented its evidence or its case in
11 chief. So you're at the point in the trial where you have
12 to decide whether or not you want to present a defense in
13 this matter which would include whether or not -- you
14 decide whether or not you want to testify or whether you
15 want to claim the protections afforded to you under the
16 Fifth Amendment to the United States Constitution.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And I'm going to read part of that to
19 you. Okay?

20 THE DEFENDANT: Uh-huh.

21 THE COURT: And that is this. It says that: No
22 person shall be compelled in any criminal case to be a
23 witness against himself. What that simply means is your
24 attorneys, the State, myself, no one can force you to take
25 the stand in this case and testify against yourself.

1 Okay? However, if you decide that you do want to testify,
2 that is a personal right that only you can make. And you
3 have to make that decision knowing your rights, knowing
4 the ramifications of your decision to testify, and knowing
5 your rights not to testify.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you decide that you will testify in
8 this case, you're going to be subject to any other -- just
9 like any other witness, you'll be subject to direct
10 examination by your lawyers.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You'll also be subject to cross-
13 examination by the State.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And as we pointed out at this point I
16 determined that your two prior convictions for shoplifting
17 involve dishonesty.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Under the case of State versus whom?

20 MR. SLOCUM: Shaw.

21 THE COURT: Shaw. Thank you. As cited.

22 Of course that's subject to me going back and
23 double-checking it but I think that's correct, which
24 means, Mr. Anthony, that if you take the stand the State's
25 going to at least be able to impeach you on those two

1 prior convictions. In other words, they'll be able to ask
2 you about it in front of this jury.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And bring evidence of those convictions
5 up in front of the jury.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The obvious reason is they want to
8 impeach your credibility. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay, sir. Now, I don't know if you
11 have any other matters on your record. It doesn't sound
12 like it has anything the State wishes to use for
13 impeachment purposes.

14 But, have you provided defense counsel his criminal
15 record at this juncture?

16 MR. SLOCUM: We have, Your Honor. We provided that
17 initially. The only other thing I would add is that we do
18 have two certified convictions from his 2012 cases;
19 however, there is one in 2011, another shoplifting out of
20 Georgia, that I would be asking him about as well if the
21 Court allows.

22 THE COURT: Well, potentially -- a shoplifting case
23 as well?

24 MR. SLOCUM: Yes, sir.

25 THE COURT: And if the State's able to meet its

1 proper foundation on that there will be three cases of
2 shoplifting they'll be able to ask you about. I'm not
3 ruling on that until I hear about it, but for you to make
4 a decision you need to assume that potentially they could
5 ask you about all of those. Okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand what I'm telling
8 you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now if you decide you do want to
11 testify, that decision has to be made by you personally.
12 It has to be made freely and voluntarily, knowing your
13 rights under the Fifth Amendment and knowing the
14 ramifications if you decide to testify. Okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood everything I've
17 gone over with you thus far?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Listen, I'll give you time to speak
20 with your attorneys or any family members or friends who
21 are with you here --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- who you may want to consult, but
24 ultimately the decision has to be made by you.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I'll also tell you that if you choose
2 not to testify, when I charge the jury on the law in just
3 a few minutes I will instruct them that they may not and
4 shall not consider your failure to testify because that's
5 your rights under the Constitution and the burden remains
6 on the State at all times to prove your guilt by proof
7 beyond a reasonable doubt. Okay, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right, sir. I'm going to let you
12 and your attorneys discuss that for a few minutes.

13 Let's take about a 10-minute break. We'll come
14 back and decide what the defense wants to do in this
15 matter. Do you have any other witnesses that you propose
16 to call?

17 MR. McMILLIAN: None, Judge.

18 THE COURT: All right. Good. Ten-minute break,
19 guys.

20 MR. SLOCUM: Yes, sir.

21 THE COURT: Thank you.

22 (Break taken at 10:54 a.m. At 11 o'clock a.m.,
23 the trial resumed:)

24 THE COURT: All right. Mr. Anthony, you are still
25 under oath by the way.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you made your decision as to
3 whether or not you wish to testify?

4 THE DEFENDANT: Take the stand, Your Honor.

5 THE COURT: You are going to take the stand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you feel like you had
8 sufficient --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: -- time to talk to your attorneys and
11 anyone else out there in making this decision?

12 THE DEFENDANT: Yes, sir

13 THE COURT: Are you making this decision of your
14 own free will?

15 THE DEFENDANT: Own free will.

16 THE COURT: Has anybody threatened, forced,
17 promised you anything?

18 THE DEFENDANT: No, sir.

19 THE COURT: And you understand the consequences of
20 your testifying?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Very well. I'm going to find that
23 Mr. Anthony made a knowing, intelligent, voluntary
24 decision to testify in this matter.

25 That being said, Mr. McMillian, do you have any

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 other witnesses you would propose in this matter?

2 MR. McMILLIAN: None, Judge.

3 THE COURT: I thought that's what you said. Okay.

4 Are you ready to proceed?

5 MR. McMILLIAN: Yes, sir, Your Honor.

6 THE COURT: Mr. Slocum, are you ready?

7 MR. SLOCUM: The State is ready, Judge.

8 THE COURT: Would you bring the jury in?

9 THE BAILIFF: Bring them in, please.

10 (Jury enters courtroom at 11:05 a.m.)

11 THE COURT: All right. Mr. McMillian, defense
12 ready to proceed?

13 MR. McMILLIAN: Yes, sir, Your Honor.

14 THE COURT: State ready to proceed?

15 MR. SLOCUM: We are, Your Honor.

16 THE COURT: Call your witness, please, sir.

17 MR. McMILLIAN: The defense would call Edward
18 Anthony.

19 THE COURT: Come around, sir.

20 EDWARD RODRIQUEZ ANTHONY, having been duly sworn,
21 was examined and testified as follows:

22 THE CLERK: Please have a seat in the witness box.
23 State your full name for the Court and spell your last.

24 THE WITNESS: My name is Edward Anthony. My last
25 name is A-N-T-H-O-N-Y.

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

DIRECT EXAMINATION

BY MR. McMILLIAN:

Q. Good morning, Edward.

A. Hey there.

Q. What do people -- do people -- does everyone call you Edward?

A. No, sir.

Q. What do people call you?

A. Freddy.

Q. Is it okay if I call you Freddy?

A. Yes, sir.

Q. Freddy, do you remember March 16th, 2014?

A. Yes, sir.

Q. Will you tell me a little bit about what was going on that day?

A. Well, I left my grandmother from MCG. And I was going to the store to buy sheets.

Q. What was your grandmother at MCG for?

A. She was sick. And she -- they started giving her dialysis. She was supposed to come home. She was in good, you know, good health when I left her that Sunday evening. So I told her I was going to buy some sheets because she was supposed to come home, like, Tuesday or Wednesday but she came home Thursday. So I went to go buy her sheets. And I went to the Belk's Department Store in

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 North Augusta after coming from MCG. And as I left my
2 grandmother I went over there and my grandfather gave me
3 some pliers. So I go to -- grip pliers. I got to Belk
4 Department Store. They was in my back pocket. I forgot
5 to take them out. And I went to the Levi section and I
6 went to the Polo section.

7 Q. Why did you go shopping for mens wear?

8 A. You know, you got to check things out when you go
9 to the store, you just look, you know, observe. When you
10 see something nice that you want to wear, you go look for
11 it.

12 Q. You're pretty into clothes then?

13 A. Yes, sir.

14 Q. Continue.

15 A. So, I found the five items. I found a pair -- two
16 pairs of Levis, one blue and one green. And I had found a
17 pair of Polo pants. It was khaki pants and I found a red
18 and white stripe shirt and I found a solid blue shirt.
19 That was on a hanger. All right. I only had one shirt
20 folded up.

21 So I entered the dressing room and I stayed in the
22 dressing room. I tried my clothes on. Then I came back
23 out. Didn't stay in there long. I came back out. And as
24 I was leaving the dressing room, I put the items, the Polo
25 shirt with stripes on it, I only kept the shirt with the

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 hanger, and the blue pants that was folded up, so I left
2 the shirt, the folded shirt, I left the pants, the Levi
3 pants and the Polo pants on the table.

4 And I proceeded to go to the linen department. As
5 I was going I noticed a friend of the family's. His name
6 Carl Gaskin. So, I didn't recognize him at first. I
7 didn't recognize him at first but he smiled at me and as I
8 was going into the linen department I thought about it.
9 So I put the clothes down before I went to the door. And
10 as I was going to the door, and I looked --

11 Q. Can we raise the screen, please? If you would, I'd
12 like for you to point Carl out on the video. No, you
13 don't have to come down yet.

14 (Pause. Video equipment adjusted.)

15 BY MR. McMILLIAN:

16 Q. Freddy, I've queued this video up.

17 A. Uh-huh.

18 Q. Would you step down? Stand right here. Again,
19 face the court reporter because I got in trouble. As we
20 play this, would you narrate for the jury and kind of tell
21 them what's happening?

22 A. Yes, sir.

23 Q. Judge, at the risk of wasting a little time I'm
24 going to fast forward just a little bit.

25 What's happening here, Freddy?

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 A. Walking out the dressing room with the items in my
2 hand.
3 Q. And what do you set down and where?
4 A. Setting down right there.
5 Q. And then you continue over to?
6 A. The linen department.
7 Q. Okay.
8 A. Setting down the Levis, the Polo pants and the
9 stripe shirt.
10 Q. Now, do you recognize that man?
11 A. Yes, sir.
12 Q. Right --
13 A. Right there. That's Carl Gaskins. He stay at [REDACTED]
14 Silverwood Drive.
15 Q. And how do you know Carl?
16 A. Family member of my family. And, plus, he's --
17 Ms. Patsy, if she was here today, she could identify him.
18 That's his mistress.
19 Q. When's the last time you saw Carl before that day?
20 A. About a year ago.
21 Q. A year before this?
22 A. Yes. Before that incident occurred.
23 Q. Okay. Now, going forward if I play this through --
24 A. Uh-huh.
25 Q. -- will you tell the jury what happened?

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 A. All right. As I loaded and I got in my mind I know
2 this fellow, I put the clothes down. I was in the
3 linens. I put the clothes down before I approached the
4 door that I had in my hand. Put them down right where you
5 seen the shelf. I walk to the door. And I looked for
6 Carl. I didn't see him. I didn't go out the door, I just
7 turned around. And I went back. I was looking for my
8 cell phone, too.

9 Q. Why were you looking for your cell phone?

10 A. Wasn't on me and I heard -- I heard it going off.
11 I heard the noise, my ringtone. So I turned back, went
12 the opposite way because I set the clothes down. As I was
13 setting the clothes down and I was looking for it, when I
14 went back I was looking for my cell phone, I seen the
15 police officer pass me. So I stepped back. I was, like,
16 what are you doing. So when I stepped back the other
17 police came behind me. But me and the police officer,
18 Deputy Smith, we seen Ms. Patsy together. And she pointed
19 me out. She's said, That's him right there.

20 But, I didn't do nothing. So, I told him, I said,
21 That's me what. And she told me, I got you on tape, I got
22 you on tape. I said, Got me on tape for what. And she
23 said, Shoplifting. And I said, I don't shoplift. I
24 didn't do nothing. So...

25 Q. You can take your seat.

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 A. All right. Excuse me.

2 Q. Let's talk a little bit about that. You heard

3 Ms. Patsy testify about the shirt you were wearing?

4 A. Yes, sir.

5 Q. Did you steal that shirt from Belk's?

6 A. No, sir.

7 Q. Where did you get that shirt?

8 A. I got that from Marshall's. They didn't have that

9 shirt there at the time. That shirt's old.

10 Q. And then I guess after that, what happened after

11 you were detained?

12 A. I --

13 Q. Where did you go next?

14 A. They put the hand -- they asked me could they put

15 the handcuffs on me first. And I told them, I said, You

16 just searched me. I didn't have anything. So I said,

17 It's cool. He said, we're going to go watch the tape. I

18 said, Okay, we're going to go watch the tape, prove my

19 innocence.

20 Q. Were you ever combative with them?

21 A. No, sir.

22 Q. Were you angry?

23 A. I was angry but I told them I'd go watch the tape

24 with Mr. Smith. So I walked to the back in handcuffs.

25 Q. Now when you got to loss prevention office, where

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 did you sit?

2 A. In a chair, like, on the back wall on my left. And
3 it was a camera in the back right there. Like, the chair
4 was on the left-hand side, the camera was on the right-
5 hand side.

6 Q. And we haven't seen that video today --

7 A. It's a camera back there.

8 Q. -- or yesterday?

9 A. No, sir. I called internal affairs about this,
10 too.

11 MR. McMILLIAN: Just a moment, Judge. (Pause.)

12 Q. Freddy, I believe I neglected to ask you about
13 something.

14 A. Uh-huh.

15 Q. Why did your grandfather give you pliers?

16 A. Because he's an electrician. I am, too. I'm a
17 certified welder as well.

18 Q. Do you work with your grandfather?

19 A. Yes. He has his own business.

20 Q. Is it unusual for you to carry pliers?

21 A. No, it's common.

22 Q. Now, let's talk for a minute about what's been
23 entered as State's Exhibit Seven.

24 May I approach, Judge?

25 THE COURT: Yes, sir.

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 BY MR. McMILLIAN:

2 Q. Do you recognize this?

3 A. Uh-huh; yes, sir.

4 Q. That's your property list?

5 A. Yes, sir.

6 Q. Why did you have all of that cash?

7 A. Because I was buying things. I like to buy things,
8 too. When I get accused of the wrong thing I still buy
9 things.

10 Q. And in those miscellaneous papers and cards, were
11 there any credit cards?

12 A. Yes, sir.

13 Q. Specifically, do you remember what kind of credit
14 card was there?

15 A. Yes, sir.

16 Q. What is that?

17 A. I had my Bank of America card. I had Belk's card.
18 I had my Visa card, my mixed van card.

19 Q. Hold on. You have a Belk's charge card?

20 A. Yes, sir. You can look it up now if you want to.

21 Q. Okay. I got to ask you about a couple of other
22 tough things, I think. Have you ever been convicted of
23 shoplifting before?

24 A. Yes, sir. In North Augusta.

25 Q. Let's talk a little bit about that. What happened

EDWARD RODRIQUEZ ANTHONY - DIRECT BY McMILLIAN

1 the first time you were convicted?

2 A. I was at Greg's Gas Plus and they accused me of
3 taking the beer, taking the beer, but when -- I was taking
4 the trash out and the girl that worked there that I was
5 dating she got fired.

6 Q. And you pled guilty to that?

7 A. Yes, sir.

8 Q. What happened the second time?

9 A. They tried me in my absence at the same place.

10 Q. Why didn't you go to court?

11 A. I didn't know I had to go to court at the time of
12 the accident {sic}. But when I went the first time I
13 thought that was it, but they charged me again, twice.

14 Q. Have you ever been convicted of shoplifting
15 anywhere else?

16 A. I was tried in Richmond County.

17 Q. And did that result in a conviction?

18 A. No.

19 MR. McMILLIAN: Beg the Court's indulgence one more
20 moment. (Pause.)

21 Q. Freddy, I just have a couple more questions.

22 A. Okay.

23 Q. Patsy testified that she saw you shoplifting
24 previously from Belk's. Have you ever stolen anything
25 from Belk's?

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

1 A. No, sir.

2 Q. And, in fact, have you ever been convicted of any
3 other crimes?

4 A. No, sir. Besides the shoplifting in North Augusta.

5 Q. And what were those two shopliftings for?

6 A. For stealing the beer that I don't drink or smoke,
7 so.

8 MR. McMILLIAN: Nothing further, Judge.

9 THE COURT: Cross-examination?

10 MR. SLOCUM: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. SLOCUM:

13 Q. Mr. Anthony --

14 A. Hey, how are you doing?

15 Q. -- good morning. You're Edward Rodriguez Anthony?

16 A. Yes, sir.

17 Q. The shopliftings he was talking about were from
18 March 6th of 2012; right?

19 A. Yes, sir.

20 Q. And then from January 19th, 2012?

21 A. I can't recall but, yes, sir.

22 Q. And then from July 11th of 2011, in Richmond
23 County, the one you just talked about?

24 A. Yes, yes, sir.

25 Q. You're pretty familiar with the cameras in the Belk

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

- 1 Department Store; aren't you?
- 2 A. Yes, sir.
- 3 Q. Because you go in there a lot; right?
- 4 A. No.
- 5 Q. You don't go in there a lot?
- 6 A. No.
- 7 Q. But you're familiar with the cameras?
- 8 A. I'm familiar with the cameras because I looked at
- 9 the -- I mean, when they accused me of something I looked
- 10 up at the camera when they were putting the handcuffs on
- 11 me. They asked me could they put the handcuffs on me, so.
- 12 Q. So were you going to do -- you were going to do an
- 13 electrician job from the hospital; right?
- 14 A. I got the key -- got the pliers from my
- 15 grandfather.
- 16 Q. So you're in the hospital room and your granddaddy
- 17 says, Hey, here are some pliers?
- 18 A. Yeah. Yes, sir.
- 19 Q. Okay. You need those pliers and that magnet to
- 20 pull those tags off the shirts; right?
- 21 A. Wasn't no magnet.
- 22 Q. What was it?
- 23 A. Wasn't no magnet. It's like --
- 24 Q. Okay.
- 25 A. -- I'm a certified electrician. So I have a lot of

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

1 type things, you know, you put two wires together and you
2 turn so they won't come apart. You tape them up with duct
3 -- with tape, electrical tape. It wasn't a magnet.

4 Q. Okay. You don't work anywhere; do you?

5 A. Yes.

6 Q. Just besides electrician?

7 A. I worked at Bridgestone-Firestone. I was working
8 there. I missed too many days when I got locked up in
9 Aiken for shoplifting from Belk's.

10 Q. So you'd agree with me that that's you on the
11 video --

12 A. Uh-huh.

13 Q. -- from March 16th?

14 A. Uh-huh.

15 Q. And that's you in there walking around looking at
16 stuff?

17 A. Uh-huh.

18 Q. And you grabbed clothes?

19 A. Uh-huh.

20 Q. Some red and white shirts; right?

21 A. Yes, sir. You seen me looking at them on the
22 camera.

23 Q. And we saw you pick them up; that's right.

24 A. I looked at the tags.

25 Q. Saw you in the dressing room?

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

- 1 A. Looked at the tags.
- 2 Q. Saw you go in the dressing room?
- 3 A. Yes.
- 4 Q. Okay. You were in there for about three minutes
- 5 and 30-some-odd seconds?
- 6 A. Uh-huh.
- 7 Q. And you tried on all of those items?
- 8 A. Yes.
- 9 Q. Every one of them?
- 10 A. Yes.
- 11 Q. I show you State's Exhibit Four. Do you see that
- 12 picture?
- 13 A. Yes.
- 14 Q. What sizes do you see, large and extra-extra large;
- 15 right?
- 16 A. This size I picked up, the large, I never picked it
- 17 up. I never wore a large since I was age 10.
- 18 Q. Sir, those shirts weren't -- you didn't pick up
- 19 neither one of those shirts?
- 20 A. I see holes in these shirts. These shirts had
- 21 alarms on them.
- 22 Q. Okay. You don't wear a size large, do you?
- 23 A. No.
- 24 Q. I wear a large.
- 25 A. Okay.

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

1 Q. So you're saying that wasn't you that came in those
2 three prior times that Ms. Patsy saw?
3 A. She should have presented evidence.
4 Q. So, someone with -- similar to your build --
5 A. Yes.
6 Q. -- came in the same store?
7 A. I guess.
8 Q. Same time of day, same department, same items
9 that -- so much that it drew a red flag to Ms. Patsy that
10 she picked you up the second you walked in the door and it
11 wasn't you --
12 A. It wasn't me.
13 Q. -- those three prior times? Okay. Just making
14 sure I understand you.
15 A. Yes.
16 Q. Mr. McMillian said you go by Freddy?
17 A. Yes.
18 Q. They also call you Freddy the Polo Guy, don't they?
19 A. Huh-uh.
20 Q. Because you sell Polos on the corner of 15th and
21 MLK in Augusta?
22 A. No.
23 Q. That ain't you?
24 A. No, that's another Freddy.
25 Q. You know who I'm talking about, though, don't you?

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

- 1 A. No, that's another Freddy.
- 2 Q. Uh-huh.
- 3 A. He sells shoes. Fake bootleg shoes, too.
- 4 Q. But you bought sheets that day; right?
- 5 A. I couldn't buy any. They arrested me.
- 6 Q. And Ms. Carl -- or Mr. Carl, the fellow you saw in
- 7 the video --
- 8 A. Yes.
- 9 Q. -- he talked to law enforcement; didn't he?
- 10 A. Yes, I guess.
- 11 Q. No, he didn't.
- 12 A. That's what they told me. He did because he came
- 13 to the room and Ms. Patsy said he didn't work there.
- 14 Q. Ms. Patsy didn't find those clothes in the corner
- 15 of the store where you said you put them down?
- 16 A. I tell her I put them on the thing there.
- 17 Q. She found them over to the left; right?
- 18 A. No. Where I dropped them off at, that's where she
- 19 found them at. When I came out of the dressing room I
- 20 didn't have anything on me. She ain't got it on the
- 21 camera.
- 22 Q. Wouldn't it be better for profits if you didn't
- 23 have to pay for your inventory, you just sold it, make a
- 24 better profit; right?
- 25 A. No.

EDWARD RODRIQUEZ ANTHONY - CROSS BY SLOCUM

1 Q. That's why you took them, that's why you had the
2 pliers? That's why you tore the tags off?

3 A. What pliers? Remember they were grip pliers,
4 adjustable grip pliers. Grip pliers don't take anything
5 off.

6 Q. That video Mr. McMillian just showed you, you
7 walking out the dressing room, what did you do when you
8 stopped by that green shirt and you moved your arm forward
9 as you were walking by? What did you toss back there, the
10 tags?

11 A. No, I didn't toss anything. I was looking for my
12 cell phone. I never made it back there.

13 Q. How did you get from MCG --

14 A. Car.

15 Q. -- to Belk's?

16 A. Car.

17 Q. In your black Suburban?

18 A. That's funny. I ain't never drove a black
19 Suburban.

20 Q. Yes or no, is it a black Suburban?

21 A. No, no.

22 MR. SLOCUM: Beg the Court's indulgence, Judge.

23 Mr. Anthony, that's all the questions I have.

24 Thank you.

25 THE WITNESS: Thank you.

EDWARD RODRIQUEZ ANTHONY - REDIRECT BY McMILLIAN

1 THE COURT: Redirect?

2 MR. McMILLIAN: Please, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. McMILLIAN:

5 Q. Freddy, I want to direct your attention to what
6 Mr. Slocum pointed out to you.

7 A. Uh-huh.

8 Q. Those two red and white shirts, when was the last
9 time you wore a size large?

10 A. At the age of 10.

11 Q. Do people call you Fat Freddy?

12 A. Yes, sir.

13 Q. You haven't wore a size large in a long time?

14 A. No.

15 Q. Now, Mr. Slocum asked you a lot of questions.

16 A. Yes, sir.

17 Q. And I want to give you a chance to clarify some of
18 those things. You are not Freddy the Polo Guy?

19 A. No, sir.

20 Q. You do not drive a black Suburban?

21 A. No, sir.

22 Q. What kind of car do you have?

23 A. A Acura and Infinity. I got my keys on me there.

24 Q. And when you left the dressing room, what were
25 you -- what were you doing, depositing right there? What

EDWARD RODRIQUEZ ANTHONY - REDIRECT BY McMILLIAN

1 were you doing?

