

**ORIGINAL**

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Thomas A. Russo, Circuit Court Judge

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**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

DAVID MYERS,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS  
COUNTY OF FLORENCE )

STATE OF SOUTH CAROLINA)  
STATE, )

v.

DAVID MYERS, )  
DEFENDANT.)

TRANSCRIPT OF RECORD  
11-GS-21-0981  
June 29, 2011  
Florence, South Carolina

**BEFORE:**

THE HONORABLE THOMAS A. RUSSO, JUDGE; AND JURY

**APPEARANCES:**

JOHN C. JEPERTINGER, ESQ.  
Attorney for the State

SCOTT P. FLOYD, ESQ.  
Attorney for Defendant

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

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(There were no exhibits submitted.)

1 (WHEREUPON, counsel approached the Bench  
2 for an off-the-record discussion.)

3 MR. JEPERTINGER: 2011-981, we're trying State  
4 versus David Myers for shoplifting. On the indictment  
5 Mrs. Parr prepared it has it listed as shoplifting third  
6 or subsequent offense. Without us having to establish the  
7 jurisdiction of this Court, since the value of the items  
8 were only 42 dollars I would wonder if he would stipulate  
9 to the jurisdiction of this Court to hear this case.

10 MR. FLOYD: Sure.

11 THE COURT: Okay. And the Defense has agreed ---

12 MR. FLOYD: Yes.

13 THE COURT: ---to stipulate to that? All right.

14 MR. JEPERTINGER: Thank you.

15 THE COURT: Good morning, ladies and gentlemen of  
16 the jury, I didn't have the pleasure to meet you on  
17 Monday. My name is Tommy Russo. I'm a circuit court  
18 judge here in Florence and you met Judge Brown on Monday  
19 and I was holding court on the 10th floor, General  
20 Sessions Court. And so I didn't have the pleasure to meet  
21 you on Monday, but it's good to be here with you this  
22 morning. We had you brought back because we need your  
23 assistance on another case.

24 And so Mr. Jepertinger, if you would call that case  
25 for trial, sir.

1           MR. JEPERTINGER: Yes, sir. The State would call  
2 State versus David Myers on 2011-981 charging him with  
3 shoplifting.

4           THE COURT: All right. Ladies and gentlemen, you  
5 heard Mr. Jepertinger call this case of the State of South  
6 Carolina versus David Myers. This indictment, indictment  
7 2011-GS-21-981, is simply a piece of paper that brings  
8 this case into court. An indictment is simply an  
9 allegation. To this allegation or to these allegations  
10 Mr. Myers has pled not guilty, and that plea of not guilty  
11 places the burden of proof on the State to prove the  
12 elements of the crime that is alleged. The indictment in  
13 no way is evidence of the allegations that it contains.  
14 It is simply the piece of paper that brings this case into  
15 court.

16           Now as I indicated, because Mr. Myers has pled not  
17 guilty that places the presumption of innocence on him,  
18 and the State must carry their burden of proof. I am  
19 going to review with you the allegations contained in this  
20 indictment. It is alleged that David Myers did in  
21 Florence County on or about February the 8th of the 2011  
22 take possession of, carry away, transfer to another area  
23 of the store, or cause to be carried away or transferred,  
24 altered, transferred or moved the price label or tag on,  
25 and/or did transfer from its container to another



1 related by blood, connected by marriage, or is a close  
2 personal friend or acquaintance of Mr. Jepertinger or who  
3 has been represented by Mr. Jepertinger in the past, if  
4 so, please stand.

5 Yes, ma'am, your name please.

6 THE POTENTIAL JUROR: Sharon Jarman.

7 THE COURT: All right.

8 MR. JEPERTINGER: I know Mr. Jepertinger. We  
9 attend the same church.

10 THE COURT: All right, ma'am. The fact that you  
11 have that relationship with Mr. Jepertinger, would that in  
12 any way affect your ability to be fair and impartial?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much, ma'am. You may  
15 have a seat.

16 Anyone else?

17 (There was no response.)

18 THE COURT: Mr. Floyd, if you would introduce  
19 yourself and your client, sir.

20 MR. FLOYD: Thank you, Your Honor. Good morning,  
21 I'm Scott Floyd. I'm an assistant public defender here in  
22 Florence County, and this is Mr. David Myers.

23 THE COURT: All right. Thank you, Mr. Myers.

24 Mr. Floyd.

25 Ladies and gentlemen, is there any member of the

1 jury panel who's related by blood, connected by marriage,  
2 or has any close business or personal relationship with  
3 Mr. Floyd or who has been represented by Mr. Floyd in the  
4 past, if so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. There are none. Ladies and  
7 gentlemen, you just met Mr. David Myers. Is there any  
8 member of the jury panel who's related by blood, connected  