2 A. I put the clothes down as I left the dressing room.

3 Q. What shirts did you put down?

4 A. The red, this shirt right here, the extra-extra
5 large. I got a two-X on now.

6 Q. Did you ever pick up a size large shirt?

7 A. No, sir. You can see that on the camera. I only
8 picked up one shirt.

9 MR. McMILLIAN: Beg the Court's indulgence.

10 (Pause.)

11 Q. Why do you think Ms. Patsy keyed in on you when you
12 walked in the door?

13 A. Because of Carl.

14 Q. Why? What's Carl got to do with it?

15 MR. SLOCUM: Judge, I object. This question is
16 pitting the witnesses.

17 MR. McMILLIAN: Judge, he opened the door to
18 speculation when he asked him why Ms. Patsy keyed in on
19 him.

20 THE COURT: Just one second. Would you go to your
21 jury room just one second, please?

22 (Jury exits courtroom at 11:30 a.m.)

23 THE COURT: I don't recall him asking her as to
24 why, and I may be wrong on that but I thought the question
25 was that, Isn't it true that she she jumped on you right

EDWARD RODRIQUEZ ANTHONY - REDIRECT BY McMILLIAN

1 when you first walked in the door; is that incorrect?

2 MR. McMILLIAN: I believe, I believe he inquired,
3 She jumped right on you because of these three prior
4 times, because you were there, because you were -- and
5 then I believe he said, Why. I'm not sure.

6 MR. SLOCUM: Judge, I said, So you're telling this
7 Court that someone with your same build, same time of day,
8 and the same store, same department, and the same clothes
9 raised a red flag to Ms. Patsy, that they picked you up as
10 you walked in the door but it wasn't you. And he said,
11 Yes.

12 MR. McMILLIAN: He's obviously asking him to
13 speculate about why Ms. Patsy --

14 MR. SLOCUM: That never came out of my mouth,
15 Judge. Why never came out of my mouth.

16 THE COURT: I'm going to sustain the objection even
17 though he says pitting witnesses. Pitting witnesses is
18 speculation. And I note your objection on the record but
19 I'm not going to let you go there. Okay?

20 MR. McMILLIAN: Thank you.

21 THE COURT: Would you bring the jury in?

22 (Jury enters courtroom at 11:30 a.m.)

23 Madam Forelady: We have one in the restroom.

24 (Pause, waiting on juror.)

25 (Juror enters courtroom at 11:32 a.m.)

1 THE COURT: All right. Mr. McMillian?

2 BY MR. McMILLIAN:

3 Q. Freddy, I just have one, two final questions. Did
4 you steal anything from Belk's that day?

5 A. No, sir.

6 Q. Did you enter Belk with any intent to steal
7 anything that day?

8 A. No, sir.

9 MR. McMILLIAN: Nothing further, Judge.

10 THE COURT: Thank you. You may step down. Call
11 your next witness, please.

12 MR. McMILLIAN: At this time, Judge, the State --
13 the defense would rest.

14 THE COURT: Very good.

15 All right. Madam Forelady, the State says it's
16 rested its case in chief. The defense has said it's
17 rested its defense. I'm going to take up a few
18 administrative matters in just a moment including going
19 over with the attorneys the law that I'll charge to you in
20 just a few minutes.

21 If you'd go back to your jury room and take a
22 little break, then we'll get you back out here. Okay?

23 FOREPERSON OF THE JURY: Yes, sir.

24 THE COURT: Thank you very much.

25 (Jury exits courtroom at 11:33 a.m.)

1 THE BAILIFF: The food is here.

2 THE COURT: You're not going to have any reply, are
3 you, or are you?

4 MR. SLOCUM: No, sir.

5 THE COURT: Let's go ahead and get the arguments.
6 It's 11:30. It's a little bit early. If you don't mind.

7 THE BAILIFF: No.

8 THE COURT: Have you looked at the shoplifting
9 proposed charge with the additions?

10 MR. SLOCUM: Yes, sir.

11 MR. McMILLIAN: Judge, if I may for the record. At
12 this time I'd like to renew my motion for a directed
13 verdict.

14 THE COURT: Okay. For the stated reasons. Any
15 other additional reasons?

16 MR. McMILLIAN: No, sir, Your Honor.

17 THE COURT: You are renewing all prior objections
18 as well?

19 MR. McMILLIAN: Yes, sir.

20 THE COURT: Very good.

21 Let me go over with you guys the basic structure of
22 my charge. You got the law as I'm going to charge on the
23 substantive law.

24 MR. SLOCUM: Judge, I'm sorry, are we going to do
25 the arguments before the charge? I know we discussed it

1 pretrial.

2 THE COURT: You guys told me that you wanted to
3 argue before I charge the law.

4 MR. SLOCUM: That's correct. I just wanted to make
5 sure.

6 THE COURT: Yes. I'm just going to go ahead and get
7 this out of the way.

8 MR. SLOCUM: Yes, sir.

9 THE COURT: But my charge is in three parts. The
10 first part is the general rules that define and control
11 the jury's duties. It would include a reminder to the
12 jury that they are to make their decision based on the
13 testimony and evidence they heard from the stand in
14 accordance with the law as I give it to them, and they
15 shall not be concerned with what the law -- what they'd
16 like it to be, but what it is.

17 And I tell them they don't have any friends to
18 reward, enemies to punish in this case. And they have to
19 follow all my instructions as I give it to them because
20 they're all equally important. If I've done anything that
21 appears to indicate to them how they should find factually
22 the verdict that is to be reached, then they're to
23 disregard that because they and they alone are the judges
24 of the facts.

25 And, they have to evaluate and weigh the evidence

1 and I can't give them a set of scales. They evaluate it
2 and weigh it using their good sound judgment and common
3 sense. I tell them what is testimony.

4 There's no stipulation in this case at all, is
5 there?

6 MR. SLOCUM. (Shakes head.)

7 MR. McMILLIAN: No, Judge.

8 THE COURT: So it will be just be testimony and
9 exhibits. And I tell them what's not in evidence and
10 that's your arguments, your questions, objections. And I
11 remind them, remind the Foreperson that people can't
12 discuss or deliberate about the fact that you have
13 objected or my rulings on them, and anything they
14 haven't -- that they've seen when court's not in session.

15 I give them the types of evidence, direct and
16 circumstantial. I give them the definition of
17 circumstantial under State versus Logan which is all the
18 circumstances must be consistent with each other and when
19 taken together point conclusively to the guilt of the
20 accused beyond a reasonable doubt, et cetera, et cetera.

21 I then go over with them the credibility of the
22 witnesses and what testimony they wish to believe and wish
23 not to believe. I give them a list of factors that they
24 can but are not required to consider. I tell them they
25 can't add up the number of people who appeared for one

1 side or the other because it doesn't matter what side the
2 truth comes from, that their sole interest is to find the
3 truth in the testimony and evidence presented.

4 Didn't -- we didn't have any experts in this trial,
5 did we?

6 MR. SLOCUM: No, sir.

7 THE COURT: No experts. So I won't give them
8 that.

9 I point out to them again that the indictment is
10 not evidence of guilt. It doesn't raise an inference nor
11 presumption of guilt.

12 I will charge them on the presumption of innocence,
13 reasonable doubt. I'm not going to charge my intent
14 charge. I know it's clearly part of this crime but it's
15 in the substantive charge on shoplifting.

16 Look at it and if you think I need to do more, I
17 can show you my intent charge but I think that adequately
18 covers the intent required for this case.

19 MR. SLOCUM: I think yours is fine, Judge.

20 MR. McMILLIAN: I don't have an issue, Your Honor.

21 THE COURT: Okay. Very good. So I will not charge
22 the general -- last charge of intent. There's no issue
23 about identification in this case.

24 So that would be the generalized charge. And then
25 I'd go in and charge the law of shoplifting which includes

1 evidence that the Defendant allegedly committed prior bad
2 acts that were not subject to convictions. And I give
3 them that. Then I give them the rest of that charge.

4 Also the statement of the Defendant under
5 Jackson-Denno, their duty to make a consideration as to
6 whether these statements are freely and voluntary. That
7 would be the substantive charge.

8 That would then lead me to a few final thoughts
9 about their deliberations. And I just go over with them
10 ideas about listening to everyone's point of view, talk
11 about the law of evidence. And they're not to be
12 partisans or advocates for one side or the other. Both
13 sides, you know, felt like you can be fair and impartial.
14 And they're doing something deliberately, they should not
15 be in a big hurry. It's his only day in court, et cetera,
16 et cetera.

17 I go over the verdict form with the bailiff, take a
18 quick break with you guys and then we'll go on.

19 I'm glad to let you see my standardized charge. If
20 you want -- more than likely if you want to look at it
21 further you're more than welcome to but that's an overview
22 of what I would charge to the jury. Okay?

23 MR. SLOCUM: State's ready to go, Judge.

24 MR. McMILLIAN: Defense is ready, Judge.

25 THE COURT: You guys want to break before you do

1 your closings?

2 MR. McMILLIAN: Just in case, I'd like to use the
3 restroom. I drink a lot of water.

4 THE COURT: I'm telling you, I'm proud of both of
5 you. I think both you guys are doing an excellent job.

6 That will be fine. Let's take about a five-minute
7 break and come back.

8 MR. SLOCUM: Thank you, Judge.

9 (Lunch break taken at 11:40 p.m. The trial resumed
10 afterwards at 12:44 p.m., as follows:)

11 THE COURT: A brief discussion. The State doesn't
12 intend to open on the law and so you'll just go first,
13 Mr. McMillian, and then you'll follow.

14 MR. McMILLIAN: That's correct.

15 MR. SLOCUM: Yes, Judge.

16 THE COURT: Anything else from the defense before
17 we get started?

18 MR. McMILLIAN: No, sir.

19 THE COURT: From the State?

20 MR. SLOCUM: No, sir.

21 THE COURT: Would you bring the jury in?

22 THE BAILIFF: Bring them in.

23 (Jury enters courtroom at 12:45 p.m.)

24 THE COURT: Madam Forelady, ladies and gentlemen of
25 the jury, did the clerk feed you suitably?

1 THE JURY (COLLECTIVELY): Yes.

2 THE COURT: Good. We're going -- we've moved from
3 the first phase of opening statements to the second phase
4 of presentation of the evidence. We are entering the
5 third phase which will be the closing statements by the
6 attorneys, their closing arguments. I will then charge
7 you on the law and then we'll let you know after a brief
8 meeting that you can begin your deliberations.

9 After each section if any one of the jury wants to
10 take a break, just let us know. Okay?

11 FOREPERSON OF THE JURY: Yes, sir.

12 THE COURT: State ready?

13 MR. SLOCUM: We are, Your Honor.

14 THE COURT: Defense ready?

15 MR. McMILLIAN: Yes, sir, Judge.

16 THE COURT: All right. Mr. McMillian?

17 MR. McMILLIAN: May it please the Court, Your
18 Honor.

19 THE COURT: Yes, sir.

20 MR. McMILLIAN: Ladies and gentlemen, we talked
21 yesterday, I guess it was yesterday afternoon, mid
22 morning. We had a big long discussion about my dog and
23 that sort of stuff.

24 We're now at the point where y'all have to decide
25 what happened. Ladies and gentlemen, I would submit to

1 you that this case is about one thing. Doubt. Just
2 doubt. In going through everything and getting ready to
3 talk to y'all, a few things occurred to me that I don't
4 doubt at all. I don't doubt death or taxes or that my
5 dog's on the couch right now. I just don't. I don't
6 doubt that my client was in Belk on March 16th. He was
7 there shopping. He got up there and testified to that.

8 I don't doubt the testimony of the corporal from
9 the jail who came in and testified about the meticulous
10 procedure by which they document what he had in his
11 pockets and all of his personal effects. He had some
12 pliers. He had \$1,013.88. And he had some miscellaneous
13 papers and cards. And he told you what most of those
14 miscellaneous papers and cards were.

15 Ladies and gentlemen, I don't doubt one more thing.
16 In just a few minutes when I wrap up, I don't doubt that
17 Mr. Slocum is going to stand up and ask you to ignore
18 everything I'm about to say. It's his job. It's what
19 he's got to do.

20 The only other thing I don't doubt, ladies and
21 gentlemen, is when I'm finished you'll go in that little
22 room back there and you'll find my client, Edward Anthony,
23 not guilty.

24 Let's talk about the things I do doubt, things I
25 think you should think about doubting. What about the

1 testimony of Ms. Patsy, the loss prevention lady from
2 Belk? She testified that in the office she had a full
3 view of the store through numerous cameras and a complex
4 system that allowed her to tilt and angle and, really,
5 honestly Lord knows what else. But what did she produce
6 for me and then what did the State produce for y'all? A
7 relatively short, cut, edited video of my client browsing
8 around Belk's approaching a door and his arrest.

9 Did you see any video of a combative client? You
10 saw a video of him exiting the store. One officer leading
11 him out, holding him by the wrist, handcuffed.

12 Ladies and gentlemen, she testified to y'all that
13 that she was a certified law enforcement officer in
14 Georgia, that she had been through the training. She knew
15 full well the importance of a detailed report, keeping and
16 maintaining and preserving evidence, if she ever in fact
17 had this evidence, and a full and fair disclosure of her
18 story.

19 Let's talk about what she actually did. The
20 report. I entered it into evidence. She started the
21 report on March 16th. First page. She has a court date
22 listed as March 31st. The date on the photo on the third
23 page, March 31st. The date on the receipt is May 21st.
24 And then, ladies and gentlemen, on the loss -- on the last
25 page of the loss prevention incident under Spontaneous

1 statement or reason given by the subject, she says No.
2 That indicates he didn't say anything. But that's not
3 what she testified to. That's not what Officer Smith
4 testified to. How do we know? We only have the video she
5 provided us.

6 Ladies and gentlemen, I think my greatest doubt
7 about Ms. Patsy's testimony is that she actually saw my
8 client remove items from his clothes and discard them on
9 the floor. She didn't go pick them up immediately. As a
10 matter of fact, she stood about right here and said that
11 he was about this far away. And I don't know when the
12 last time y'all were in a Belk's was, but those racks are
13 this high (indicating). She testified to that. And
14 there's clothes and items and stuff and there's just no
15 way that she could see and see through those items to see
16 him do anything.

17 What reason is there for that? Well, he didn't
18 plead guilty and she started cobbling together a report.
19 By the dates on the report, it took her two or three
20 months to get everything together. But what didn't she
21 provide? She didn't provide any security tags that she
22 says somebody gave her, she's not sure who. She didn't
23 provide law enforcement the name of the associate who
24 supposedly swept the dressing room. Why didn't she do
25 that? Because it didn't happen.

1 Let's talk a little bit about what Officer Smith
2 got on the stand and testified to. I believe he testified
3 that when he pulled up he saw someone matching the
4 description of the person he was dispatched there for
5 almost exit the store and then turn back in but walked
6 right past him inside the store. Didn't see him until
7 Ms. Patsy said, That's him, That's him.

8 Ladies and gentlemen, he testified that he found a
9 magnet on my client. Where is the proof of that? We
10 don't know because he didn't do anything to preserve any
11 evidence. He didn't go back and retrieve any evidence.
12 He didn't take any photos, but we'll get to why he said he
13 did that in just a minute.

14 The other reason I doubt he found this bag is that
15 because, like I told you, Corporal Buggs went through the
16 extensive procedure. You know, one person logs everything
17 in, writes everything on the bag. And then she in turn
18 takes that sealed bag and manipulates those items and
19 creates an inventory. And that was entered into evidence.
20 There's no magnet there. You heard Officer Smith testify
21 that he didn't put anything in his pockets and he didn't
22 take anything out. Where's this mysterious magnet?

23 Ladies and gentlemen, after watching the exit video
24 with y'all, I have a serious doubt that my client was ever
25 combative. And I would submit to you all that the reason

1 he indicated he was combative -- because that explains a
2 few things.

3 That's an effort to make y'all's job a little
4 easier. If my client was combative, there's his reason
5 that he didn't collect these security tags or take any
6 photos. He needed to get him out of there. He's making a
7 scene. If my client's combative, it explains why he had
8 to remove him from a chair while he was handcuffed behind
9 his back with pressure to his hypoglossal nerve and a
10 taser.

11 Ladies and gentlemen, you saw that video of him
12 exiting the store. But my client being combative explains
13 why they needed to deliver knee strikes, whatever that is,
14 and why they needed to use a taser again to get him in the
15 car.

16 Ladies and gentlemen, what concerned me most about
17 Officer Smith's testimony, though, was -- you remember I
18 approached him and asked to see his report. And then he
19 testified that he requested his in-car video be
20 submitted. And I asked him if we were ever provided
21 that. He said, No.

22 That's important. And we don't know when or if he,
23 in fact, tripped the mic or did whatever it is to start
24 recording. But that in-car video might have provided
25 audio for the entire interaction in the store. It might

1 corroborate his story that he read my client his Miranda
2 rights. It might indicate that he was combative. We
3 don't have that. I would submit to you the reason we
4 don't have it is because it doesn't corroborate his story.

5 Finally I guess with that in-car video, we won't
6 ever know if he actually made that statement, if he
7 actually ever said: If he ever would have thought about
8 it, saying ain't doing it. We also won't know if the
9 officer lied to you when he said he didn't interrogate
10 him. He didn't question him.

11 I'm going to sit down in just a second, ladies and
12 gentlemen. That one resounding thing that I have no doubt
13 about is that Mr. Slocum will ask you to ignore all of
14 this. I hope you won't. I hope you'll go back there and
15 find my client not guilty today.

16 Thank you.

17 THE COURT: Mr. Slocum?

18 MR. SLOCUM: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. SLOCUM: Mr. McMillian. Mr. Thompson. Ladies
21 and gentlemen of the jury.

22 Well, we made it. You've gotten to know myself and
23 Mr. McMillian in the last day and a half. And he's
24 right. We are acquaintances outside of work.

25 But I don't want you to ignore what he said. I

1 want you to focus on it. I want you to look at all of
2 that stuff. He wants you to think that all these
3 witnesses that we put up were lying and to believe his
4 client.

5 Well, this isn't NCIS. This isn't CSI. It's the
6 real world. And as I told you all at the beginning, we
7 asked you all 12 to be here because we wanted you to use
8 your common sense and to use what you use on a daily basis
9 to judge credibility of the witnesses that we put up and
10 the credibility of his client, Mr. Anthony.

11 Mr. McMillian is not only a friend of mine but he's
12 a good attorney. And he did what he's supposed to do. He
13 wants you to look over here and he wants you to look down
14 here. He wants you to look around everything but the
15 truth.

16 Well, the facts are the facts and the truth is the
17 truth. It doesn't matter about the apprehension. It
18 doesn't matter about what happened outside of this
19 shoplifting. All of that doesn't matter. It's all
20 smoking mirrors. What happened was Mr. Anthony walked in
21 the Belk's on March 16th, went and picked up these items,
22 went to the dressing room, popped the tags off of them
23 with pliers that he said he had. He stated he was there.
24 Comes out and these shirts just so happen to be the exact
25 same shirts that he picked up with holes where the tags

1 used to be. He wants you to think that he was just
2 unlucky. It was a bad day, just a really bad day. Wrong
3 place. Wrong time. Just so happened he had pliers on
4 him. Just so happened that three times before that the
5 same guy, same type guy, same build, same time of day,
6 same store, same everything, came in and did the exact
7 same thing.

8 But he was too slow on March 16th of 2014, and he
9 finally got caught.

10 I want you to think about what Ms. Patsy said.
11 Think about her catching him as soon as he walked in the
12 door. Y'all saw the video. He's walking in and there he
13 is. Never leaves him, the whole time he's in the store.

14 What's the result? (Displays exhibit.) You saw
15 Mr. Anthony on the video walk past -- the doors are over
16 here. He walks past and does a little meander. Hits the
17 door, woop, there's law enforcement, and goes back along
18 the back wall and discarded the items that were found.

19 Officer Smith didn't see him because he was behind
20 the shelves angled away so Ms. Patsy could see him coming
21 around the corner. But Officer Smith sees him after he's
22 trying to sneak out behind him and Patsy catches him.
23 Officer Smith didn't lie to you. He said, No, I didn't
24 see him when he walked in. Because he didn't. He walked
25 by him because he was over here discarding the stuff.

1 Hunched down, discarding it when Ms. Patsy caught him.
2 And she's not here today. She had an accident at work
3 this morning and couldn't make it.

4 But she saw him. And then we found the pliers and
5 then we found the shirts and all of these pieces start to
6 fit. Now we know why when he opened the door he came back
7 in. He wasn't going after some Carl fellow. That has
8 nothing to do with what happened with the shoplifting. He
9 saw Officer Smith coming in. Woop. I got to go now. I
10 got to drop these. Woop. I don't got nothing. Y'all can
11 search me.

12 Ladies and gentlemen, I've heard some stories
13 before and, again, you can use your own common sense to
14 judge the credibility of Mr. Anthony but I don't got
15 nothing is one of the most incriminating statements you
16 can make. Who says that? Somebody with a guilty
17 conscience says that.

18 I talked to you in the beginning about direct and
19 circumstantial evidence. Direct being what you can see,
20 smell, touch, taste. You heard directly what Ms. Patsy
21 saw. Officer Smith came in, what he saw, what he
22 corroborated. You see it in the video. Y'all saw the
23 videos. Corporal Buggs telling you what she did with the
24 pliers, inventoried them.

25 All of those pieces together lead to one thing and

1 one thing only. This wasn't an accident. It wasn't a
2 mistake. This wasn't a I-was-going-to-buy-some-sheets-
3 and-decided-not-to. This was just the one time that
4 Mr. Anthony was too slow and he got caught.

5 Don't ignore what Mr. McMillian said. Please, I
6 want you to look at all of it. Take it all into account
7 when you make your decision.

8 The decision should be pretty fairly easy for you
9 at this point. Talk about my nephews -- nieces and
10 nephews getting in the cookie jar and having the cookie
11 crumbs around their mouth and chocolate on their face.
12 And they tell you, No, I didn't get in the cookie jar, but
13 those crumbs and that chocolate says another story.

14 This tells a different story. I talked to you in
15 the beginning about evidence of shoplifting and
16 Mr. McMillian pointed out that I didn't use the word
17 intent. And he's right. I left it out, but that's why I
18 wanted you to go on what the Judge is going to tell you.

19 He's going to tell you shoplifting is concealment,
20 taking to another area of the store, altering the tags,
21 moving it with the intent to deprive. Ladies and
22 gentlemen, even if you don't think he exited that door, a
23 shoplifting occurred as soon as these tags were popped
24 off. You don't have to leave the store.

25 There is your shoplifting. Mr. Anthony told you

1 he went into the dressing room and tried them all on. And
2 here they are, tags gone. Everything else aside there's
3 your shoplifting. You don't need anything else.

4 The Judge is going to tell you about reasonable
5 doubt. It's not all doubt. Just ask y'all, what's
6 reasonable in this case? What do the little crumbs
7 circumstantially, what's it lead to? What does our
8 evidence show? Y'all can decide who's telling the truth
9 and who's not.

10 I thank y'all for your service. And I'd ask that
11 when you return to your jury room you come back with a
12 verdict of guilty. Thank you.

13 THE COURT: All right.

14 Madam Forelady, ladies and gentlemen of the jury.
15 I anticipate my charge would be in the neighborhood of
16 about 25 minutes. Would you like to take a break or would
17 you like to continue on with the charge? Would you check
18 with your jury, please, ma'am?

19 (Pause.)

20 THE FOREPERSON OF THE JURY: Continue on.

21 THE COURT: Let me forewarn you, I'm not as
22 intelligent enough or as eloquent as these attorneys are.
23 Some of this will be read. These are important points of
24 law and so I'm afraid if I try to paraphrase them I will
25 misstate them. So I apologize to you in advance for

1 reading some of this to you. I try to minimize it as much
2 as possible but bear with me to the extent I have to.

3 Ladies and gentlemen of the jury, now that you've
4 heard all the evidence in this case, you've heard the
5 arguments of these attorneys, it is my duty as the trial
6 judge to instruct the law that you must apply in this
7 case.

8 My instructions to you is going to be in three
9 parts. The first part will be the general rules that
10 define and control your duties as jurors. The second will
11 be the law of shoplifting and some other items that I will
12 charge you about. And the final part of my charge will be
13 some considerations about your deliberations.

14 Now if at any time you don't understand what I tell
15 you, let me know. If you need a break at any time, you
16 let me know. Okay?

17 Now as I told you at the beginning of this case.
18 It's your duty to find what the facts are from the
19 evidence that you heard that's been presented to you here
20 in this courtroom.

21 From this point forward no more evidence is going
22 to be presented to you. The end of the evidence has
23 occurred. So you must make your decision based on the
24 sworn testimony, whether it be cross, direct or some other
25 form, and the exhibits that you heard.

1 You also must apply the law to the facts as you
2 find them to be. You shall not be concerned with what you
3 wish the law would be but what it is as I tell you now.
4 And you also should not be influenced by any personal
5 likes or dislikes you may have, prejudice or undue
6 sympathy you may have for one side or the other. What
7 that simply means is you have no friends to reward, no
8 enemies to punish.

9 You will make your decision based solely on the
10 testimony and evidence that you heard here in this
11 courtroom and according to the law as I give it to you.
12 And, if you will recall, when you took your oath you swore
13 or affirmed that you'd do just that.

14 In following these instructions I'm giving to you
15 now, you must follow all of my instructions. You can't
16 pick out aspects of it that you agree with and apply those
17 and disregard some that you may disagree with. They're
18 all equally important.

19 Also, if I have said or done anything throughout
20 the course of this trial that seems to indicate to you the
21 facts you're supposed to find, in other words, the verdict
22 you're to reach, I'm going to ask you but I'm also going
23 to instruct you to disregard that. I have no feeling as
24 to your verdict or the facts you're to reach. That is
25 solely up to you. You and you alone are the judges of

1 what the facts are. And you will decide what those facts
2 are by evaluating and weighing the evidence that you've
3 heard here in this courtroom.

4 Now, the term evaluating or weighing, you can't do
5 that literally. I can't give you a set of scales to weigh
6 the evidence. You are to use good sound judgment and
7 common sense and walk through and discuss all the
8 testimony and evidence in this case that you've heard when
9 reaching your decision.

10 I'm going to tell you what is evidence, and what is
11 not evidence so when you get into your discussions you'll
12 know.

13 The sworn testimony of a witness, whether it be on
14 direct examination or cross-examination, is evidence. Any
15 exhibits that have been allowed into the record in this
16 case is also evidence. And that's the only evidence you
17 have before you.

18 So it takes me to what's not evidence. Number one,
19 the arguments of these attorneys, these fine attorneys
20 from their opening statements and their closing
21 statements, other times during the course of this case, is
22 not evidence. As I told you at the beginning of the case,
23 they're not sworn. They're not put on the witness stand
24 and subjected to cross-examination.

25 That's not to minimize what they tell you, but it

1 is not evidence. At the end of the day if your memory
2 differs from what either or both these attorneys tell you,
3 then your collective memory will control. And, Madam
4 Forelady, I remind you also that because something may
5 appear in someone's notes doesn't mean it trumps
6 somebody's memory. Again, as I told you earlier, that's
7 why they call them deliberations. You'll just have to
8 hash out whatever the differences are. Okay?

9 FOREPERSON OF THE JURY: Yes, Your Honor.

10 THE COURT: Also, questions and objections by the
11 attorneys is not evidence. As I told you, there will be
12 an objections in every trial and this one was no
13 different. Bear it to say that objections are a part of
14 the process that each trial goes through.

15 You may not, you shall not consider the fact an
16 objection was raised or to the extent I allowed you to
17 stay in here, you may not consider or discuss my ruling on
18 that objection. Okay? Again, that's -- Madam Forelady,
19 that will be up to you to make sure that ruling is
20 enforced.

21 Finally, ladies and gentlemen, whatever you saw
22 when court was not in session is not evidence. So we
23 limit it to what we heard and saw here in this courtroom
24 from this witness stand.

25 So that takes me to the types of evidence that we

1 recognize in South Carolina. We recognize two sets, two
2 types of evidence. We recognize direct evidence and
3 circumstantial evidence.

4 And direct evidence is pretty straight forward.
5 Circumstantial evidence is a little more tricky. But I'm
6 going to tell you and read to you what each is and give
7 you an example. Direct evidence directly proves the
8 existence of a fact and does not require deduction or
9 inference.

10 For example, if I am accused of running a red light
11 and Judge Gravely testified that he saw me run the red
12 light, that would immediately establish that issue -- that
13 point that's at issue. You don't have to infer anything
14 further. That is direct evidence.

15 Circumstantial evidence is this: It's proof of a
16 chain of facts and circumstances indicating the existence
17 of a fact. In other words, it requires deduction or
18 inference.

19 For example, if I were to go to bed at night or
20 each of you were to go to bed at night and have a fresh
21 sheet of snow in your front yard, if you were to wake up
22 in the morning and see tracks in that snow, you may
23 reasonably infer that someone or something walked through
24 your yard although you did not see it. It requires a
25 deduction or inference. The only prohibition is that

1 inference or your conclusion can't be speculation or
2 surmise.

3 Now, ladies and gentlemen, in South Carolina crimes
4 may be proven by circumstantial evidence and in our state
5 the law makes absolutely no distinction between the weight
6 and the value to be given either direct evidence or
7 circumstantial evidence.

8 However, to the extent that the State relies on
9 circumstantial evidence to prove its case, all of the
10 circumstances must be consistent with each other and when
11 taken together point conclusively to the doubt -- excuse
12 me, to the guilt of the accused beyond a reasonable doubt.
13 If these circumstances merely portray the Defendant's
14 behavior as suspicious, then their proof has failed.

15 The State has the burden of proving the Defendant
16 guilty beyond a reasonable doubt and that burden rests
17 with the State regardless of whether they choose to use
18 direct evidence, circumstantial evidence or a combination
19 of both.

20 Now in deciding what the facts are in this case it
21 will be incumbent upon you to determine which testimony
22 that you wish to believe and which testimony you wish not
23 to believe. You have a right to disbelieve all or part of
24 any witness's testimony. You have a right to believe all
25 of any witness's testimony.

1 In making this decision, what we call credibility
2 of the witnesses or what the facts are, you may, but,
3 ladies and gentlemen, you're not required to, take into
4 account a number of factors. Let me give you these
5 factors.

6 Number one, was the witness able to hear or see or
7 know the things about which they testified? How well were
8 they able to recall and describe the topics of their
9 testimony? What was their demeanor while they're on the
10 witness stand? In other words, what was their manner
11 while they're up here? You may ask yourself: Is there a
12 reason that a person would want to help or hurt one side
13 of the case or the other? Did they have an interest in
14 the outcome of this case or prejudice or bias against one
15 side or the other in this case?

16 You can ask how reasonable the witness's testimony
17 was in light of all the evidence in this case and whether
18 what that person said on the stand had been contradicted
19 by what they said at another time or what they did at
20 another time, by other testimony in the case or other
21 exhibits or testimony in the case.

22 And, ladies and gentlemen, those are just some of
23 the factors that you may consider in determining this
24 credibility of the witness or believability of the
25 evidence.

1 One thing you don't do as jurors is check your
2 common sense at the door once you're sworn in. And you
3 shouldn't in this case. You should use those things in
4 your day-to-day lives that you find indicative of
5 truthfulness and indicative of a lack of truthfulness when
6 you make -- when you go through this exercise of the
7 believability of the witnesses.

8 But one thing you may not do is add up the number
9 of witnesses that may appear for one side or the other
10 because it doesn't matter for you where the truth comes,
11 whether it's a witness for the defense, for the State or
12 some combination of those two. Your sole goal and
13 objective is to try to find the truth based on the
14 testimony and the evidence before you in this case.

15 Ladies and gentlemen, I'll remind you again that
16 the fact that the Defendant was arrested, charged and
17 indicted is not evidence of guilt. It does not raise an
18 inference nor a presumption of guilt. Again, that is
19 simply the way we bring a person before the Court for a
20 trial and a determination of guilt or innocence. And you
21 may not discuss or consider the fact that the indictment
22 occurred.

23 Now, in this case the Defendant has pled not guilty
24 to the indictment. That puts the burden on the State to
25 prove him guilty beyond a reasonable doubt.

1 A person charged with committing a criminal offense
2 in South Carolina, ladies and gentlemen, is never required
3 to prove himself or herself innocent. And I'll charge you
4 that it is an important rule of law in any criminal case,
5 no matter how serious or not serious a charge may be that
6 a defendant will always be presumed innocent of the crime
7 for which he has been indicted unless there's been proof
8 presented by the State that satisfies you of their guilt
9 beyond a reasonable doubt.

10 Now this presumption does not end when you go back
11 in your room and begin your deliberations but it
12 accompanies the Defendant throughout this trial until you,
13 the jury, are satisfied of guilt by proof beyond a
14 reasonable doubt. The presumption of innocence is said to
15 be like a robe of righteousness that stands upon the
16 shoulders of the Defendant until it's been removed or
17 stripped from his shoulders by evidence satisfying you of
18 guilt beyond a reasonable doubt.

19 And, ladies and gentlemen, that's not just a mere
20 legal theory and that's not just a legal phrase. The
21 presumption of innocence is a substantial right which
22 every citizen is entitled to unless you, the jury, are
23 satisfied of guilt beyond a reasonable doubt.

24 So that leaves me finally in this part of my charge
25 as to the definition of reasonable doubt. Then we'll take

1 a quick break. Okay?

2 This is a reasonable doubt. A reasonable doubt is
3 the kind of doubt that would cause a reasonable, sincere,
4 honest and conscientious person to hesitate to act in an
5 important matter in their own affairs. Proof beyond a
6 reasonable doubt is proof that leaves you firmly convinced
7 of the Defendant's guilt. There are very few things,
8 ladies and gentlemen, that we know in this world with
9 absolute certainty. And in criminal cases, the law does
10 not require proof that overcomes every possible doubt.

11 When you begin your deliberations if, based on your
12 consideration of that evidence, you are firmly convinced
13 that the Defendant is guilty of the crime for which he has
14 been charged, then you must find him guilty. On the other
15 hand, if you think that there is a real possibility that
16 the Defendant is not guilty, you must give the Defendant
17 the benefit of the doubt and find him not guilty.

18 Reasonable doubt may arise from the evidence or a
19 lack of evidence. And I further instruct you that a
20 defendant is entitled to every reasonable doubt that may
21 arise in a case. And what that simply means, ladies and
22 gentlemen, is this: That if upon any issue of fact
23 essential to a verdict of guilty you have a doubt as to
24 how that issue should be resolved it will be your duty to
25 resolve that issue in favor of the Defendant.

1 Now, Madam Forelady, those are the first aspect or
2 those are the rules that define and control your duty as
3 jurors. And I can sit here and see looking down at you
4 that I'm about to put some of you to sleep. So let me get
5 you to stand up for a second. We're not going to leave
6 the courtroom. Just stand up and move around. Then I'll
7 finish up with the rest of the charge which will not be so
8 long.

9 Does anyone need a drink or does anyone need a
10 break? Okay.

11 (Pause.)

12 THE COURT: Madam Forelady, ladies and gentlemen of
13 the jury. I am going to the second aspect of my charge to
14 you and that will be the law of shoplifting, and also the
15 fact that there was an alleged statement made or
16 statements made by the Defendant.

17 First, the Defendant in this case is charged with
18 shoplifting. The State must prove beyond a reasonable
19 doubt the following: That the Defendant took, took
20 possession of, carried away, transferred from one person
21 to another, or from one area of a store to another area,
22 merchandise with the intent to deprive the merchant of the
23 possession, use or benefit of merchandise without paying
24 the full retail value.

25 Full retail value means the merchant's stated or

1 advertised price for the merchandise.

2 Merchandise means any goods, chattels, foodstuffs
3 or wares of any type of description regardless of value.

4 Merchant means the owner or operator of the store
5 or any agent, employees, lessee, consignee, officer,
6 director, franchisee, or independent contractor of the
7 owner or operator.

8 Intent means willful, intending the result which
9 actually occurs, not accidentally or involuntarily.

10 Intent may be shown by acts and conduct of the
11 Defendant and other circumstances from which you may
12 naturally and reasonably infer intent. If the Defendant
13 willfully concealed un-purchased goods or merchandise on
14 the premises, outside the premises of the store, on the
15 Defendant's person, amongst the Defendant's belongings, or
16 amongst the belongings of another person, you may consider
17 this as evidence that the Defendant has concealed the
18 merchandise with the intent to convert it to his own use
19 without paying the purchase price.

20 Conceal means to hide merchandise on the person or
21 among the belongings of a person so that although there
22 may be some notice of its presence it is not visible
23 through ordinary observation.

24 That is the law of shoplifting.

25 And by the way, ladies and gentlemen, I will not

1 send you my charge back there but I will go over the law
2 with you or any parts of my charge as many and as often
3 times as you'd like. Okay?

4 Now, ladies and gentlemen, let me tell you. You've
5 heard evidence in this case that the Defendant allegedly
6 committed prior bad acts which were not the subject of
7 convictions other than the one for which he is on trial
8 for now. This testimony, if you conclude it is true, may
9 only be considered by you, the jury, on the question of
10 whether these acts constitutes a common scheme or plan and
11 for no other reason and no other purpose.

12 You may give this evidence the weight and value, if
13 any, which you find it should have on the sole issue of
14 whether a common scheme or plan existed. You must not
15 consider evidence of the commission of another bad act not
16 the subject of the conviction of the proof of the
17 Defendant's guilt in this charge we're trying today.

18 Let me say that again. You must not consider
19 evidence of the commission of another bad act not the
20 subject of a conviction as proof of the Defendant's guilt
21 of the charge we're trying today.

22 Again, ladies and gentlemen, you may only consider
23 the other bad acts as to whether or not there's a common
24 scheme, not whether he committed the charge that he's on
25 trial for today.

1 Now, ladies and gentlemen, there were statements
2 alleged to have been made by the Defendant admitted into
3 evidence in this case. Now, while the Court has
4 determined that the statements are admissible, I instruct
5 you that you make the ultimate decision of whether or not
6 the Defendant made the statements.

7 If the Defendant did make the statements you must
8 determine whether the statements were made by the
9 Defendant voluntarily and of his own free will. This
10 means that the statements were not caused by pressure,
11 force, fear, threats, coercion or intimidation, or by hope
12 or a promise of leniency, or a reward of any kind. In
13 determining whether the statement was voluntary, you
14 should consider both the characteristics of the Defendant
15 and the details of the questioning.

16 Some of the factors you must consider are: The age
17 of the Defendant; the Defendant's education or lack of
18 education; the Defendant's mental ability or capacity; the
19 Defendant's IQ or intelligence; the Defendant's background
20 and environment; the place and length of detention; the
21 nature of the questioning and the advice or lack thereof
22 to the Defendant of his constitutional rights including,
23 but not limited to, the right to remain silent, that any
24 statement could be used against him in a court of law, the
25 right to have a lawyer present, that if he could not

1 afford a lawyer, a lawyer would be appointed to represent
2 him without any cost, and that he could stop making a
3 statement at any time. You must carefully consider all of
4 the surrounding circumstances before you give any weight
5 to any alleged statements.

6 The State has the burden of proving beyond a
7 reasonable doubt that the alleged statements were
8 voluntary. If you determine that the statement was
9 voluntary you may give the statements any further
10 consideration that you deem to be proper. On the other
11 hand, you must decide what weight, if any, should be given
12 to the alleged statements if you do that.

13 If you determine the alleged statements was {sic}
14 not the free and voluntary statement of the Defendant you
15 should not and shall not consider the statements at all.

16 Now, ladies and gentlemen, that is the substantive
17 law that you will apply in this case. And that leads me
18 to a final few points about your deliberations.

19 Number one, you do not serve as jurors because
20 you're partisans or advocates for one side of the case or
21 the other. Both sides picked you because you represented
22 throughout the qualification process that you could be
23 fair and impartial to both the State and to the defense
24 and make a decision based solely upon the testimony and
25 the evidence and according to the law as I give it to you.

1 Now when you begin your deliberations and we'll
2 send you word when you're supposed to, don't forget that
3 you're to use your experiences in life, your good common
4 sense and your sense of logic and reason in discussing the
5 evidence and testimony in this case and ultimately
6 deciding on which verdict you tend to reach.

7 Now deliberation is defined as this: It's a
8 careful consideration weighing up with a view toward a
9 decision. Now regardless of what any of you may think
10 about our judicial system or our jury system, I would
11 submit to you that the genius of it is that it allows 12
12 men and women like yourselves who come from different
13 walks of life, who have different experiences, different
14 perspectives, to listen to the testimony, to listen to the
15 evidence, listen to the charge on the law, and then you go
16 back and discuss calm and courteously all the testimony
17 and to ultimately reach a verdict.

18 And we call them deliberations for a reason. If
19 you're doing something deliberately you should not be in a
20 big hurry. And you should not be today. This is the
21 State's and the defense's only day in court. They can't
22 come back tomorrow or next week or next month for a second
23 bite at the apple. This case is important to both sides
24 of this case, both the State and to this Defendant.

25 Remember your sole interest is to try the find the

1 truth from the testimony and evidence you've heard in this
2 case, listen to each other's points of view and the points
3 they're making about the weight of the evidence, walk
4 through and talk through courteously all the evidence.
5 And, remember, this is the only time the parties get to
6 try this case.

7 For your verdict to stand it has to be unanimous
8 amongst the 12 of you. With that being said, each of you
9 must decide this case for yourself, but you should only do
10 that after you have impartially listened to all the
11 discussion, walked through all the evidence with your
12 fellow jurors and listened to everybody's points and
13 points of view.

14 Don't be afraid to change your opinion as to the
15 weight of the evidence if the discussion with your fellow
16 jurors honestly convinces you that's the right thing to
17 do. On the other hand, do not change your opinion as to
18 the weight of the evidence solely to appease your fellow
19 jurors to get a verdict.

20 Now, Madam Forelady, with that being said if the
21 jury needs anything throughout the course of your
22 deliberations, if you would write down what it is or your
23 question, sign it, knock on the door, we'll receive it
24 here in the courtroom and we'll respond accordingly. If
25 you need any water or drinks, I'm sure the bailiffs will

1 make sure they take care of you on that fashion. If you
2 have any other things, questions or the charge on the law,
3 let us know and we'll be glad to do that.

4 Once the jury reaches its verdict as to what it's
5 going to find in this case, you'll need to fill out the
6 verdict form. The order in which your options occur have
7 to come one way or the other so it's of no consequence
8 which order they appear.

9 But your order is this: As to the charge of
10 shoplifting, under Indictment 2014-GS-02-1000. We, the
11 jury, unanimously find the Defendant not guilty. If
12 that's the jury's verdict, you'll check that first option.

13 The second option would be: As to the charge of
14 shoplifting, Indictment Number 2014-GS-02-1000, we, the
15 jury, unanimously find the Defendant guilty. If that's
16 your decision then you'll check that option. You'll then
17 sign as the Foreperson, you'll fold your paper and crease
18 it, knock on the door and we'll receive you back in the
19 jury room {sic} for your verdict.

20 That being said, I'm going to ask that the jury,
21 except for the alternate, go back to the jury room --
22 well, if you have some personal belongings back there if
23 you'd step back and get them, then bring them back out,
24 otherwise you stay right here with me. Then we might
25 bring you back for further clarification of the law or

1 we'll send you back for you to begin your deliberations.
2 If you'd to back now, please.

3 (Jury exits courtroom at 1:36 p.m.)

4 THE COURT: Any additions or exceptions?

5 MR. SLOCUM: None from the State, Judge.

6 MR. McMILLIAN: None, Your Honor.

7 THE COURT: Would you guys look at the exhibits?

8 MR. SLOCUM: Sure.

9 (Attorneys reviewing exhibits.)

10 THE COURT: Take this verdict form and then signal
11 back, Mr. Bailiff, once they do that they can begin their
12 deliberations. Okay?

13 THE BAILIFF: Yes, sir.

14 THE COURT: Mr. Anthony, if you'd stick around
15 close by. And for the attorneys if you want to head out,
16 give us your cell phones so we can chase you down if we
17 need. Okay? We're at ease.

18 (Deliberations commenced at 1:38 p.m. Thereafter,
19 the Court heard other matters. At 3:14 p.m., the trial
20 continued:)

21 THE COURT: We have a question in the Anthony case.

22 (Defendant enters courtroom.)

23 THE COURT: We are back on the record in the State
24 versus Edward Rodriguez Anthony.

25 The jury sent out a question as follows: Was

1 Officer Daniel Smith's police report that he was referring
2 to on the stand entered into evidence.

3 MR. McMILLIAN: No, Your Honor.

4 THE COURT: And so, my -- I would say no, and you
5 just got to make a decision based on the evidence that's
6 in the record at this point.

7 Any problem with that from either side?

8 MR. SLOCUM: No, sir.

9 MR. McMILLIAN: No, Judge.

10 THE COURT: Any other requests or instructions to
11 the jury?

12 MR. SLOCUM: None from the State, Judge.

13 THE COURT: Okay. Bring the jury out, please.

14 (Jury enters courtroom at 3:15 p.m.)

15 THE COURT: All right. Madam Forelady, the
16 question from the jury was: Was Officer Daniel Smith's
17 police report that he was referring to on the stand
18 entered into evidence; correct?

19 FOREPERSON OF THE JURY: Yes, Your Honor.

20 THE COURT: And the answer to that question is no.
21 And the record that's been placed before you is what
22 you'll have to make your decision on. Okay?

23 FOREPERSON OF THE JURY: Yes, Your Honor.

24 THE COURT: Does that respond to the jury's
25 question?

1 FOREPERSON OF THE JURY: Yes, Your Honor.

2 THE COURT: I'm going to send you back to your jury
3 room. If you would stop your deliberations for one second
4 in case I need to amend my instructions. Otherwise, we'll
5 send word back to you in just a moment. Okay?

6 FOREPERSON OF THE JURY: Yes, Your Honor.

7 THE COURT: Thank you very much.

8 (Jury exits courtroom at 3:17 p.m.)

9 (Court's Exhibit No. 2, jury note, marked and
10 received into the record.)

11 THE COURT: All right. Any additions or exceptions
12 from the State?

13 MR. SLOCUM: None from the State, Judge.

14 THE COURT: From the defense?

15 MR. McMILLIAN: None, Judge.

16 THE COURT: We'll be back at ease. Would you ask
17 the jury to resume their deliberations, Mr. Bailiff?

18 (Thereafter, other matters were heard by the Court.
19 The trial resumed at 3:34 p.m.:)

20 THE COURT: Everybody ready? State ready?

21 MR. SLOCUM: We are, Your Honor.

22 THE COURT: Defense ready?

23 MR. McMILLIAN: Yes, sir, Judge.

24 THE COURT: Bring them in.

25 (Jury enters courtroom at 3:35 p.m.)

1 THE COURT: All right. Madam Forelady, my
2 understanding is the jury has reached a verdict; is that
3 correct?

4 FOREPERSON OF THE JURY: Yes, Your Honor.

5 THE COURT: And is it unanimous?

6 FOREPERSON OF THE JURY: Yes, Your Honor.

7 THE COURT: Would you pass it forward to the
8 bailiff, please, ma'am?

9 FOREPERSON OF THE JURY: Yes, Your Honor.

10 THE COURT: And for the record, I believe both
11 counsel are aware, we provided a new sentencing sheet or
12 verdict form to the jury because they asked for one. And
13 I believe both parties reviewed that verdict form and had
14 no objections to it; is that correct?

15 MR. SLOCUM: That's correct, Your Honor.

16 MR. McMILLIAN: That's correct, Judge.

17 THE COURT: Will you publish the verdict, please,
18 ma'am?

19 THE CLERK: Yes.

20 Your Honor, we have the State of South Carolina
21 versus Edward Anthony. As to the charge of shoplifting,
22 Indictment Number 2014-GS-02-1000, we, the jury,
23 unanimously find the Defendant guilty.

24 Signed by Jessica Prupis, Juror Number 134,
25 Foreperson, dated April 15th, 2015.

1 Ladies and gentlemen of the jury, if this is your
2 verdict, please indicate so by raising of your right
3 hands.

4 THE JURY (COLLECTIVELY): (Complying.)

5 THE CLERK: All hands are raised, Your Honor.

6 THE COURT: Thank you, ma'am.

7 You may be seated for the time being.

8 Ladies and gentlemen of the jury, the Court is
9 never concerned with your verdict but that the process is
10 followed and that you stayed engaged throughout the trial
11 and listened to the law and paid attention to the
12 testimony and the attorneys. And you did that from the
13 beginning to the end.

14 So, I'm not thanking you for your verdict because
15 I'm never concerned with what it is but I do thank you for
16 performing your civic duty. I told the alternate when I
17 excused her and I'll tell you that it's never pleasurable
18 to sit in judgment of your fellow man and listen to the
19 evidence when someone may have their liberty taken away
20 from them. But without you being willing to be step away
21 from your homes and jobs and do your civic duty, then the
22 rule of law is not existent. You can look across the
23 world and see areas where they don't have the rule of law
24 and they don't have a way to resolve their differences
25 either civilly or criminally and they do it with a gun in

1 the streets. And so you may not think this is the best
2 system out there, but I would challenge you to find one
3 that beats it anywhere in the world.

4 With that being said, I do thank you for your
5 service. You are finished for the week. You can't be
6 called back to state court for a period of three years.

7 If you go to your jury room, I need to get you,
8 Madam Forelady, to sign the indictment for me and I'd like
9 to speak with you just very quickly and we'll be back out
10 here in the courtroom in just a few minutes, but if you'd
11 go back to the jury room now, please.

12 (Jury exits courtroom at 4:39 p.m.)

13 (Some members of the jury enter courtroom again at
14 4:43 p.m.)

15 THE COURT: Mr. Slocum, do you have a sentence
16 sheet?

17 MR. SLOCUM: We are ready to go, Your Honor. It's
18 being passed up right now.

19 THE COURT: All right. Mr. Anthony, come around,
20 please.

21 Do we have everyone present who wants to be
22 present?

23 A JUROR: Yes, sir.

24 THE COURT: Give me Mr. Anthony's criminal record.

25 MR. SLOCUM: Judge, he has three prior

1 shopliftings: One from July 11 of 2011 out of Richmond
2 County, Georgia; one from January 19th, 2012, out of South
3 Carolina; and March 6th, 2012, out of South Carolina

4 THE COURT: And that's it?

5 MR. SLOCUM: That's it

6 THE COURT: All right. Mr. McMillian, I'll be glad
7 to hear from your client.

8 MR. McMILLIAN: Thank you, Your Honor.

9 Mr. Anthony is 35 years old. He is a welder and
10 does some electrical work by trade. He attended and
11 graduated TW Josey High School in Augusta. He has been to
12 technical college where he studied welding. He tells me,
13 Judge, he has three children. They live there in Augusta
14 as well.

15 Judge, I think in evaluating this case and electing
16 to take this case to trial, Mr. Anthony made a decision
17 based on the evidence we had at the time which did not
18 include any of the prior bad acts evidence. Both he and
19 well, he found out on Tuesday, I found out on Monday night
20 after Mr. Slocum had spoken with Ms. Patsy.

21 Judge, it certainly didn't include any of the
22 mention of the in-car video. At the time he elected to
23 take this to trial, Judge, we had viable defenses and I
24 just hope that you will consider that in sentencing.

25 THE COURT: Well, I certainly would never hold

1 against anybody exercising their constitutional rights.
2 So that would certainly not be at issue here.

3 But what is at issue is that Mr. Anthony, I think
4 it's clear -- I mean, although it wasn't the strongest
5 case, granted. There was some gaps, too, but this
6 gentleman, Freddy Polo, and he's out there on the corner
7 selling shirts and he's stealing from Belk's and other
8 places in my mind. And, Mr. Anthony, you disagree with
9 me.

10 THE DEFENDANT: Yes, I do.

11 THE COURT: The jury found you guilty.

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And I tell you what. I'm going to let
14 you speak in just a minute but right now I'm going to.
15 Okay?

16 THE DEFENDANT: Uh-huh.

17 THE COURT: Now do you know whether your client's
18 ever filed a tax return, ever?

19 MR. McMILLIAN: I don't know the answer to that,
20 Judge.

21 THE COURT: Have you?

22 THE DEFENDANT: (Shakes head.)

23 THE COURT: No, sir?

24 THE DEFENDANT: Not now.

25 THE COURT: When's the last time you filed a tax

1 return?

2 THE DEFENDANT: 2012.

3 THE COURT: Sir?

4 THE DEFENDANT: 2012.

5 THE COURT: 2012. What income were you claiming
6 from that?

7 THE DEFENDANT: I get paid under the table. I do
8 contractor work with my grandfather.

9 THE COURT: Uh-huh.

10 THE DEFENDANT: So you set a price and they pay you
11 then.

12 THE COURT: Right.

13 THE DEFENDANT: I work every year though. I work
14 temporary jobs with the Coops Staffing. I lost my job. I
15 got a job now though.

16 THE COURT: Now, Mr. Anthony, I told you I'd let
17 you speak. Go ahead. I'll be glad to let you.

18 THE DEFENDANT: All right. In the case that y'all
19 presented today, I was -- it violated my rights to a fair
20 trial.

21 First of all it's imposed. She said she seen me do
22 something. She didn't show you actual footage where I
23 went to go back the cell phone. The man said I had a
24 magnet. I never had a magnet.

25 The clothes that they presented today, I didn't put

1 them holes in that shirt. The time and date is off
2 because if I had this stuff when I committed the crime she
3 allegedly accused me of, it would have showed that. And
4 by her offering the tapes, copy, cut and paste, I know how
5 to do that as well. By her doing that, it didn't show
6 everything on the tape. The cameras was right there in
7 plain view. And I told her I said, camera right there to
8 show you everything. And I told Mr. Smith that, Deputy
9 Smith.

10 And now I'm getting locked up for a crime I never
11 committed, never committed. It's like she said I was on
12 the corner. It's another man named Freddy out there on
13 the corner doing the same thing, got Polo shirts with the
14 name on it in plastic. He orders them. I don't sell Polo
15 clothes. I work for my grandfather and Carl knows that.

16 If we -- I would rather appeal this charge today
17 because if he comes to court you will see, you will see
18 that everything I told you today wasn't a lie.

19 Ms. Patsy's son's named Allen.

20 THE COURT: Well, let me tell you this you will
21 have the right --

22 THE DEFENDANT: Yes.

23 THE COURT: -- to appeal. It's 10 days from today.

24 THE DEFENDANT: I'm going to appeal it, yes, sir.

25 THE COURT: That's fine. You sure have a right

1 to. Until that time, anything else you want to place on
2 the record?

3 THE DEFENDANT: I'm innocent. I'll call the N
4 Double ACP. (NAACP). I promise you. Thank you.

5 THE COURT: Okay, sir. Very well.

6 THE DEFENDANT: I got -- I want to say this right
7 here. I got choked, tased and fell out the chair, tased
8 again, choked and yanked on. I got doctor bills with this
9 case.

10 She should have showed that when there's a camera
11 up there. You withheld the evidence.

12 I called internal affairs in North Augusta. They
13 need to tell the right thing. Wrongly convicted of a
14 crime I never committed. She misled a jury to indict me.
15 Punishing me.

16 MR. SLOCUM: Judge, at the appropriate time in
17 regards to the victims, I'd like to relay something to the
18 Court.

19 THE COURT: Is the victim back here, or the
20 representative for the victim?

21 MR. SLOCUM: They are. Mr. David Gaskins is the
22 district manager for Belk. I just wanted to make the
23 Court aware that he has been here all day and Mr. Turno
24 was here all day yesterday. Their interest in this case
25 from the very beginning of -- starting this week has been

1 non-stop. And I just wanted to make the Court aware of
2 that and thank North Augusta Public Safety for their work
3 in this case as well.

4 As stated, it's not a perfect world and I'm
5 thankful for what they did.

6 THE COURT: All right. Anything further from
7 either side?

8 MR. McMILLIAN: No, Your Honor.

9 THE COURT: All right. I'M GOING TO SENTENCE YOU
10 TO SIX YEARS SUSPENDED ON 45 MONTHS ACTIVE WITH FIVE YEARS
11 PROBATION. WHEN YOU COME OUT YOU WILL GO TO VOC REHAB OR
12 JOB CORPS UNTIL YOU HAVE FULL-TIME EMPLOYMENT. YOUR --

13 THE DEFENDANT: I have full-time --

14 THE COURT: YOUR EMPLOYMENT MUST BE AT A JOB THAT
15 REPORTS AND WITHHOLDS TAXES.

16 YOU'RE GIVEN TRESPASS NOTICE FROM THIS MOMENT ON
17 THAT YOU SHALL NOT GO ON ANY BELK LOCATION. I'M PUTTING
18 YOU ON NO CONTACT WITH ANY BELK LOCATION. SO YOU'RE ON
19 TRESPASS NOTICE AND NO CONTACT WITH THE VICTIM.

20 THAT'S THE DECISION OF THE COURT.

21 Ten days to appeal, Mr. Anthony.

22 THE DEFENDANT: I will.

23 MR. McMILLIAN: Thank you, Your Honor.

24 THE COURT: Certainly.

25 MR. SLOCUM: Thank you, Judge.

1 THE COURT: Madam Bailiff, would you make sure that
2 the jurors are escorted safely from the courthouse,
3 please?

4 THE BAILIFF: Yes, sir.

5 THE COURT: All right. Thank you, ladies and
6 gentlemen, for your service.

7 REMAINING JURORS (COLLECTIVELY): Thank you.

8 (Jury exits courtroom at 3:51 p.m.)

9 END OF PROCEEDINGS: 3:51 P.M.

10 ***

11 CERTIFICATE OF REPORTER

12 STATE OF SOUTH CAROLINA)

13 COUNTY OF AIKEN)

14 I, Cheri L. Young, Registered Professional Reporter
15 and Official Court Reporter for the State of South
16 Carolina, Second Circuit-At Large, do hereby certify that
17 the foregoing proceedings were written stenographically by
18 me using computer-aided translation; further, that the
19 foregoing is a true, accurate and complete record, to the
20 best of my skill and ability, of all the proceedings had
21 and evidence introduced in the hearing of the captioned
22 case, relative to appeal, in the Court of General Sessions
23 for Aiken County, on the 14th and 15th days of April,
24 2015.

25 I do further certify that I am neither of kin,

1 counsel, nor interest to any party hereto.

2 I have hereunder set my hand this Thursday, the 6th
3 day of August, 2015.

4
5
6 -----
7 Cheri L. Young, RPR
8 Official Court Reporter
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FORM 5

2014A0211000051

FEB 07 2017

STATE OF SOUTH CAROLINA

County of AikenEdward R. Anthony

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017CP0200213

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Trenton Correctional Institution
2. Name and location of Court which imposed sentence Aiken County Court of General Session
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:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FEB 02 2017

C.C.P. & G., Aiken County, S.C.

Deputy Clerk

FILED

2.2.17

C.C.P. & G.S.

Deputy Clerk

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-15-15
- (b) 6 YEARS suspended to 4.5 months w/ 5 YEARS probation
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES (Direct Appeal)
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Confirm Conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

That Counsel demonstrated deficient performance on part of Failure and the result of prejudice from him that prejudiced the Defendant

10. Counsel Failed to make timely objections. Counsel Failed to Investigate for more evidence that he knew about Counsel labored of conflict of Interest

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.
- (a) (1) Probable Cause Never existed to make Arrest or Detain
- (b) (2) Trial Judge allowed Hearsay testimony at trial
- (c) And Store Clerk gave perjured testimony during Trial
- (4) Brady Violation
- (5) Ineffective Assistance
11. State concisely and in the same order the facts which support each of the grounds set out in (10).
- (a) Each Fact that support each ground will be set out at
- (b) Evidentiary Hearing.
- (c) _____
12. Prior to this application have you filed with respect to this conviction: YES
- (a) any petition in a State Court under South Carolina Law? Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof.

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- 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? **NO**

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- 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) These issues can only be raised on PCB. This is
 (b) Petitioner's initial Review
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Bradley McMillan, Second Circuit
Public Defenders Office, P.O. Box 2249,
Aiken S.C. 29802
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Petitioner wishes to be exonerated of all charges
Against Him.

20. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA)

County of AIKEN

VERIFICATION

I, Edwood Anthony, 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.

Edwood Anthony 363714

SWORN to and subscribed before me this 31st
day of January, 2017.

[Signature] (L S)
Notary Public

My Commission Expires: 10-7-2024

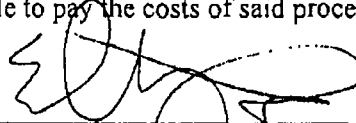
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Edward Anthony, 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.



Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

 363714
Applicant

SWORN or affirmed to and subscribed before me this
31st day of January, 2017.


Notary Public

My Commission Expires: 10-7-2024

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Edward Anthony, #363714,

2017-CP-02-0213

Applicant,

**RETURN AND PARTIAL MOTION TO
DISMISS**

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 2, 2017, would respectfully show this Court:

I.

Applicant is presently serving a probationary term under the supervision of the Department of Probation, Parole, and Pardon Services. In July 2014, the Aiken County Grand Jury indicted Applicant for shoplifting (2014-GS-02-1000). M. Bradley McMillian, Esquire and Barry L. Thompson, II, Esquire represented Applicant. Solicitors Jeffrey Alan Slocum, Esquire, Cassie W. Hall, Esquire, and Ashley Hammack, Esquire prosecuted the case. On April 14-15, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh. The jury found Applicant guilty as indicted. Judge McIntosh sentenced Applicant to imprisonment for six years, suspended upon service of forty-five months with five years' probation.

Applicant filed a timely notice of appeal. Tiffany L. Butler, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 7, 2016. State v. Anthony, Op. No. 2016-UP-507 (S.C. Ct. App. filed December 7, 2016). The remittitur was returned to the circuit court on December 28, 2016.

Attached to this Return and incorporated by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Probable cause never existed to make arrest or detain."
2. "Trial judge allowed hearsay testimony at trial."
3. "Both officer and store clerk gave perjured testimonies during trial."
4. "Brady Violation- Prosecutor withheld exculpatory evidence."
5. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to make timely objections."
 - b. "Counsel failed to motion for dismissal of charges."
 - c. "Counsel labored conflict of interest."
 - d. "Trial counsel demonstrated deficient performance on part of failure and the result of prejudice from him prejudiced the defendant."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges Brady violations. In evaluating post-trial Brady claims, Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable

to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory 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." Id., 434 S.E.2d at 268. Respondent submits that Applicant cannot satisfy the elements warranting a Brady violation. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue.

V.

Applicant's first, second, and third allegations should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"No probable cause never existed to arrest or detain," "Judge allowed hearsay testimony at trial," and "Both officer and store clerk gave perjured testimonies" are not cognizable claims

under the act. Applicant's contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

Furthermore, these issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss these allegations for failing to state cognizable claims for which relief can be granted under the Post-Conviction Relief Act.

VI.

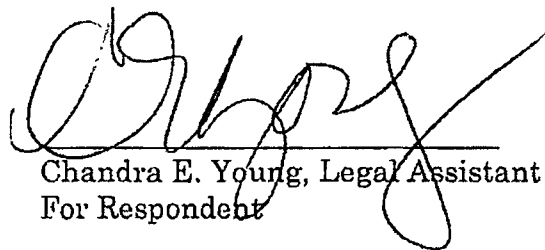
Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2017-CP-02-0213
EDWARD ANTHONY, #363714	)	
	)	
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 and Partial Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201

DATED this 16TH day of May, 2017.


 Chandra E. Young, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
 2 County of Aiken) Of Common Pleas
 3
 4 Docket No: 2017CP0200213
 5
 6 Edward Rodriguez Anthony,)
 7 Applicant,)
 8 vs.) Transcript of Record
 9)
 10 State of South Carolina,)
 Respondent.)

11
 12 January 23, 2018
 13 Aiken, South Carolina
 14

15 B E F O R E:

16 The Honorable William P. Keesley, Judge.
 17

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

19 Lance S. Boozer, Esquire
 20 Attorney for the Applicant

21 Julie A. Coleman, Assistant Attorney General
 22 Attorney for the Respondent
 23

24 Brenda J. Sigwald, Circuit Court Reporter
 To The Honorable Doyet A. Early III
 25 P.O. Box 206, Jackson, South Carolina 29831

I N D E X

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E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Page</u>

(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 MS. COLEMAN: May it please the Court?

2 THE COURT: Yes, ma'am.

3 MS. COLEMAN: This is Edward Anthony versus the
4 State of South Carolina, Docket Number 2017CP02213.
5 Applicant is currently serving a probationary term under
6 the supervision of the Department of Probation Parole and
7 Pardon Services.

8 In July 2014, the Aiken County Grand Jury indicted
9 applicant for shoplifting. Mr. Bradley McMillian, Esquire
10 and Barry L. Thompson II, Esquire represented the
11 applicant. Solicitor Jeffrey Allen Slocum, Esquire
12 prosecuted the case. On April 14th through the 15th, 2015,
13 applicant proceeded to a jury trial before the Honorable R.
14 Lawton McIntosh. The jury found applicant guilty as
15 indicted. Judge McIntosh sentenced applicant to
16 imprisonment for 6 years, suspended upon service of 45
17 months -- months, with 5 years probation, excuse me.

18 Applicant filed a timely notice of appeal. The
19 South Carolina court of appeals affirmed applicant's
20 conviction on December 7th, 2016. The remittitur was
21 issued on December 28th, 2016.

22 Applicant filed a timely application for post
23 conviction relief on February 2nd, 2017, alleging that he
24 was being he would in custody unlawfully based on the
25 following allegations: Probable cause never existed to

1 make an arrest or detain; trial judge allowed hearsay
2 testimony at trial; both officer and store clerk gave
3 perjured testimonies during the trial; Brady violation, the
4 prosecutor withheld exculpatory evidence; and ineffective
5 assistance of counsel.

6 The State filed its return and partial motion to
7 dismiss on May 16th, 2017. An evidentiary hearing was
8 scheduled on September 19, 2017. At the hearing the
9 Honorable J. Mark Hayes dismissed the case for failure to
10 prosecute because the applicant did not appear at the
11 hearing.

12 Afterwards applicant contacted his attorney to
13 inform him that he did not receive notice of the hearing
14 and if he would have, he would have been present. Judge
15 Hayes vacated his oral order dismissing the case and set
16 the case for a new hearing during this term of court before
17 Your Honor.

18 Applicant is present today and represented by
19 Mr. Lance Boozer.

20 And, Your Honor, at this time the State would make
21 its motion to dismiss the first three allegations in this
22 application as they are direct appeal issues and are
23 improper at post conviction relief.

24 THE COURT: Mr. Boozer?

25 MR. BOOZER: Thank you, Your Honor. If it pleases

1 the Court?

2 THE COURT: Yes, sir.

3 MR. BOOZER: Judge, with regard to the first three
4 allegations which are probable cause never existed to make
5 an arrest or detain, that the trial judge allowed hearsay
6 testimony at trial, as well as both officer and store clerk
7 gave perjured testimony during the trial; Your Honor in
8 response to the motion to dismiss, I would make an argument
9 that for the probable cause never existed, that that's
10 framed and we would certainly get into it with his former
11 attorney and through my client's own testimony that that's
12 really a claim of ineffective assistance of counsel, that
13 some sort of action should have been taken to challenge the
14 probable cause or the lack thereof as my client claims. So
15 we don't believe that that's actually a direct appeal
16 issue, that's an ineffective assistance of counsel claim.

17 With regard to the trial judge allowing hearsay
18 testimony at trial, Your Honor, my client's prepared to
19 testify to various instances that he believed were hearsay,
20 that either his lawyer did not object to or that he
21 believes, I think as he will couch it, that the prosecutor
22 should not have been eliciting. Certainly where the trial
23 judge does allow hearsay testimony over an objection, I
24 don't disagree that that is a direct appeal issue, but
25 we're going to explore some other areas through testimony.

1 Your Honor, with regard to both officer and store
2 clerk giving perjured testimonies during trial, Your Honor,
3 I believe his position, my client's position is, again,
4 that that falls under -- really more of a prosecutorial
5 misconduct aspect in presenting what he's going to, I
6 believe, claim was known perjured testimony, I don't know
7 that it would be a direct appeal and if it -- he also
8 claimed his lawyer should have brought that to the Court's
9 attention. So that would be another ineffective assistance
10 of counsel claim.

11 So, Judge, I would respectfully ask with regard to
12 those three allegations that they not be dismissed as we
13 will delve into those as either ineffective assistance of
14 counsel or prosecutorial misconduct claims.

15 THE COURT: Ms. Coleman?

16 MS. COLEMAN: Yes, Your Honor. As long as they're
17 framed as ineffective assistance of counsel, I believe that
18 it's allowed, but otherwise we would withdraw our motion
19 under that circumstance. Thank you.

20 THE COURT: Do either of you wish to make opening
21 statements or are you ready to proceed?

22 MR. BOOZER: Your Honor, applicant is ready to
23 proceed.

24 MS. COLEMAN: Ready to proceed, Your Honor.

25 THE COURT: Call your first witness.

Edward Anthony - Direct Examination by Mr. Boozer

1 MR. BOOZER: Thank you, Your Honor. We would call
2 Mr. Anthony to the stand.

3 THE COURT: Come up to the clerk, please, sir.

4 EDWARD ANTHONY,

5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat in the witness
7 chair. State your full name and spell your last name,
8 please.

9 THE WITNESS: My name is Edward Anthony,
10 A-N-T-H-O-N-Y, Anthony.

11 **DIRECT EXAMINATION**

12 BY MR. BOOZER:

13 Q Mr. Anthony, how you doing today?

14 A All right.

15 Q Okay. Mr. Anthony, do you know why is it that
16 we're all here --

17 A Yes.

18 Q -- today?

19 And why is that?

20 A Because I've been wrongfully convicted of a crime I
21 never committed and my constitution of safeguard is imposed
22 because of that allegations that they committed against me,
23 the crime they committed against me, the officer, the
24 solicitor, and if my public defender was a good lawyer --
25 like the Bible states, don't put your faith in the counsel

Edward Anthony - Direct Examination by Mr. Boozer

1 of the un Godly because they will perish you and convict
2 you. So with that being said, if he would have
3 investigated, further investigated the case, even with
4 their evidence, when the Judge McIntosh asked him --

5 Q Let me stop you right there. We're going to get
6 into some very specific --

7 A All right.

8 Q -- issues in a minute?

9 A All right.

10 Q But you understand that this is a PCR hearing?

11 A Yes.

12 Q And you've filed a PCR application?

13 A For release.

14 Q Hang on one second. Madam Court Reporter has to
15 take down everything that I say and everything you say, so
16 let's try and talk separately so she can get all that down,
17 okay?

18 A Uh-huh.

19 Q Now, let's talk about this: You were not in
20 prison; is that correct?

21 A I was.

22 Q You were?

23 A Yes.

24 Q But currently, as it stands, you came here in your
25 own car and --

Edward Anthony - Direct Examination by Mr. Boozer

1 A Yes.

2 Q And came to this place on your own free will?

3 A Yes, sir.

4 Q Okay. Now, you and I have certainly discussed what
5 it is that this Court can do for you and what it can't do
6 for you?

7 A Yes, sir.

8 Q And in that discussion, we've discussed that if
9 you're successful here today, this judge cannot reduce your
10 sentence or let you off -- are you on probation right now?

11 A Yes.

12 Q Okay. He can't let you off of probation or
13 anything like that. The only thing that His Honor can do
14 is start your case completely over and you go back and have
15 a trial; is that --

16 A Yes.

17 Q -- is that your understanding?

18 A Yes.

19 Q And is that you what you want?

20 A Yes.

21 Q Okay. And we've certainly discussed there's some
22 risk with that?

23 A Yes.

24 Q And knowing those risks you still want to go
25 forward?

Edward Anthony - Direct Examination by Mr. Boozer

1 A Yes.

2 Q Okay. Now, you heard Madame Attorney General
3 indicate that you had been convicted at trial. What type
4 of sentence did you receive?

5 A I received a 6 year suspended to 45 months and 5
6 years probation. But here's the problem with the
7 sentencing. It's in error because you cap something off at
8 6 and you do 45 months, that's almost four years. And you
9 give me 5 years probation, you had already done -- that's 9
10 years probation -- I mean 9 years.

11 Q Okay.

12 A Total.

13 Q Let's get to your claim so we can walk through
14 this. Did you appeal your conviction?

15 A Yes.

16 Q All right. Who represented you for your trial?

17 A Bradley McMillian.

18 Q How did Mr. McMillian come about representing you?

19 A It's -- he wasn't my first attorney. My first
20 attorney was Andy Smith, but when I talked to him, he said
21 he was my first attorney, but the record would show if held
22 have did an investigation, held have seen that he was my
23 second attorney.

24 Q All right. How did Mr. McMillian come about
25 representing you?

Edward Anthony - Direct Examination by Mr. Boozer

1 A I had called up the office of probation -- I mean
2 the public defender's office and I tried to use Wallis
3 Alvez and she said he was my public defender, not her,
4 so...

5 With that being said, he was like -- he rushed into
6 it instead of investigating it further. Like if he would
7 have investigated it, he would have seen that I was -- how
8 can you enhance something if I wasn't represented by an
9 attorney and plus if you never -- if you enhance something,
10 I was never represented by an attorney by law. That's
11 illegal enhancement and plus if you would have investigated
12 it, you would have seen it was double jeopardy, crimes
13 committed against me even when the police appeared for the
14 warrant. Deputy Danny Smith, he must have been establish
15 probable cause because Jason Skinner, I believe that his
16 last name is, he appeared in front of the judge -- on the
17 left-hand side you got Deputy Smith's badge number is 288.
18 But on the right-hand side, you got his signature, but you
19 got another deputy's dispatch Number 295.

20 So that being said, my life shouldn't be put in
21 danger twice. My Fifth Amendment says that. So my rights
22 have been violated, but if he would have investigated the
23 past crimes that they charged me with at Greg's Gas Plus he
24 would have seen also that if I plead guilty to it and how
25 can you issue me a warrant. And instead it would show that

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1 the South Carolina is an injustice system because they fail
2 to advise people of their rights. I have my paperwork to
3 prove that. So...

4 Q Going back to his failure the investigate --

5 A Uh-huh.

6 Q How many times do you think you met with
7 Mr. McMillian prior to going to trial?

8 A I met with him one week. I met him Wednesday and
9 then I met him Friday.

10 Q How long was Mr. McMillian representing you?

11 A Just that time.

12 Q And that's --

13 A A short period of time. It was less than two
14 weeks.

15 Q Okay. Were you out on bond at that time?

16 A Yes.

17 Q Where would you meet Mr. McMillian when you did
18 talk to him?

19 A To the public defender's office.

20 Q All right. Were there any plea offers prior to
21 your trial?

22 A No, it was like -- the evidence that they presented
23 was two months after the fact and I have proof that I
24 contacted Washington D.C. and everything that if I get
25 locked up on March 16th, he talked about it in the trial

Edward Anthony - Direct Examination by Mr. Boozer

1 transcript today it will show you proof if I get locked up
2 March 16, 2014, why would the officer be turning back to
3 May 21, 2014. And when Bradley McMillian asked him that on
4 the stand, he admitted to it, but the lady said she didn't
5 know -- Patsy Singletary stated under oath that she didn't
6 know why -- the evidence was off put in the back. Julien
7 must have -- must have messed with it and put it in the
8 back. She didn't know why it was off.

9 But Deputy Danny Smith, he lied at first, but he
10 told the truth. So you got evidence in your position that
11 these people went back and got evidence against me. You
12 can't do that. That's a violation of my Fourth Amendment.
13 You can't deprive me of that.

14 Q Well, let's talk about that. I think you're
15 jumping into one of your --

16 A Oh, okay.

17 Q -- allegations.

18 A Yes.

19 Q Which is -- let's talk about those and we'll go out
20 of order a little bit. But one of your allegations is you
21 believe both the officer and store clerk gave perjured
22 testimony --

23 A Yes.

24 Q -- at trial.

25 Is that what you were starting to get into?

Edward Anthony - Direct Examination by Mr. Boozer

1 A Yes. It's like to be -- in her written statement,
2 she stated under oath that I only came out with two things
3 of evidence.

4 Q When you say she, who are you talking about?

5 A Patsy, Patsy Singletary.

6 Q And who is she?

7 A That's the loss prevention clerk.

8 Q And this all occurred at Belk?

9 A Yes. Belk Department Store.

10 Q The allegations were -- that the State was making
11 against you that you were in the Belk attempting to steal
12 some items?

13 A Yes, yes, yes.

14 Q Okay. So keep going forward and explain to His
15 Honor what you believe the perjured testimony is?

16 A All right. When Bradley McMillian asked them who
17 was Karl Gaskins, she stated under oath that he was just a
18 customer. But if you watch the video tape, how can a
19 customer go to the police car, to the dash cam and come
20 back in and then can come right there and stand behind me
21 as the police is searching me and then sat in the front
22 when they put the handcuffs on me. So how is he a customer
23 when he's back in the store?

24 And I told him -- I told Bradley McMillian I know
25 him personally. He said how's the fire. He do insurance

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1 frauds. I know this man personally, so when I got in the
2 car, my family members know him and I seen him, I could see
3 him. But I turned back around to go get my cell phone, on
4 the video camera, you see me drop the cell phone, but the
5 deputy pushed me into the rack. But when he searching me,
6 he kept searching me over and over, he never did discover
7 any evidence.

8 When I come out of the dressing room, I dropped the
9 evidence on the table. And she lied under oath when she
10 kept saying honest he did this. To been honest he did
11 that. You got to make up your mind. You said I didn't
12 steal these four shirts and when Jeffrey Slocum asked the
13 -- the accuser about the -- has the evidence been altered,
14 she said, yes it have. He said don't testify to that just
15 yet. So that being stated, you come to the war with
16 tainted evidence, fruits of the poisonous tree got me, it's
17 enhanced now.

18 Q Well, let me ask you -- did you have any discussion
19 with Mr. McMillian about what you believed to be perjured
20 testimony?

21 A No.

22 Q Okay.

23 A We never -- because the evidence that was withheld,
24 the prosecutor even knew about it because he talked about
25 it. The judge -- when the jury had doubts, they came out

Edward Anthony - Direct Examination by Mr. Boozer

1 during their deliberation and they asked, they said do you
2 have -- can we see the evidence that he talked about
3 earlier and Bradley McMillian, when the judge asked him, do
4 y'all have any problem with this going forward, he asked
5 Bradley about the evidence and Bradley said I don't have no
6 problem going forward.

7 He asked Slocum, he said I don't have any problem
8 going forward. So that makes it a Brady violation when you
9 find out before trial, during trial, or after trial, that's
10 a violation of my rights.

11 Q Did your lawyer make any sort of motion at that
12 point?

13 A No.

14 Q Okay. As far as perjured testimony from the
15 officer and the store clerk --

16 A Uh-huh.

17 Q -- is there anything else with regard to that
18 allegation you want to describe to the Court?

19 A The officer and store clerk, it's like on one side,
20 the accuser, the loss prevention lady, Patsy, she knew she
21 was wrong, just like, you got five or six steps for a
22 shoplifting. You saying that I got to go outside, I pass
23 all check points and go outside. Well, on the video, you
24 never see me just go out with anything and you search me on
25 the camera and the initial police report, he stated I was

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1 outside of the camera. But on the dash cam, it shows that
2 I was clearly inside the view of the camera. So with that
3 being said, the violation -- when he asked me did I go
4 outside for shoplifting and she said no. So that
5 contradicted the officers warrant. He said on there they
6 had probable cause, I went outside but I never exited the
7 building, why am I here. That's a total facade.

8 Q Okay. Let's tie that in since you just jumped to
9 it a little bit about your lawyer, what you claim is he
10 failed to make a motion to dismiss the charges?

11 A Yes.

12 Q You just talked about the probable cause side of
13 that?

14 A Yes.

15 Q And then also your allegation that probable cause
16 never existed to make an arrest or detain. Is that what
17 you're describing?

18 A Yes, I told -- like I told the officer on the video
19 tape, I said, Officer there's no due process. He said, Let
20 me search you. He asked me could he put me in handcuffs
21 and take me to the back. So you failed to discover
22 evidence and put that in your police report and the
23 evidence that I discovered while I was incarcerated that
24 Bradley McMillian talked about on the record, if the chain
25 of custody says May 21 -- I mean March 21st, how was that

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1 stole when the lady didn't know why it was off, but the
2 deputy knew it was off and it's proof and my burden of
3 proof is that in the initial police report, the additional,
4 it would show you that if you lock me up March 16th, 2014
5 and you putting your thing into evidence at 2100, but you
6 returned at 1900 hours to the Belk Department Store and the
7 Belk's receipt says May 21st, 2014. So that's an error.

8 That's a violation of my rights. That's double
9 jeopardy once again. That's a violation of my fourth,
10 fifth, sixth and eighth and fourteenth amendments. Why
11 would I -- why should I be deprived of something that's in
12 the law that protects me against things like this.

13 Q With what you're describing, did your lawyer make
14 any sort of motion to the Court or attempt to get your
15 charges dismissed because of that?

16 A No.

17 Q Okay. And do you wish that he would have?

18 A Yes.

19 Q Okay.

20 A I wasted my life and I lost my car behind this.

21 Q You've also got an allegation that the judge
22 allowed hearsay testimony --

23 A Yes.

24 Q -- in the trial. If you would describe -- and you
25 may have already testified on that. But describe what you

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1 believe was testimony that either should not have been
2 allowed or that your lawyer should have objected to?

3 A Okay. When Patsy Mc -- she should have objected to
4 what I talked to earlier when she asked -- when prosecutor
5 Slocum asked about the evidence was it been -- has it been
6 altered, he should have objected to that right then.
7 Because if there was no evidence, how can you go get
8 evidence.

9 And the evidence I have in my bag would prove that,
10 if you said I had a red and white shirt and you put that in
11 evidence, well, when you show it at trial and I enter it
12 and the general rule to it, how can they have a warrant --
13 you would have a -- instead of a warrant. You know under
14 the Federal Rules of Criminal Procedure, I asked -- Federal
15 Rule 16 I asked and suspect this evidence and they kept
16 telling me that I have a public defender, I need to talk to
17 Bradley McMillian, but my letters will show if I asked you
18 in May, I think it was May 26 or 21st, about evidence, he
19 said I'm not your lawyer no more.

20 Q You're talking about Mr. McMillian?

21 A Yeah, Brad McMillian. He said I'm not your lawyer.
22 And January 2000 -- the next year in January 16th, again,
23 that's when I received my motion of -- my Rule 5, so I
24 would have had that before I went to trial it would have
25 been a different scene. So the jury had a shadow of a

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1 doubt to present the evidence to them so it would clear me
2 of a crime that I'm innocent. Only way I prove my
3 innocence is that you hand something over.

4 Q And you are getting into now your allegation that
5 exculpatory evidence --

6 A Was presented. Yes.

7 Q Okay. Describe for me, if you will, what you
8 believe the State withheld from you that you didn't know
9 about?

10 A Oh, the evidence about -- about when the jury had
11 doubts about the March, to see -- if the crime happened.
12 March 16th, why would you enter a receipt that said May 1st
13 and it showed that the computer printout of the Belks -- of
14 Belk's store receipt, it said -- and then they had
15 allegation that I stole \$412 for the items. But on the
16 receipt, that thing said a 1 or 200 and something dollars.
17 So with that being said, how can you lower your cost and
18 then higher the cost and present it at trial and say I had
19 this many items, I had that many items. You have to make
20 up your mind because in your written statement it say two,
21 but on the receipt it say three items and the other paper
22 said seven. Which one is it.

23 Q Okay. Did your lawyer ever review any of those
24 testimonies with you?

25 A No. Because there was no evidence to view because

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1 in his police report he said there was no evidence. But
2 when he asked him about the return, he said yes he
3 returned. He admitted to his wrong. He said what did you
4 get. He said nothing. He should have tagged on the
5 receipt to show that I at least have a cumulative from
6 Ms. Patsy.

7 Q Have you seen copies of these receipts?

8 A Yes. They entered -- they were entered at trial.

9 Q They were marked as exhibits at trial?

10 A Yes.

11 Q And you're talking about the May one?

12 A May.

13 Q Okay. That you're referring to?

14 A Yes.

15 Q All right.

16 A It's like the judge never knew that I got locked up
17 for March. If he would have let -- it's like he would have
18 never -- he would have never probably allowed it because
19 the exclusionary rule is this judge makes the decision. So
20 with that being said, he deprived me of my rights of
21 freedom once again. That's why I say my constitutional
22 safeguard is imposed because that's a federal civil rights
23 violation. You can't do nothing about that. You making
24 your own list and you can't control it, come on, man.

25 Q Did you have any discussion with your appellate

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1 attorney about any of that?

2 A I did, but it's like they wanted to tackle their
3 own situation. Prior time, I looked up the law, it said
4 prior time convictions, you can't hold that in a case of
5 shoplifting. You have to establish probable cause or the
6 evidence have to be there. Prior conviction has no weight
7 in the case of shoplifting. You have to have all elements.

8 Q Going back to the receipt that you're discussing
9 and that was entered into evidence at trial?

10 A Uh-huh.

11 Q What do you feel like Mr. McMillian should have
12 done with regard to the -- to that evidence?

13 A He should have tackled it when he seen the
14 violation at hand. He should have exposed that to the
15 lawyer. That's in my trial transcript. He talked to the
16 witness when she lied at any time, he sees errors. His
17 motions are errors in my opinion. If the police say I was
18 detained, he said he didn't find no evidence, but he
19 detained me.

20 Okay. I didn't go to trial for resisting arrest,
21 okay? I went to trial for shoplifting, so he -- it's like
22 he tried the resisting arrest when my charges had been
23 dropped. He should -- in 2017 in September my charges was
24 dropped for resisting when I was -- my proof, my burden of
25 proof. So if you would have showed the Courts that -- the

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1 error and told the judge at any time you wanted a motion to
2 dismiss for illegally obtained evidence, Matt versus Ohio
3 you would have showed him this, he would have sat there and
4 say, Okay, well, I understand they did violate his rights.

5 Q As far as exculpatory evidence that you believe was
6 withheld from you, is there anything else that you believe
7 was withheld that you believe is exculpatory or in your
8 favor?

9 A Yes, sir, like the dash cam.

10 Q Okay. Let's talk about that.

11 A All right. He said he asked it, but his department
12 -- and remember, this crime happened in March -- I mean
13 March, but he requested it May when he -- he went back to
14 the store and he came back to his precinct and entered it
15 into evidence. If when you request something and I take
16 you to trial a year later, you withheld that evidence
17 against me, it's still a violation of my rights. Brady
18 versus Maryland. You have to present that and give them --
19 once you request something, you got to give it so when I
20 take it to trial and it's not got on the record to show my
21 innocence, that that's -- there's another violation. You
22 can't withheld something that you requested.

23 So when I did get the evidence three years later,
24 you had no sound. It's been tampered with as well because
25 you would have seen that something I didn't pick up in the

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1 store, the lady came out with it on the dash cam and I have
2 it right here to show to prove that I've been deprived once
3 again.

4 Q Okay. Do you have a copy of the video that you're
5 discussing?

6 A Not in hand.

7 Q Okay.

8 A I can't -- it had a decoder in it and I couldn't
9 decode it at the time, but I have pictures so...

10 Q Other than that and what we've previously talked
11 about as far as exculpatory evidence, is there anything
12 else that you have since discovered that you believe would
13 have assisted you at trial?

14 A Yes. If he would have discovered that the written
15 statements or turned in a copy of the police report or the
16 video once again, you would have seen that when I wrote to
17 internal affairs. The internal affairs man said Deputy
18 Smith didn't violate my rights by using excessive force.
19 He said that I failed to stand up out of the chair and let
20 him put me in handcuffs. But if you would have watched the
21 video, you would have seen that I was already detained.

22 If I'm already detained, how can you pull out a
23 Miranda card in the back of the store when you look at the
24 video, you never see him pull out a Miranda card. So it
25 contradict -- he lied. So that's why I called the FBI and

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1 showed them and presented it to them. And they say it is
2 an error so that they would violate him. I called again
3 and tell them that. I'm trying to see that decision
4 because he violating me once again. He lied to the
5 internal affairs man. So he's still on the force. That's
6 why I say the State of South Carolina is an injustice
7 system. You see they violated my constitutional rights and
8 you deprive me.

9 Q Now, if you have anything that's pending either in
10 investigation or another court that you filed or attempting
11 to file, I don't want you to get into that?

12 A This is fine.

13 Q Okay. You've got an allegation that your lawyer
14 failed to timely object?

15 A Uh-huh.

16 Q Let's talk about one of those items, specifically.

17 MR. BOOZER: And, Your Honor, I'm looking at the
18 transcript at page 211.

19 THE COURT: All right.

20 MR. BOOZER: In the record on appeal and the trial
21 transcript the numbers actually match up, so this will be
22 211 beginning at line 16.

23 BY BOOZER:

24 Q Now, Mr. Anthony, did you actually testify at your
25 trial?

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1 A Yes, sir.

2 Q Okay. Do you recall on page 211 the solicitor
3 asking you, saying, You go by Freddie, to which you said
4 yes?

5 A Yes.

6 Q Okay. Do you recall also then the solicitor
7 asking, they call you Freddie --

8 A Polo Freddie.

9 Q Hang on a second. They call you Freddie the Polo
10 Guy, don't they. And you say huh-huh. And then the
11 question is asked, Because you sell polo's on the corner of
12 15th and MLK in Augusta. And you say no. And the
13 solicitor then says, That ain't you. No, that's another
14 Freddie. And then he asks, you know who I'm talking about
15 though, don't you. And you say that's another Freddie.

16 Did your solicitor -- did your attorney make any
17 sort of objection to you --

18 A No, he didn't.

19 Q Hang on a second.

20 A Oh.

21 Q -- to you being characterized or asking if you're
22 some guy Freddie the Polo Guy?

23 A No, sir he never objected. I'm glad you brought
24 that up. And when he said that, the lady never said my
25 name. The accuser never said my nickname. The police

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1 officer never said my nickname but Carl knew my nickname.
2 And so when my cousin, Carl, in front of Brad McMillian, he
3 said why did I say Carl's name. It was a -- it was a
4 conflict of interest. He gave them the inside scoop on
5 what we was going to talk about that day. So by him giving
6 the inside scoop, it mean that it is a conflict of interest
7 with the evidence. You turned over something that I can
8 use against him, but the error he made, the solicitor, by
9 calling me Polo Freddie, is the lady didn't say it, the
10 police officer never said it, being why would you let him
11 say it; so you should objected to that on the record and
12 seen that that's a crime against me. That's another error.

13 Q Okay. And let's talk about this. Let's skip
14 forward.

15 MR. BOOZER: And, Your Honor, I'm a bit further in
16 the transcript to page 260 and 261. And beginning on the
17 bottom of page 240 at line 25.

18 BY BOOZER:

19 Q Mr. Anthony, after this is all said and done and
20 you've been convicted at trial, do you recall the Court
21 making some statements to you?

22 A Yes. The judge said --

23 Q Hang on a second.

24 A Okay.

25 Q Do you recall on page 260 the Court stating, Well,

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1 certainly would never hold against anybody exercising their
2 constitutional rights, so that would certainly not be an
3 issue here, but what is at issue is that Mr. Anthony, I
4 think it's clear, although it wasn't the strongest case,
5 granted, but there are some gaps, but this gentleman
6 Freddie Polo and he's out there on the corner selling
7 shirts that he's stealing from Belks and other places in my
8 mind -- he makes this comment about Freddie Polo, doesn't
9 he?

10 A Yeah, that's an error.

11 Q Okay.

12 A Because he in cahoots -- the judge is in cahoots
13 with them.

14 Q Okay. But my point is, your lawyer never made any
15 sort of objection to this Freddie Polo guy?

16 A No. He never -- he worked for the State, so...

17 Q Okay. Other timely objections, are there any other
18 things that you feel like Mr. McMillian should have
19 objected to other than things we've already discussed, but
20 things other than that?

21 A Yes, in the transcript when he talked about the
22 Batson --

23 THE COURT REPORTER: The what?

24 THE WITNESS: Batson.

25 THE COURT REPORTER: Okay.

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1 THE WITNESS: B-A-T-S-O-N.

2 THE COURT REPORTER: Uh-huh.

3 THE WITNESS: When he talked about picking my jury,
4 he stated right then when I was sitting there, he said it
5 was his job and I asked him about me picking the jury and
6 he said it was his job to pick my jury. They picked a jury
7 not of my peers but white people. And my only black jury,
8 they sent her home. And I never gave consent for her to
9 sent -- go home, but when he talked about -- about why
10 Slocum never picked the black people, he stated that they
11 have crimes of dishonesty, but shoplifts is not a crime of
12 dishonesty -- might be but it's still not a crime of
13 dishonesty.

14 But he should have brought that up that they were
15 stereotyping my race when I'm African American, so it's a
16 violation. Lyndon B. Johnson gave me civil rights in 1964,
17 a right to protest that I should be discriminated against.
18 That's like our constitutional rights. I think it's like
19 the Fifth Amendment. I got the right to vote, African
20 Americans do as well. So why am I here.

21 BY MR. BOOZER:

22 Q Okay. So are you -- are you stating that you
23 believe your attorney should have made some objection to
24 the --

25 A Yeah.

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1 Q -- jury who was sat or seated?

2 A Seated. And plus, when the judge said this in
3 front of jury, he said I have no reason to doubt her
4 testimony, but she never told me what he took. So if I
5 never took anything and I never went out of the store, once
6 again why am I here. I mean my constitutional safeguard is
7 imposed again because I talked about that at the end. I
8 told him you have violated my rights to a fair trial,
9 therefore, my safeguard is imposed.

10 But when I wrote the stenographer and wrote the
11 Court, she said she didn't tamper with my evidence -- but
12 why is my constitutional safeguard. And I stated on the
13 record you have withheld evidence in my favor in my trial
14 transcript.

15 Q Other than the juror issue, is there anything else
16 you believe your lawyer should have objected to?

17 A In the beginning stages before trial, when he seen
18 they lacked evidence and he seen that the receipt said
19 March instead of May, he should have -- motion to dismiss
20 it before court started. And he failed to investigate
21 because he would have seen it was error with the
22 enhancement. It's called illegal enhancements because they
23 would have checked on my record. I get convicted for
24 taking trash out and I requested for an attorney and they
25 failed to give me one. They said I didn't qualify for one.

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1 Once I request something under my Sixth Amendment, I should
2 be awarded that and plus you charge me the same crime,
3 that's double jeopardy.

4 The Fifth Amendment, it states that I shouldn't be
5 tried twice for the same crime, but I was. If he would
6 have done a better investigation, he would have seen that.
7 But to enhance something and to bring me to court, to
8 trial.

9 Q Other than those issues is there anything further
10 that he should have objected to?

11 A No, that's it.

12 Q Okay. That's it for that.

13 Now, you mentioned earlier and started to reference
14 it and one of your allegations is that you believe your
15 attorney was operating under a conflict of interest?

16 A Uh-huh.

17 Q And you started to talk about that. So if you
18 would explain what you believe that conflict of interest
19 is.

20 A All right. When he asked Patsy Singletary --

21 Q Who was the store clerk?

22 A Yes.

23 Q Okay.

24 A All right. When he asked her, did you know who
25 this man was. She said no, I don't. I just -- she said I

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1 see customers all the time. So you see customers all the
2 time, once you let that video tape at trial, he could have
3 said she contradict yourself so that's why I got on the
4 stand to defend myself and show that she's not under oath,
5 but she wasn't in court so we could cross-examine her for
6 the second time. And she said she didn't have to come. So
7 if she would have came, we would have seen that she lied --
8 she committed crimes against me.

9 Q Okay. So describe how you believe that that made
10 Mr. McMillian have a conflict?

11 A That made him a conflict of interest because you
12 let her lie, you let her change her statement multiple
13 times. He failed to talk about the evidence being offered
14 when Jeffrey Slocum told her don't testify to that just
15 yet. It's like they got off the subject and they swayed
16 away from it and when she lied under -- about coming back
17 sometime later and getting evidence, why would you come
18 back some time later when the officer said no evidence.
19 These things improper against me, but they have.

20 Q Okay. Mr. Anthony, obviously, you've waited a
21 while to have your day in court and you're in here of your
22 own free will and volition?

23 A Yes, sir.

24 Q And you have, of course, maintained your innocence
25 throughout this entire process from trial through today?

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1 A Yes.

2 Q So today is your day in court. Obviously, we have
3 gone through all of your allegations. I just want to make
4 sure we covered everything.

5 A Yes.

6 Q Is there anything that we have not covered as far
7 as your PCR allegations and your allegations against either
8 the State or your former attorney that we have not been
9 over that you want to bring to the Court's attention?

10 A There's a lot of things.

11 Q And take your time because this is your day.

12 A I know. The -- if he just could have brought all
13 of the evidence and put all the -- like the chain of
14 custody, the chain of command. If he would have brought
15 that and showed Deputy Smith that, how can this be March
16 and you got evidence saying May. How can you bring this
17 and hold this against someone when you're initial police
18 report say there was no evidence. He should have stated,
19 Well, did you read the Miranda Rights then. He should have
20 objected to that when they didn't, why would you issue
21 Miranda Rights when he's lied under oath.

22 And plus, he should have brought the warrant to
23 show the double jeopardy because on a warrant when somebody
24 appears and they say they accomplished probable cause, they
25 cross they name out. Then the other deputy put his name

Edward Anthony - Direct Examination by Mr. Boozer

1 there. You got one man's signature, Deputy Danny Smith and
2 you got two -- two 95 Jason's badge number, so that mean he
3 went back twice on the left-hand side you got 288, a deputy
4 dispatch number.

5 So, you know, my grandma raised me to tell the
6 truth, nothing but the truth. But she worked for Richmond
7 County Sheriff's Department and she told me she said, be
8 weary -- be aware of people because they will lie on you
9 all the time, even police officers because she worked
10 there. And like in my trial transcript, another error is
11 when -- when Bradley should have objected to it when he
12 asked me do I have a crime -- a charge of shoplifting in
13 Richmond County. That was an error because he can't use
14 out of State -- another charge in because then at trial,
15 you have to present it in South Carolina. You should have
16 left Georgia in Georgia. You can't hold that against me.

17 Q You said Richmond County?

18 A Yes, he brought that up in my trial transcript when
19 he -- when he called me Polo Freddie, he said, you have a
20 crime for shifting in Georgia. In Richmond County, Augusta
21 Georgia. I told him yes. I didn't lie under oath. I told
22 him yes one charge. But when he brought that up he talked
23 about double jeopardy. He said you own about two
24 shopliftings in the State of South Carolina. So if I got
25 two shoplifts, that mean Bradley, he should have further

Edward Anthony - Direct Examination by Mr. Boozer

1 investigated it because this man is talking about it, but
2 he should object and said you can't hold that -- and you
3 can't hold that against me, that's out of state. That's
4 another error. That's a critical error once again.

5 Q Let me -- let me ask you one question before I
6 forget. Do you recall on page 260, and we were just on
7 this page, do you recall your attorney stating to the
8 Court, Judge, I think in evaluating this case and electing
9 to take this case to trial, Mr. Anthony made a decision
10 based on the evidence we had at the time, which did not
11 include any of the prior bad acts evidence. Both he and --
12 well, he found out on Tuesday, I found out on Monday night,
13 Judge it certainly didn't include any of this mention of
14 the in-car video.

15 At the time he elected to take this to trial,
16 Judge, we had viable defenses and I just hope you will
17 consider that in sentencing.

18 Did you have any discussion or can you describe
19 what that --

20 A I never had a discussion with him about that. He
21 said that out in -- at trial, so...

22 With that being said, he should have brought that
23 up to me, to my attention before time, so -- but he told me
24 something. He said he went back to the store on Sunday.
25 So when he stated on the record that Jeffrey Slocum is his

Edward Anthony - Direct Examination by Mr. Boozer

1 friend outside of this court, he's his friend, that's his
2 best friend. But I mean him and his best friend went back
3 to the store together and see what they was going to come
4 up with and you know, he worked for the State, so that was
5 a conflict of interest.

6 If you state on the record that that's your best
7 friend, that mean you keep once again with Freddie Polo.
8 If Bradley says Freddie, why would this man say Freddie
9 Polo. And if I sold clothes on the corner like the person
10 they said out there in Augusta, he was saying something
11 about Augusta and brought to it -- to Aiken, South
12 Carolina, that's in Augusta, Georgia. Do that person do
13 that in Aiken. I'm in Aiken. I got locked up in Aiken, so
14 why would you bring that in error, at hand here.

15 So when I try to say -- even -- when I seen the
16 error about the sentencing thing, I would have definitely
17 told the judge -- I wrote one to the Supreme Court in
18 Washington D.C. I wrote one to Aiken courts. And Judge
19 McIntosh, contacted Judie Coleman right there, the
20 assistant attorney general, and he said he don't know what
21 I have to do because it's out of his jurisdiction, it's out
22 of her hands.

23 So when you recognize your own error, then it's a
24 problem, not mine.

25 Q Let me ask you a question and I'll refer back to

Edward Anthony - Direct Examination by Mr. Boozer

1 page 198 of the transcript and this is when you -- this is
2 when you initially take the stand and testify?

3 A Uh-huh.

4 Q Your attorney in his opening questions asked you,
5 what do people -- does everyone call you Edward and you say
6 no, sir. What do people call you and you said Freddie.

7 A Yes.

8 Q And he asked if it was okay if I call you Freddie,
9 and you said yeah, why was there any discussion about
10 calling you Freddie and not Mr. Anthony.

11 A Because once again he knew that she lied about Carl
12 Gaskin. Carl Gaskin probably asked me -- probably told
13 them what my nickname was, so when he asked me in his
14 office that Friday, the next week was court and he said
15 Freddie, he kept calling me Freddie.

16 So it was the police officer -- the police officer
17 never said it and the -- the accuser at the, the loss
18 prevention never said it. Then why would she let him call
19 me something that they never said. So that 's in error
20 once again.

21 Q Okay. Mr. Anthony, I think that we've covered
22 everything that's in your application, but I wanted to make
23 sure so we have it and that would be all the questions I
24 have. Is there anything else that we're leaving out?

25 A No, that's all I have.

Bradley McMillian - Direct Examination by Mr. Boozer

1 Q Please answer any questions that Madam Attorney may
2 have for you.

3 MS. COLEMAN: I have no questions. Thank you.

4 THE COURT: Thank you, sir, you may step down.

5 Any further evidence from the applicant?

6 MR. BOOZER: Your Honor, we'd go ahead and call
7 Mr. McMillian to the stand.

8 BRADLEY MCMILLIAN,
9 having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the jury box. State
11 your full name, spelling your last.

12 THE COURT: Jury box?

13 THE CLERK: Witness stand.

14 THE WITNESS: My name is Michael Bradley McMillian.
15 M-C-M-I-L-L-I-A-N.

16 **DIRECT EXAMINATION**

17 BY MR. BOOZER:

18 Q Mr. McMillian, how you doing today?

19 A I'm very well. How are you?

20 Q I'm doing fine, thank you.

21 Mr. McMillian, did you have an occasion to
22 represent Mr. Anthony previously?

23 A I did.

24 Q All right. How did that representation come about?

25 A To the best of my recollection in late 2014 I was

Bradley McMillian - Direct Examination by Mr. Boozer

1 essentially transferred from the Barnwell, Bamberg Public
2 Defender's Office to the Aiken office. I'd worked in
3 Barnwell and Bamberg for several years and Andy Smith left
4 the PD's office here in Aiken and essentially, Grant asked
5 if I'd like to cut my commute and I said sure, and I
6 started, it was mid to late November of 2014.

7 Over the course of a month or so, slowly his cases
8 were transferred to me. I was getting new cases, obviously
9 assigned directly to me, but his cases were being
10 reassigned to me sort of as they came up. I became aware
11 that I represented Mr. Anthony in mid to late March. There
12 were some messages in my office that he called, that he was
13 upset that he'd spoken to me several different times
14 reviewing this video and I had never allowed him to see it.

15 According to my notes, the very first time I heard
16 or saw any of this or knew who Edward Anthony was March
17 25th, 2015.

18 I called him back, I touched base with him, he was
19 adamant that he wanted to see this video. I think all of
20 this came to be because his name popped up on the
21 solicitor's office trial list. It's a long trial list, 40,
22 50, 60 names and our office at the time, as a result of
23 being on that trial list sent out a letter that said your
24 name's on the trial list, you need to contact your
25 attorney, that sort of thing.

Bradley McMillian - Direct Examination by Mr. Boozer

1 After talking with Mr. Anthony on the phone, like I
2 said, he was adamant about seeing the video. I talked with
3 Solicitor Jay Slocum. I told Jay that, as far as I could
4 tell in my file, it had no video from the store. Jay made
5 it available, made a copy and best I can tell, I had the
6 video several days later on March 30th. I watched the
7 video at that time.

8 We were trying to set a physical appointment with
9 Mr. Anthony, but for whatever reason, our calls weren't
10 going through. Ultimately we left a message on April 6th
11 and then on April 7th, he, no-showed for an appointment.
12 According to my notes, he did return our call the previous
13 day and acknowledged that he knew he had an appointment on
14 April 7th, but he didn't actually show up. That's kind of
15 how I came to represent him and how I found out about him.

16 Q How many times total do you think you met with
17 Mr. Anthony prior to the trial?

18 A I met with Mr. Anthony on April 10th and probably
19 one day a couple days prior to that he came in, and my notes
20 reflect that we had two meetings that week.

21 Like I said that very first meeting, I tried to
22 make it apparent to him that we need to meet several times
23 over the next few days to talk about his case. It was on
24 the trial list. Jay had indicated that he intended to try
25 it the following week. I tried to explain to him how

Bradley McMillian - Direct Examination by Mr. Boozer

1 imperative it was that he be available as I got ready, as I
2 got prepared. We talked several times by telephone. At
3 one point, I remember because I made a note of it
4 distinctly, being on the telephone with him, trying to ask
5 him certain questions and nail down when he was coming in
6 that afternoon and he was very obviously having several
7 different discussions with people somewhere. He indicated
8 that he didn't really have time for this right now; and I
9 said, Well, you know, we're going to trial next week, you
10 probably need to make time. And at that point I told him
11 when you think you have the time to discuss your pending
12 criminal charge, you can call me back. I'll do the best I
13 can to prepare.

14 Q Let me ask you this: What was sort of your
15 strategy on the case before the trial?

16 A Well, from what I gathered from talking with Mr.
17 Anthony and what I could actually tell, he was taken into
18 custody initially by officers with North Augusta. When he
19 was taken into custody, he was in possession of a pair of
20 pliers and they said ultimately that he was in possession
21 of a large magnet. There were some shirts on the video.
22 You can very clearly see, he deposits into the store and
23 he --

24 Q Polo shirts?

25 A I believe several of them were Polo shirts. I

Bradley McMillian - Direct Examination by Mr. Boozer

1 believe several of them -- there was a pair of jeans, some
2 other things. He takes them into the dressing room to try
3 them on. He comes out in relatively short order. From my
4 discussions with him, he sat several items down right
5 beside the dressing room, proceeded to the -- I'm not
6 really sure of the orientation of that Belks, but he
7 proceeded to the exit at what I would call the upper end of
8 the parking lot.

9 You can see him on video get to that door and then
10 noticeably turn around. On the video, shortly thereafter,
11 the officers come in. They ultimately talk with Mr.
12 Anthony take him into custody, take him back to loss
13 prevention, et cetera. This was going to be a case about
14 whether they believed him that he didn't have any of these
15 items on him as he was about to proceed out that door. It
16 was going to be almost necessary for him to testify because
17 on the video it appeared that he got to the door and just
18 the timing of things, saw the North Augusta officer coming
19 in and turn back into the store. That certainly didn't
20 look good. We discussed that.

21 We talked about offers made in the case at some
22 point, I suppose it was probably, I think it's like he
23 said, I think it was Sunday afternoon, I was at the office
24 preparing, thought it would be necessary -- you need to see
25 somewhere, especially if you're going to try a case. I

Bradley McMillian - Direct Examination by Mr. Boozer

1 went out and talked with Belks on Friday, essentially
2 telling them sometime over the weekend I'm going to go, if
3 there's somebody who could kind of show me around and just
4 let me see the store and where everything alledgedly
5 happened. They were gracious, let me come in.

6 I don't think it was a same loss prevention lady,
7 but they made their loss prevention officer available. He
8 kind of pointed out all the cameras, explained how the
9 system worked. Like I said, ultimately this case was going
10 the come down to whether they believed him or the video.

11 Q Were there offers made?

12 A There was.

13 Q What was the offer?

14 A I'm going to read you my note because this is --
15 this is the best indication I have of happened that week
16 leading up to -- On April 10th client came in for an
17 appointment earlier this week. We reviewed the video. He
18 was agitated and insisted that he wanted to go to trial.
19 He said that he didn't have time for this appointment and
20 eventually left in a hurry.

21 We discussed one potential witness. He was unable
22 to provide any information on him at that time except his
23 name. I suggested the client to call back on Thursday with
24 the witness info. Today I called him back. I'm assuming
25 today, April 10th was a Thursday, since he never called me

Bradley McMillian - Direct Examination by Mr. Boozer

1 with the witness info. I explained that the solicitor, Jay
2 Slocum was offering a probation recommendation. Client
3 insisted that he wasn't pleading to anything. He was on
4 and off the phone with other people and disinterested in
5 our conversation.

6 I explained that I would need him to come to the
7 office and discuss a defense. In between phone calls, he
8 explained that he couldn't right now. I told him that he
9 needed to call me back when he could speak with me only.

10 Q Okay. So the offer -- there may have been some
11 sort of offer where it would be a probation revocation?

12 A No, sir. There was an offer of a probation
13 recommendation.

14 Q Got you.

15 A Essentially Jay was going to indicate to the Court
16 that the State's position would be that because of his
17 prior record that the Court sentence him some sentence
18 suspended to probation.

19 Q Okay. And he was pretty adamant about going to
20 trial.

21 A Adamant is not a strong enough word.

22 Q There was no other option, it was trial?

23 A From the very first time I talked to him until he
24 was sentenced and well beyond that.

25 Q And going back talking about him having to testify,

Bradley McMillian - Direct Examination by Mr. Boozer

1 that he had to testify because y'all had some reasons as to
2 why he had a pair of pliers and a magnet; is that right?

3 A We did.

4 Q Okay. Let me ask you this: Obviously, you've
5 heard me today talk about the Freddie the Polo Guy?

6 A Yes, sir.

7 Q Okay. Were you aware that that was going to be
8 something that was going to be thrown out there in trial?

9 A The very first time I heard of it was when
10 Solicitor Slocum cross-examined him on it.

11 Q Okay. When he -- and you're talking about, I think
12 on page 211, as I indicated earlier. When that comes
13 out --

14 A I don't -- I don't have a copy of that transcript,
15 so if there's something you want me to refer to, I'm going
16 to need to take a look at it.

17 MR. BOOZER: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes.

20 MR. BOOZER: Thank you.

21 BY MR. BOOZER:

22 Q If you would, just take a moment and look over at
23 page 211. And it's actually highlighted, so just take a
24 moment.

25 A Okay.

Bradley McMillian - Direct Examination by Mr. Boozer

1 Q All right. When that came up and the solicitor
2 refers to -- asks Mr. Anthony if he is Freddie the Polo
3 Guy, what are your thoughts at that time when that's
4 happening?

5 A Well, initially, at some point during one of our
6 meetings, Mr. Anthony indicated that people call him
7 Freddie. And so, you know, when building a client
8 relationship, I try to call people what they want to be
9 called. In leading up to him taking the stand, it was
10 going to be really imperative that we try to get him
11 comfortable. And I had a discussion with Mr. Thompson.
12 He, at the time could be very, very animated.

13 He could be adamant. And I decided to ask him, you
14 know, people call you Freddie, right. To try and settle
15 him into being on the witness stand, make him comfortable
16 talking to me, make him comfortable talking to the jury.
17 When the solicitor asked the question about Polo -- or
18 Freddie the Polo Guy or Freddie Polo, it didn't really
19 shock me any kind of way. I was surprised.

20 Q Did you know who Freddie -- had you ever heard of
21 Freddie the Polo Guy?

22 A I have not.

23 Q Okay. Can you see that -- what the solicitor's
24 trying to do is obviously insinuate that what Mr. Anthony
25 does is, he's Freddie and he goes into these stores and

Bradley McMillian - Direct Examination by Mr. Boozer

1 steals merchandise and he goes out and sells them on the
2 street over in Augusta or wherever it may be. Do you see
3 that that's what he's trying to do.

4 A I believe that to be the case.

5 Q Okay. And just throwing out, is there any evidence
6 in the record that he's this Freddie the Polo Guy?

7 A Not that I know of.

8 Q Okay. Would that have been objectionable to object
9 to him calling him Freddie the Polo Guy or making some sort
10 of curative instruction request or a motion for mistrial?

11 A I don't think he ever went so far as to call him
12 Freddie -- I think he asked him if he's Freddie the Polo
13 Guy. I hi he asks if people call him polo Freddie. At the
14 time, as I heard it, I didn't see anything objectionable
15 about it because he was asking a request which Mr. Anthony,
16 obviously, could admit or deny.

17 Q But you -- there's a reason for asking it. I mean
18 just to throw the idea for the jury?

19 A It absolutely is.

20 Q Okay. So let's say that you -- let's do a
21 hypothetical. Let's say that you're representing someone
22 who's been accused of murder in Aiken. And let's say that
23 that person had -- is accused of strangling somebody, if
24 the solicitor were to get up and your client took the
25 stand, and let's say your witnesses were names William

Bradley McMillian - Direct Examination by Mr. Boozer

1 Michael or something like that. And the solicitor says do
2 they call you Johnny the Aiken strangler, do you think that
3 that would be objectionable?

4 A I believe so, but I think this is a little bit
5 different situation.

6 Q Sure, it's different, but it's along the same line
7 as trying to throw out to the jury that there's a guy out
8 there that's name is Johnny the Aiken strangler, this is
9 him, we just haven't admitted or denied it, but you're
10 putting it into the mind of the jury, right?

11 A Sure.

12 Q Okay. Would you think that that's prejudicial to
13 your client?

14 A I could see how it could be. I would think it was
15 in this particular case. I thought Mr. Anthony handled the
16 question well. He said huh-huh that's somebody else. And
17 the solicitor moved right along.

18 Q I'm going to --

19 MR. BOOZER: If I may, Your Honor, approach the
20 witness.

21 BY MR. BOOZER:

22 Q -- and show you another passage I'd like for you to
23 read. And Mr. McMillian, I'm just going to point you to --
24 and its actually highlighted, again, its page 260, of the
25 transcript. And this is the Court speaking after the

Bradley McMillian - Direct Examination by Mr. Boozer

1 verdict. Just take a moment and read that.

2 A (Reading.) Okay.

3 Q Okay. In that passage, and this is the Court
4 speaking, I guess to Mr. Anthony, the Court says, You know,
5 but what is at issue Mr. Anthony, I think it's clear,
6 although it wasn't the strongest case, granted, but there's
7 gaps too for this gentlemen Freddie Polo, he's out there on
8 the corner selling shirts and he's stealing from Belks and
9 other places; in my mind -- I would say it's in the judges
10 mind that Freddie Polo is out there, right?

11 A It would appear so.

12 Q And does it appear from this that he's linking
13 Mr. Anthony to maybe being Freddie polo?

14 A It does.

15 Q Okay. So would you agree with me that the
16 solicitor's tactic of dropping this Freddie the Polo Guy,
17 obviously, it had some effect on the judge?

18 A I believe it did.

19 Q Okay. And I guess you could surmise that it may
20 have had an effect on the jury at this point as well?

21 A I couldn't say. I really don't know what they
22 talked about in the back. And I -- I do want to say,
23 glancing at that, I'm not sure -- like I said, I haven't
24 reviewed that transcript from front to back. There may
25 have actually been testimony from somebody that he -- that

Bradley McMillian - Direct Examination by Mr. Boozer

1 Mr. Anthony sold these shirts in Augusta. And it's either
2 there or it's not. I'm not really sure, but I -- some part
3 of that, I do recall.

4 Q If it's in there, it's in there, if it's not, it's
5 not.

6 A Right.

7 Q Okay. Going back to this --

8 MR. BOOZER: And this is again on page 260, I'm
9 sorry, if I may approach again.

10 BY BOOZER:

11 Q If you would just look on 260 and starting at line
12 15, and I believe this is you speaking to the Court.

13 A Okay.

14 Q You're telling the Court, You know, in evaluating
15 this case and taking it to trial, we made a decision based
16 on the evidence that we had at the time, which did not
17 include any of the prior bad acts evidence. Both he and --
18 well, he found out Tuesday, I found out on Monday night.
19 It didn't include any of this in-car video. What were you
20 conveying to the Court there?

21 A At some point either right after -- I don't recall
22 the exact order of events that week, but Jay and I had a
23 discussion about Ms. Patsy Singletary and what her
24 testimony might be. He eventually, obviously, subpoenaed
25 her, talked to her: She'd indicated that she wasn't

Bradley McMillian - Direct Examination by Mr. Boozer

1 necessarily interested in talking to us, but would
2 ultimately be subject to cross-examination. Jay did
3 explain to me she recognized Mr. Anthony because he had
4 been in the store several other occasions doing this as a
5 kind of a similar situation. He came in very quickly,
6 grabbed several items, go into the dressing room and
7 ultimately then scoot out of the store with those items
8 tucked in his pants, in his shirt wherever. Essentially
9 she was going to testify that he had done this several
10 times other than the particular incident we were going to
11 try.

12 I found out about that I think after -- after
13 Mr. Slocum had actually served her a subpoena and talked to
14 her in the lead up to trial. I explained that to
15 Mr. Anthony. I think at some point there we discussed it
16 with it the judge and the judge ultimately made a ruling
17 allowing it in.

18 Q Okay.

19 MR. BOOZER: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Yes.

22 MR. BOOZER: That's all the questions I have for
23 you at this time.

24 THE COURT: Any questions of the witness?

25 MS. COLEMAN: Thank you, Your Honor.

Bradley McMillian - Cross-Examination by Ms. Coleman

CROSS-EXAMINATION

1
2 BY MS. COLEMAN:

3 Q Mr. McMillian, how long have you been practicing
4 law?

5 A Since May of 2012.

6 Q Okay. In this case, did you file Rule 5 or Brady
7 Motion, or was that already done for you?

8 A It was done when Mr. Ander -- or Mr. Smith
9 represented Mr. Anthony.

10 Q So you already had all the discovery material in
11 the case?

12 A As with a lot of things, some of that stuff is kind
13 of coming in steadily, but I had the report. I think the
14 video came in, like I testified earlier, after we were --

15 Q Right.

16 A I mean, obviously, that could have been lost in our
17 office. Whatever, we didn't have it and the State did
18 provide it very quickly.

19 Q Right. And you reviewed this material with the
20 applicant before trial?

21 A To the best of my ability. Like I testified, I
22 called him. We did our best to schedule these
23 appointments. It seemed to be a huge imposition for him,
24 but he did ultimately come to the office on two different
25 occasions. We talked about the report. We talked about

Bradley McMillian - Cross-Examination by Ms. Coleman

1 potential witnesses. He reviewed the video. He explained
2 to me these different points, you know, in the video where
3 he said he sat things down. He and I discussed that.
4 Ultimately I was able to go out to Belk that afternoon and
5 see the store and get a feel for the story, essentially,
6 that he told me.

7 Q And were there any Brady materials that were not
8 turned over by the prosecutor in this case?

9 A I don't know that it's Brady material. At some
10 point I do recall one of the officers being on the stand
11 and he was testifying about the in-car video. He was,
12 obviously, testifying from a report and having spent four
13 or five days, pretty heavily reading this report, talking
14 about it with him by telephone, he mentioned a date that
15 struck me as a date I had never heard before. And I asked
16 to approach and I came up and there was a mention in his --
17 essentially it was a supplementary report indicating that
18 he asked somebody to drop his in-car video or dropped his
19 in-car video. We didn't actually have that supplement and
20 I don't believe we were ever provided that in-car video.
21 But I don't know that it was ever actually dropped.

22 Q Was the dash cam video, the in-car video introduced
23 at trial?

24 A It was not.

25 Q Just the officer's testimony about it?

Bradley McMillian - Cross-Examination by Ms. Coleman

1 A Yes, ma'am.

2 Q Okay. As far as the receipt that was entered into
3 evidence. Do you recall the date on that receipt?

4 A I don't. I do recall there being some discussion
5 with Mr. Anthony about it. When I talked to Jay about it,
6 if memory serves, they essentially had to -- officers had
7 to go back and get a receipt for the merchandise to deal
8 with the valuation element of the property that he
9 allegedly was shoplifting. So I do think it was several
10 days after. It wasn't -- it wasn't the day of.

11 Q Was there any reason to object to that receipt
12 being used as evidence because it was not the same date as
13 the offense?

14 A Based on my discussions with Mr. Anthony, his --
15 our entire defense revolved around the fact that he wasn't
16 there to shoplift, so there was no reason to object to the
17 State's purported valuation of the property.

18 Q And what was -- you had mentioned your trial
19 strategy. Can you explain your trial strategy in general?

20 A Mr. Anthony's story to me the entire time was that,
21 I was there briefly to do some shopping. I came in,
22 grabbed a few things, tried them on. I decided I didn't
23 want any of them and I started out toward the door. When I
24 got to the door, I saw this man, Carl Gaspins. My notes
25 say Gaspins, G-A-S-P-I-N-S, but I think later it came out

Bradley McMillian - Cross-Examination by Ms. Coleman

1 that it was Gaskins, G-A-S-K-I-N-S and that he at that
2 point turned and went into the linens department looking
3 for Mr. Gaskins. And at some point in that, the officers
4 came in, he changed sides of the store and Mr. Gaskins
5 actually left the store. That's -- that's the story we had
6 and that's the story I tried to present at trial.

7 Like I said, he -- he was adamant that Carl Gaskins
8 was going to be this witness and it was like pulling teeth
9 trying to get Mr. Gaskin's information from him. He could
10 give me an old address that he may or may not still live
11 at; a telephone number of somebody who knew him at some
12 point; but we, even actually after -- at the public
13 defender's office we had Lexuss Nexus and there was some
14 software that we use to locate people and witnesses
15 sometimes. We exhausted all of those routes in trying to
16 find Mr. Gaskins and ultimately couldn't find him.

17 Q Okay. Who is Mr. Gaskins and what purpose was he
18 going to testify for?

19 A To the best of my memory, according to Mr. Anthony,
20 he was a family friend of Mr. Anthony who may or may not
21 have been having an affair with Patsy Singletary. I don't
22 really know that the affair with Patsy Singletary has
23 anything to do with anything, but we did look for him
24 because his identifying Mr. Gaskins gave some credibility
25 to his defense that he wasn't attempting to exit the store

Bradley McMillian - Cross-Examination by Ms. Coleman

1 and ran from the police. He was about to leave the store
2 and saw Mr. Gaskins. So identifying him was important, we
3 just couldn't find him.

4 Q All right. And the applicant did testify to that
5 at trial, right? That was the story he gave, that he saw
6 Carl Gaskins and turned around to find him?

7 A Best memory serves me, that's essentially the story
8 that he testified to.

9 Q And he also mentioned on the stand that he was --
10 that Ms. Patsy was his mistress; is that right?

11 A I do remember that, him saying that at trial as
12 well.

13 Q But that didn't have anything to do with the
14 charges, right?

15 A No, ma'am.

16 Q Okay. Before the trial, did you describe to the
17 applicant the charges against him and what the State was
18 required to prove?

19 A I did.

20 Q Did you explain that he didn't necessarily have to
21 leave the store with the goods to be convicted of
22 shoplifting?

23 A I did. And we discussed at length that he was
24 essentially taken into custody with his pair of pliers. He
25 did offer what I thought was at least a viable explanation

Bradley McMillian - Cross-Examination by Ms. Coleman

1 to present to a jury, that he did some work with his
2 grandfather, I think, maybe sort of an electrician's
3 assistant sort of stuff and he carried these pliers all the
4 time. Ultimately, I think the State put up some people
5 from the jail who testified about his property.

6 And there wasn't a magnet found in his property,
7 but there was some testimony, I think, from the officer
8 that when he was taken into custody he was found in
9 possession of this pair of pliers and this magnet and that
10 that generally was how he could remove the security tags
11 when they shoplifted.

12 Q Okay. Would you describe in total just a summary
13 of the State's evidence against the applicant?

14 A What I recall is we had a report where he came into
15 the store and to the best I could see from the video, had
16 three, maybe four shirts, a pair or two of jeans and goes
17 into the dressing room, men's dressing room. He's in the
18 men's dressing room for maybe a minute, not very long. And
19 I think the State argued that he wasn't there long enough
20 to try any of this on. He's in there for a few minutes.
21 He comes out and makes a beeline for the door.

22 At that point, Ms. Patsy ultimately, who testified,
23 that she'd identified him from previous encounters. She
24 knew him to be a shoplifter. She was -- and it very
25 obviously in this video, the video is following him through

Bradley McMillian - Cross-Examination by Ms. Coleman

1 the store. You know, bits and clips from different
2 cameras. When he gets to the door, he does pass a man on
3 the way to the door, which like I said, he indicated to me
4 was Carl Gaskins. When he gets to the door, he turns and
5 retreats into the store and then goes over into the linen
6 section and almost simultaneously with that, law
7 enforcement comes in. They meet somewhere there in the
8 aisle. He's ultimately taken into custody and questioned
9 in loss prevention. He denies any involvement. They
10 indicate that they find these several items with security
11 tags removed and that he's in possession of these pliers
12 and this magnet and ultimately when they take him into
13 custody he's in possession of those.

14 Q Ms. Patsy also indicated that she saw him removing
15 shirts from under his clothing before the police officers
16 came in; is that right?

17 A I believe that's right. I think at -- we talked a
18 little bit earlier about the dash cam video and I think
19 there might have been some testimony about that dash cam
20 video where the officer indicated that he made a statement,
21 something to the effect of would-a could-a but-didn't, or
22 some sort of -- not necessarily wildly inculpatory
23 statement, but certainly wasn't helpful.

24 Q And there was a pretrial hearing about his
25 statements that he made to the officers and the judge found

Bradley McMillian - Cross-Examination by Ms. Coleman

1 that they were admissible; is that right?

2 A That's true.

3 Q Okay. And then you also testified the police
4 officer, when he searched the applicant, he found pliers
5 and a magnet in his pocket, but those were not actually in
6 evidence, but he testified about them, right?

7 A That was his testimony and I think what the State
8 actually ended up introducing was the property list from
9 the jail. I can't recall right now whether that property
10 list included pliers or a magnet or -- but I remember them
11 introducing that.

12 Q So there was testimony from the officer who
13 collected the items at the jail and from the police officer
14 who searched him on arrest, right?

15 A Yes.

16 Q About the tools or pliers, although there was some
17 question over whether or not there was a magnet in his
18 pocket, right?

19 A Yes, ma'am.

20 Q Okay. As far as the -- how would you characterize
21 all this evidence against the applicant? Would you
22 describe it as strong?

23 A Yes, ma'am. He and I had several discussions about
24 -- I guess it was that meeting on Friday, Mr. Thompson sat
25 in those meetings with us. I believe his mother came. We

Bradley McMillian - Cross-Examination by Ms. Coleman

1 had several long talks about the evidence and what I
2 thought his likelihood of success was at trial. We
3 indicated to him, his mother indicated to him that he
4 should very strongly consider accepting the State's
5 recommendation of probation.

6 Ultimately, that's not my decision to make. And he
7 elected to go to trial. But I would have characterized it
8 as a strong shoplifting with the video and the testimony,
9 yes, ma'am.

10 Q There was also a dispute over -- there were some
11 motions about the prior bad acts that Ms. Patsy testified
12 about the three prior occasions when she had seen him
13 shoplifting before but had not caught him; is that right?

14 A Yes, ma'am, and I think we had a hearing about that
15 as well.

16 Q Uh-huh. And those were allowed in at trial?

17 A They were. I believe this -- the winning argument,
18 I believe, was kind of the common scheme or plan that
19 Mr. Anthony would come into the store and do this quickly
20 and efficiently and then get out of the store before he
21 could ever be caught.

22 Q And obviously, you argued to the Court that it was
23 more prejudicial than probative?

24 A Yes, ma'am.

25 Q But he allowed them in over your objection?

Bradley McMillian - Cross-Examination by Ms. Coleman

1 A Yes, ma'am.

2 Q So all the evidence, taken with the three prior
3 occasions of him shoplifting from the store that she
4 testified about, do you believe that's overwhelming
5 evidence? Or did it strengthen the evidence?

6 A It certainly made it stronger. To have her testify
7 that she could identify him because she'd seen him doing
8 this before, to me that was -- that was when I knew the
9 ship had kind of sailed. Once that was coming in, we were
10 fighting a real uphill battle.

11 Q And you explained that those were going to be used
12 against the applicant to him? Did you explain that to him?

13 A I did.

14 Q And he still wanted to go to trial?

15 A He did.

16 Q Okay.

17 A Let me back up. I think you ask asked if I
18 explained that those prior incidents had been explained to
19 him. The ones that Ms. Patsy testified to are not actually
20 convictions on his record.

21 Q Right.

22 A And I didn't explain that to him until I guess
23 maybe early when I found out about it. Ultimately we were
24 about to start trial. He did choose to go forward at this
25 point.

Bradley McMillian - Cross-Examination by Ms. Coleman

1 Q Okay.

2 A We had talked about his prior record and the fact
3 that those could be used against him and ultimately that it
4 was his choice whether or not to testify.

5 Q But he knew -- you didn't know that his prior
6 shoplifting offenses that were not convictions were going
7 to be used until there was a motion before the Court and
8 the Court ruled on it?

9 A Yes, ma'am.

10 Q But you explained it to him at this point?

11 A I did.

12 Q Okay. Did he admit or deny those prior shoplifting
13 occasions to you?

14 A Totally denied them.

15 Q Okay. And he denied those to the judge during
16 sentencing; is that right?

17 A He did.

18 Q Okay. Did you have enough time to prepare for
19 trial in this case?

20 A I thought I had more than adequate time to prepare.
21 I had the evidence that I felt was necessary. Ultimately,
22 he came and spent enough time with me to give me what I
23 thought was a viable defense, including the weekend working
24 on it and having time to go the Belks, yes, ma'am, I think
25 I had more than enough time.

Bradley McMillian - Cross-Examination by Ms. Coleman

1 Q Okay. Was there any reason to object to or move to
2 suppress any of the evidence like the perjured testimony
3 that Mr. Anthony testified about?

4 A The only indication I had that that was perjured
5 testimony was Mr. Anthony telling me so. That certainly
6 didn't, in my mind rise to the level that I should object
7 to it. He was going to have the opportunity to testify.
8 He could shed some light on those subjects. I didn't feel
9 the need to object to it.

10 Q Okay. What about if evidence that was collected
11 after the applicant was arrested? Was there any reason to
12 object to that or move to suppress it because it was
13 collected after his arrest?

14 A No, ma'am. To the best of my recollection, we had
15 discussion about the statements and when and where he was
16 Mirandized. But like I said, we ultimately had a hearing
17 on that and it was admitted as well.

18 Q Was there any reason to object to the arrest
19 warrants in this case or the indictments based on those?

20 A No, ma'am.

21 Q Okay.

22 MS. COLEMAN: No further questions. Thank you.

23 THE COURT: Any other questions from the witness?

24 MR. BOOZER: No, Your Honor.

25 THE COURT: Thank you, sir, you may step down.

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 THE WITNESS: Thank you, Your Honor.

2 Court's in recess for 10 minutes.

3 (A brief recess was observed.)

4 THE COURT: Any other witnesses from the applicant?

5 MR. BOOZER: Nothing further, Your Honor.

6 THE COURT: The State?

7 MS. COLEMAN: Yes, Your Honor, the State calls
8 Solicitor Jay Slocum.

9 THE COURT: Come around, please.

10 JEFFREY ALLEN SLOCUM,

11 having been duly sworn, testified as follows:

12 THE CLERK: Please have a seat in the witness box.

13 State your full name for the Court.

14 THE WITNESS: Jeffrey Allen Slocum, Jr.

15 **DIRECT EXAMINATION**

16 BY MS. COLEMAN:

17 Q Good morning, Mr. Slocum, how are you?

18 A Good morning, I'm well.

19 Q Where are you currently employed?

20 A At the Johnson law firm here in Aiken, South
21 Carolina.

22 Q And before that, where were you employed?

23 A I had my own firm for about a year and then I was
24 at the solicitor's office in the second circuit for about
25 four years.

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 Q Okay. And were you employed at the solicitor's
2 office in April of 2015?

3 A I was.

4 Q And were you involved in the trial of Edward
5 Anthony in 2015?

6 A I was the assigned assistant prosecutor.

7 Q Okay. We've been over the facts of this case, but
8 just briefly, would you kind of reiterate what the State
9 was alleging Mr. Anthony had done?

10 A Yeah, it was alleged that he entered a Belks
11 Department Store in Aiken County and took some clothes off
12 of a rack. This was witnessed by loss prevention agent,
13 Ms. Singletary, who recollects she saw him, saw the
14 defendant go into the dressing room with a stack of clothes
15 on his arm, came back out shortly thereafter with no
16 clothes and saw him proceed to the door, the exit doors,
17 with what looked like a bulge in his pants or underneath
18 his clothing. He then turned around and went back through
19 a different area of the store. I believe it was the home
20 or linens section, and dumps the clothes he had stuffed in
21 his pants.

22 Law enforcement came in, detained Mr. Anthony and
23 Ms. Singletary found some of the clothes dumped in a
24 certain portion of the store with the tags, security tags
25 taken off of them. Mr. Anthony was subsequently arrested

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 for shoplifting.

2 Q Okay. What evidence did the State present?

3 A We had testimony from the officers that arrived at
4 the store giving their accounts. We had Ms. Singletary,
5 who was the loss prevention agent at Belks testified. I
6 believe there was a surveillance video that was introduced
7 through Ms. Singletary and there was a, I think it was a
8 booking deputy at the jail that testified to the property
9 that Mr. Anthony brought in with him at the jail on the day
10 of his arrest.

11 Q Okay. Did you turn over Rule 5 and Brady materials
12 to the applicant or his attorney?

13 A To his defense attorney we did.

14 Q Okay. And which defense attorney is that?

15 A I believe it started out with Mr. Smith, Andy Smith
16 and then it was transferred to Mr. Bradley McMillian.

17 Q Okay you recall when you turned over those
18 materials?

19 A Not offhand.

20 Q Okay.

21 A It would have been after we received their Rule 5
22 discovery motion.

23 Q Okay. Was there any question that Mr. McMillian,
24 trial counsel, had the full copy of Rule 5 and Brady
25 material?

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 A There was no question. He had what I had.

2 Q Okay. Was there anything you failed to turn over
3 to trial counsel?

4 A To my knowledge, no.

5 Q Okay. Now, Ms. Patsy, you testified she was the --
6 the loss prevention manager from Belks, she testified at
7 trial?

8 A That's correct.

9 Q Did she testify about prior bad acts that the
10 applicant had committed?

11 A She did. I believe it was indicated in the report
12 that she was -- she knew Mr. Anthony from seeing him in the
13 store on prior occasions. The actual meat of what she
14 meant by that, I believe, was brought to my attention the
15 morning of trial when she referenced these other instances.
16 I contacted Mr. McMillian and said, Hey, this is what we've
17 got. We need to have a pretrial for prior bad acts
18 evidence, where she testified -- Ms. Singletary testified
19 that she had seen the defendant on multiple occasions come
20 into the store at the same time, same entry point, same MO,
21 same department.

22 There was a number of factors she testified to in
23 regards to those prior instances that ultimately we argued
24 was a common plan or scheme and the judge allowed into
25 evidence after that pretrial hearing.

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 Q Okay. To your knowledge did Ms. Patsy or the
2 officer who testified at trial -- was any of their
3 testimony perjured?

4 A To my knowledge, no.

5 Q Okay. When the applicant testified at trial, on
6 cross-examination, you asked him if he was Freddie the Polo
7 Guy who sold Polo's on the street, what was your basis for
8 asking this question?

9 A During the direct, I believe, Mr. McMillian asked
10 him his name and do you go by Freddie or something to that
11 effect. I don't recall exactly. During that testimony, I
12 was informed -- I can't remember whether it was one of our
13 investigators or one of the officers or whom it was leaned
14 up and said that's Freddie Polo or Freddie the Polo Guy.

15 So on cross, I asked him after learning that his
16 name was Freddie from his direct examination and being told
17 that, I asked him if he was Freddie the Polo Guy or Polo
18 Freddie, and he denied both. I think I asked him a time or
19 two and he denied it both times.

20 Q And he said he was not Freddie the Polo Guy that
21 was someone else?

22 A That's correct. He said he was not Freddie the
23 Polo Guy.

24 Q If trial counsel had objected to the question that
25 you asked, what would your response have been?

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 A That it was, you know, a denied question. It was
2 testimony for the jury to consider.

3 Q Okay. No further questions. Thank you.

4 THE COURT: Cross-examination?

5 MR. BOOZER: No questions, Your Honor.

6 THE COURT: Thank you, sir, you may step down.

7 THE WITNESS: Thank you, Your Honor.

8 MS. COLEMAN: State has no further questions.

9 THE COURT: Any reply?

10 MR. BOOZER: Nothing further, Your Honor.

11 THE COURT: Any argument that needs to be made?

12 You're free to go.

13 THE WITNESS: Thank you, Your Honor.

14 MS. COLEMAN: If Your Honor has any questions about
15 any specific issues, I'm happy to address them. Otherwise,
16 no argument.

17 THE COURT: Anything you need to put on the record.

18 MR. BOOZER: Judge, I think the testimony is clear
19 what our arguments are. There's nothing else I would like
20 the add at this point.

21 THE COURT: So the video is not part of the record?
22 The video of the -- in the store.

23 MS. COLEMAN: Your Honor, the surveillance from
24 inside the Belk was produced at trial. I think he, today,
25 has raised questions about the dash cam from the police

Jeffrey Slocum - Direct Examination by Ms. Coleman

1 vehicle outside the store and that was not introduced at
2 trial.

3 THE COURT: But, in the PCR hearing, neither of
4 those are in evidence?

5 MS. COLEMAN: Correct.

6 THE COURT: Is that right?

7 MR. BOOZER: Correct, Your Honor.

8 THE COURT: All right. I'll review the materials
9 and notify you of my decision in writing. Thank you very
10 much.

11 * * * * * END OF TRANSCRIPT * * * * *

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Jeffrey Slocum - Direct Examination by Ms. Coleman

1 State of South Carolina)
2 County of Aiken) Certificate of Reporter

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6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 23rd day of January.

13 I FURTHER CERTIFY that I am neither kin, counsel,
14 nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal at Aiken County, this 16th day of July, 2018.

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Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

Respondent.

ORDER OF DISMISSAL

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from M. Bradley McMillian, Esquire ("Trial Counsel"). Respondent presented testimony from Solicitor Jeffrey Alan Slocum, Esquire. This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, appellate records, the trial transcript, and the pleadings. The Court finds as follows:

The records before this Court indicate Applicant is presently serving a probationary term under the supervision of the Department of Probation, Parole, and Pardon Services. In July 2014, the Aiken County Grand Jury indicted Applicant for shoplifting (2014-GS-02-1000). M.

Bradley McMillian, Esquire and Barry L. Thompson, II, Esquire represented Applicant. Assistant Solicitor Jeffrey Alan Slocum, Esquire, prosecuted the case. On April 14-15, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh. The jury found Applicant guilty as indicted. Judge McIntosh sentenced Applicant to imprisonment for six years, suspended upon service of forty-five months with five years' probation.

Applicant filed a timely notice of appeal. Tiffany L. Butler, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 7, 2016. State v. Anthony, Op. No. 2016-UP-507 (S.C. Ct. App. filed December 7, 2016). The remittitur was issued on December 28, 2016.

Applicant filed this timely application for post-conviction relief on February 2, 2017. The State filed its Return and Partial Motion to Dismiss on May 16, 2017. An evidentiary hearing was held on September 19, 2017. At the hearing, the Honorable J. Mark Hayes dismissed the case for failing to prosecute because Applicant did not appear at the hearing. Afterwards, Applicant contacted his attorney to inform him he did not receive notice of the hearing, and if he had he would have been present. Judge Hayes vacated his oral order dismissing the case and set the case for a new hearing. The evidentiary hearing was convened January 23, 2018.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Probable cause never existed to make arrest or detain."
2. "Trial judge allowed hearsay testimony at trial."
3. "Both officer and store clerk gave perjured testimonies during trial."
4. "Brady Violation- Prosecutor withheld exculpatory evidence."
5. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to make timely objections."
 - b. "Counsel failed to motion for dismissal of charges."
 - c. "Counsel labored conflict of interest."

- d. "Trial counsel demonstrated deficient performance on part of failure and the result of prejudice from him prejudiced the defendant."

At the outset of the evidentiary hearing, Respondent moved to dismiss the first three allegations for failure to state a claim proper for post-conviction relief, as they were direct appeal allegations that Applicant should have argued on direct appeal rather than in his PCR action. Applicant clarified that he would frame those allegations as allegations of ineffective assistance of counsel. This Court granted the motion to dismiss for any allegations framed as direct appeal issues, and Applicant proceeded forward on his allegations of Brady violations and ineffective assistance of counsel.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicants' testimony

At the evidentiary hearing, Applicant testified he was currently out on probation. He stated Trial Counsel was ineffective for failing to investigate his case. He stated the officer and store clerk who testified against him at trial gave perjured testimony, but he did not tell Trial Counsel about the perjured testimony during the trial. He stated Trial Counsel did not object or make a motion regarding the testimony, but he should have. Applicant testified the arrest warrant was invalid because it said that he went outside of the store, but he did not go outside. He stated Trial Counsel should have objected to the arrest warrant. Applicant testified that he received his Rule 5 materials after trial but did get them before the trial. He testified the receipt used as evidence at trial was dated May 21st, but the crime happened on March 16th, and Trial Counsel should have moved to suppress the receipt before trial.

Applicant testified Trial Counsel should have objected to the evidence about him resisting arrest because he was on trial for shoplifting, not for resisting arrest. He stated Trial Counsel requested a copy of the dash camera video from the State, but he was not given a copy

until three years later. Applicant testified Trial Counsel failed to object to the solicitor's use of the nickname "Freddy the Polo Guy" on page 211 of the trial transcript. He stated this was a conflict of interest with the evidence. He stated it was ineffective for Trial Counsel to call him his nickname, "Freddy," on the stand because it matched the solicitor's use of the nickname "Freddy the Polo Guy." Applicant stated Trial Counsel should have objected to the jury and made a Batson motion because there were no African Americans on the jury.

Trial Counsel's testimony

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Trial Counsel testified he was appointed to this case through the Public Defender's office. He stated he spoke to Applicant on the phone, Applicant told him he wanted to see the video in his discovery. Trial Counsel stated he asked the solicitor for the video tape from the store where the shoplifting occurred, and he received it a week later. Trial Counsel testified he made an appointment to meet with Applicant on April 7, 2015, and Applicant did not come to the meeting. He stated he had two meetings with Applicant the week of April 10th, but Applicant left the meeting to take a phone call and told Trial Counsel he did not have time to talk about his upcoming trial. Trial Counsel stated he told Applicant that he needed to make time because the trial was coming soon, and to let him know when he could find the time to discuss his pending criminal charges. He stated he spoke to Applicant on the telephone several times.

Trial Counsel testified the evidence against Applicant was strong, and included the report from Belk, the stolen shirts and jeans, and a video following Applicant through the store, into the dressing room, and to the exit door. Other evidence included testimony from the loss prevention agent stating that she witnessed Applicant taking the shirts out from under his shirt when he ^{*SAW*} ~~was~~ *JOKE* the police officer coming. There was also a statement Applicant gave in the police car indicating that he "could have" stolen from the store but he did not. Trial Counsel testified the evidence was

especially strong when the court allowed in evidence of Applicant's prior bad acts, which included three prior shopliftings from the same store in the same manner as the current charges. Trial Counsel stated he objected to the prior bad acts, but the trial court ruled they were admissible. Trial Counsel testified it was almost necessary for Applicant to testify at trial because the case came down to whether the jury believed Applicant had the clothes on him as he was walking out the door of the store. He stated this was difficult to refute because the video tape showed Applicant getting to the door of the store to walk outside, seeing the police officer coming toward him, and turning around to go back in.

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Trial Counsel stated his investigation of this case involved going to the Belk store and looking at their cameras, security system, and store layout. He stated he discussed one potential witness with Applicant, but Applicant never gave him any information on the witness for him to investigate. Trial Counsel testified there were plea offers made in this case, but Applicant rejected them, including a plea offer for a recommendation of probation. He stated Applicant would not plead guilty and was adamant about going to trial. Trial Counsel testified that he called Applicant "Freddy" on direct examination at trial because he wanted Applicant to be comfortable on the stand, and that's what he wanted to be called. He stated he was not aware of the "Freddy the Polo Guy" nickname until it came out on cross-examination of Applicant. He stated that he was surprised by the "Freddy Polo" nickname and had never heard of him.

Trial Counsel stated there was no evidence in the record that Applicant sells Polos. He stated he did not object because Solicitor Slocum never called him "Freddy the Polo Guy," he just asked if people call him that, and Applicant answered that they did not. He stated he did not think it was prejudicial in this case because Applicant denied being Freddy Polo and explained that it was not him, and that was someone else. Trial Counsel testified he saw no issue with the

receipt used at trial because it was printed by the store several days after the incident in order to evaluate the value of the stolen merchandise, and the date had no bearing on the facts of the actual incident. He stated there was no reason to object to the valuation of the stolen items because their defense strategy was that Applicant did not steal the items.

Trial Counsel stated Carl Gaskins was going to be their witness at trial, but it was like "pulling teeth" to get his information from Applicant. Trial Counsel testified he searched everywhere for Carl Gaskins but could not find him. He stated Gaskins was a family friend who allegedly had an affair with Patsy Singletary, the Belk loss prevention agent who testified at trial. Trial Counsel stated there was no evidence of perjured testimony by any of the witnesses other than Applicant telling him that they were lying. He stated there was no legal reason to object to the warrants, the indictments, or the evidence that was collected after Applicant was arrested.

Solicitor Slocum's testimony

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Solicitor Slocum testified he represented the State in Applicant's trial. He testified he turned over all Rule 5 and Brady material to attorney Andy Smith, who represented Applicant before Trial Counsel took over the case. He stated Trial Counsel had everything that he gave to Andy Smith, and there was nothing he failed to turn over that he should have. Solicitor Slocum testified that he was informed by one of his investigators during Applicant's direct examination that Applicant was "Freddy Polo" who sold Polo shirts on the street, so he asked Applicant if he was "Freddy Polo" during his cross examination. He stated he was not aware of any perjured testimony by the police officer or the store clerk who testified at trial.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). 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 117-18, 386 S.E.2d at 625. ~~With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).~~

V. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely 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 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions ~~not~~ to be ^{WPC} credible. In contrast, this Court finds Trial Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

^{WPC #8} Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Failure to object in general

Applicant alleges Trial Counsel was ineffective for failing to object to the arrest warrants, to the indictments, and the evidence obtained from Applicant after his arrest. He further alleges Trial Counsel should have objected to what he asserts was perjured testimony by the Belk loss prevention agent and the officer who testified at trial, as well as to hearsay testimony presented at trial. This Court finds Applicant has failed to meet his burden of proving any deficient performance or resulting prejudice under Strickland on any of these grounds. The testimony

presented and the record before the Court show no merit to his allegations, and this Court finds there was no legal basis to raise objections to these potential issues. Accordingly, these allegations are denied and dismissed with prejudice.

Failure to object to Solicitor's use of "Freddy Polo" nickname

Applicant alleges Trial Counsel was ineffective for failing to object to the solicitor's use of the nickname "Freddy the Polo Guy" or "Freddy Polo" at trial. This Court finds that although Trial Counsel was deficient in failing to object or request curative instruction or a mistrial, Applicant was not prejudiced by the failure to do so, and the allegation must be denied.

At the trial, Applicant testified on his own behalf. On cross-examination, Assistant Solicitor Slocum asked Applicant if he went by the nickname "Freddy," and Applicant admitted he did. The solicitor continued:

- Q: They also call you Freddy the Polo Guy, don't they?
 A: Huh-uh.
 Q: Because you sell Polos on the corner of 15th and MLK in Augusta?
 A: No.
 Q: That ain't you?
 A: No, that's another Freddy.
 Q: You know who I'm talking about, though, don't you?
 A: No, that's another Freddy.
 Q: Uh-huh.
 A: He sells shoes. Fake bootleg shoes, too.

ROA 211, line 18 – 212, line 3, Trial Counsel did not object to the question.

At the evidentiary hearing, Trial Counsel testified that he was surprised by the "Freddy Polo" question and had never heard anything about it before that moment. Solicitor Slocum testified that he was not aware of the nickname before the trial, but during Applicant's trial testimony, he was informed by an investigator that Applicant was "Freddy Polo," and this was his basis for asking Applicant the question to see if it was true. Trial Counsel testified that he did not object to the question because the solicitor never called Applicant "Freddy Polo;" he only

asked if people call him that, so he did not believe there was any basis for an objection. He stated he did not believe it was prejudicial in this case because of the other evidence against Applicant, and because Applicant denied it, and explained to the jury that he was not Freddy the Polo Guy.

After Applicant was convicted, the trial judge mentioned this nickname during sentencing. The trial judge commented:

THE COURT: But what is at issue is that Mr. Anthony, I think it's clear – I mean, although it wasn't the strongest case, granted. There was some gaps, too, but this gentleman, Freddy Polo, and he's out there on the corner selling shirts and he's stealing from Belk's and other places in my mind. And, Mr. Anthony, you disagree with me.

THE DEFENDANT: Yes, I do.

THE COURT: The jury found you guilty.

*WPK
#10*
ROA 261, line 3-11. Trial Counsel did not object or ask the judge not to consider that there was no evidence in the record that Applicant was "Freddy Polo" who sold shirts on the street corner. However, Applicant explained to the trial judge that he was not selling Polos on the street corner: "It's like she said I was on the corner. It's another man named Freddy out there on the corner doing the same thing, got Polo shirts with the name on it in plastic. He orders them. I don't sell Polo clothes. I work for my grandfather and Carl knows that." ROA 263, line 10-15. The trial judge allowed Applicant a chance to explain anything else he thought needed to be placed on the record before imposing his sentence. ROA 264, line 1-2. Although Applicant was facing up to ten years' imprisonment, the trial judge sentenced Applicant to six years' imprisonment suspended on forty-five months active with five years' probation.

Applicant now alleges Trial Counsel was ineffective for failing to object to the question that implied Applicant was selling stolen polo shirts on the street corner, and for possibly moving for a mistrial or, in the alternative, requesting a curative jury instruction. This Court finds Trial

Counsel was deficient in failing to object and/or move for a mistrial or curative instruction when the solicitor asked Applicant if he was "Freddy Polo." Using a nickname implying that the accused is someone who steals and sells stolen merchandise was objectionable and inappropriate. However, Applicant has failed to prove prejudice as defined in Strickland.

The Court notes prejudice for this allegation should be considered in two parts: (1) the lack of objection to the solicitor's question and the potential impact it had on the jury; and (2) the lack of objection to the indication that the trial judge might have considered this factor while determining Applicant's sentence and its potential impact on the length or terms of the sentence.

First, this Court finds the solicitor's question did not change the jury's verdict because Applicant denied having the nickname on the stand, and answered the question by explaining to the solicitor and the jury that he was not "Freddy the Polo Guy" and he did not sell polos on the street corner. Applicant has not met his burden of proving that this question alone ^{AFFECTED} ~~changed~~ the jury's verdict, and had it not been asked, he would have been found not guilty. This Court finds credible Trial Counsel's testimony that this question was not prejudicial to Applicant based on the evidence against him and the fact that he denied selling stolen polo shirts. The evidence in the record of Applicant's guilt was very strong, and this Court finds no resulting prejudice on the outcome of the trial based on the evidence against him.

At trial, the loss prevention officer from Belk testified that not only had she seen Applicant shoplift from Belk on *three* prior occasions, but she saw him enter the store, follow the same behavior pattern that he had on the other three occasions, grab an entire stack of polo shirts in various sizes off the table without looking at them, take them into a dressing room and leave empty handed within a short amount of time, and immediately walk toward the door with a bulge under his clothing. She testified that she witnessed him turn around before he could exit when he

saw a security officer approaching, and then he pulled the polo shirts out from under his sweatshirt and dropped them as the officer approached; and he held his hands in the air and yelled that he did not have anything on him and they could search him. Surveillance video was presented to the jury that showed Applicant walking through the store in a manner that matched her testimony. The State introduced photographic evidence of the polo shirts that were found in the store with holes in the shirts where the security tags had been forcibly removed. The arresting security officer also testified about searching Applicant and finding a magnet and a pair of pliers in his pocket, which he implied could be used to remove security tags. A prison official also testified at trial about how Applicant had tools, which could have been the pliers, on him when he came to the jail.

WPK
#12
Based on this evidence, this Court finds this deficiency by Trial Counsel did not affect the jury's verdict. Accordingly, even though Trial Counsel was deficient for failing to object to the "Freddy Polo" question, there is ~~certainly~~ ^{no} prejudice under the circumstances. Applicant has failed to meet his burden of proving that raising that nickname tainted the trial to the extent that it created a reasonable probability that the outcome would have been different.

Secondly, Trial Counsel's failure to object to the trial judge's possible use of the "Freddy Polo" nickname during sentencing was not ineffective because Applicant has failed to meet his burden of proving that the nickname affected his sentence, resulting in prejudice. Although the judge's reference to the nickname at sentencing is troubling, the transcript reveals sufficient correction of the trial judge's misunderstanding. This Court finds the sentence imposed by the trial court was reasonable under the circumstances on this case, and Applicant has failed to prove that the trial court abused his discretion or used any improper factors to enhance Applicant's sentence.

A trial judge generally has broad discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. *U.S. v. Magliano*, 336 F.2d 817 (4th Cir. 1964); *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072 (1969). Appellate courts have no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). ~~In order to succeed in proving prejudice in this case, Applicant must show the trial court did, in fact, use the "Freddy Polo" nickname to enhance the sentence, and if Trial Counsel had objected, Applicant's sentence would have been lighter.~~

WPK #13
Here, Applicant was convicted of shoplifting \$2,000 or less, enhanced to third or subsequent offense based on his prior record of three prior shoplifting convictions. Under the statute, Applicant was facing a potential sentence of ten years. S.C. Code Ann. § 16-13-110 (1976); S.C. Code Ann. § 16-1-57 (1976). In evaluating Applicant's sentence, the trial court considered several factors, some of which are indicated in the record, including the presence and participation of the victims, the fact that Applicant had not filed a tax return since 2012, and, ultimately, the fact that the jury found that Applicant had stolen shirts from Belk's. Trial Counsel offered mitigation in asking for a lesser sentence, including the fact that Applicant graduated high school and does electrical work and welding, and is the father of three children. ROA 260, line 9-14.

After the trial judge commented on the "Freddy Polo" nickname during sentencing, Applicant explained again to the trial court that he was not "Freddy Polo" and did not sell stolen polo shirts on the street corner. "And now I'm getting locked up for a crime I never committed,

never committed. It's like she said I was on the corner. It's another man named Freddy out there on the corner doing the same thing, got Polo shirts with the name on it in plastic. He orders them. I don't sell Polo clothes. I work for my grandfather and Carl knows that." ROA 263, line 10-15. The trial judge heard this explanation, and ultimately gave it whatever weight he believed was proper within his discretion. Although he could have sentenced Applicant to ten years' imprisonment, the sentence he imposed required Applicant to serve only 45 months in prison, with a five year term of probation.¹

WAC #14
Based on the length of the sentence imposed, as well as the fact that Applicant was given multiple opportunities to deny the allegation that he was "Freddy Polo" who sells stolen goods on the street corner, both during the trial and during sentencing, it is clear that there was no prejudice to Applicant from these comments or from Trial Counsel's failure to object to them. Applicant's sentence was reasonable under the circumstances of the case. Furthermore, Applicant has failed to prove that the trial court would have imposed a lighter sentence if Trial Counsel had made some objection to the judge's "Freddy Polo" comment during sentencing. Applicant has failed to meet his burden of proving that raising the nickname had a prejudicial effect on the sentence.

Accordingly, although Trial Counsel was deficient, this Court finds Applicant has failed to prove prejudice resulting from Trial Counsel's failure to object, and this allegation is denied and dismissed with prejudice.

Failure to request to dismiss charges

Applicant's allegation that Trial Counsel was ineffective for failing to move to dismiss the charges against him is meritless. Applicant has failed to present any credible evidence that there was any meritorious basis to move to dismiss the charges that would have been successful.

The record before the Court and the testimony presented show Trial Counsel represented Applicant vigorously at trial and made the proper motions to defend him against and challenge the charges he faced. This Court finds there was no reasonable basis to move to dismiss the charges, as they were properly made and Applicant was properly noticed of the charges, the indictments, and the evidence against him. Applicant has failed to meet either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Conflict of interest

Applicant alleges Trial Counsel was ineffective for representing him although he had a conflict of interest and should have recused himself from the case. This allegation is meritless, and Applicant has failed to prove Trial Counsel had any conflict of interest. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). A defendant need not demonstrate prejudice if there is an actual conflict of interest." Id., 364 S.C. at 153, 612 S.E.2d at 450.

This Court finds Applicant has failed to prove an actual conflict of interest that should have precluded Trial Counsel from representing him. Accordingly, this allegation is denied and dismissed with prejudice.

BRADY VIOLATION

Applicant alleges the solicitor withheld exculpatory evidence from him in violation of Brady v. Maryland, 373 U.S. 83 (1963). This allegation is meritless.

WPC #16
Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady¹ claim is based upon the requirement of due process. Such a 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). Impeachment or exculpatory 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. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

This Court finds Applicant has failed to prove the existence of any Brady materials that were not turned over to the defense in Applicant's case. The testimony presented and the record before the court show Solicitor Slocum delivered all Rule 5 and Brady material to Trial Counsel and Applicant before the trial and did not withhold any exculpatory information he was required to provide. Accordingly, this allegation is denied and dismissed with prejudice.

¹ Brady v. Maryland, 373 U.S. 83 (1963).

VI. CONCLUSION

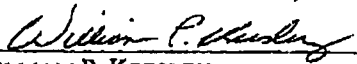
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

#17 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 29TH day of MARCH, 2018.


WILLIAM P. KEESLEY
Presiding Judge
Second Judicial Circuit

LEXINGTON, South Carolina

WITNESSES

North Augusta Dept. of Public Safety

D Smith

Law Enforcement Case #: 14-000676

JAS

ARREST WARRANT NUMBER

2014A0211000051

FILED July 10 2014
Liz Hodard
CCCP & G.S.
Ann Sanders
CLERK

ACTION OF GRAND JURY

true bill

Robert Wade
Foreperson of Grand Jury
Date: July 10, 2014

VERDICT

Guilty
Jessie M. Francis
Foreperson of Petit Jury
Date: 4-15-15

DOCKET NO. 2014GS0201000

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2014

THE STATE
vs.

EDWARD RODRIQUEZ ANTHONY

CDR #: 2877

Indictment for

SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Odgers, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

16 day of April 2015
Liz Hodard
CCCP & G.S. Aiken County, S.C.

Sherry Langley
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

At a Court of General Sessions, convened on July 14, 2014, the Grand Jurors of Aiken County present upon their oath:

That EDWARD RODRIQUEZ ANTHONY did in Aiken County on or about March 16, 2014, take possession, carry away, transfer to another area of the store; alter, transfer or remove the price label or tag; transfer from its container to another container; and/or wilfully conceal certain merchandise valued at less than Two Thousand Dollars, to wit: clothing , displayed, held, stored or offered for sale by Belk's, located at 1163 Knox Avenue, North Augusta, South Carolina, a store or retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of the merchandise without paying the full retail value. The Defendant having previously been twice convicted of offenses for which the term of imprisonment was contingent upon the value of the property involved. All in violation of §16-13-110 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.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

COUNTY OF Aiken
STATE VS.Edward Rodriguez Anthony

AKA:

Race: Black Sex: M Age: 36DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Augusta, GA 30906DL#: [REDACTED] SID#: SC02023415*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Shoplifting / Enhancement for 3rd or sub. offense. Value \$2000 or less (see 16-01-0057)INDICTMENT/CASE#: 2014GS0201000A/W#: 2014A0211000051Date of Offense: 3/16/2014S.C. Code § : 16-13-0110(A) (16-1-57)CDR Code #: 2877

SENTENCE SHEET

0-10 yrs

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-13-0110(A) (16-1-57) of the S.C. Code of Laws, bearing CDR Code # 2877☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY:
Stocum, Jeffrey Alan100236
SC Bar#

Defendant

M. B. M. M. M.
Attorney for Defendant100386
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ 500.00; provided that upon the service of 5 days/months/years and/or payment
of \$ 500.00; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-10Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-20 (Carrying
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 500.00 plus 20% fee: \$ 100.00

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 648.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

10 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. ☒

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 100.00 beginning\$ 500.00 paid to Public Defender FundOther: Defendant must workEmployment to withhold orReport TaxesTrespass Notice given to All Bell'slocation☒ Appointed PD or appointed other counsel

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code:

Sentence Date:

4-15-15

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, the Clerk of Court of the County of Aiken, do hereby certify
that the foregoing contains a true and correct copy of the
original document which has been filed in this office.

Cheri Young
Deputy Clerk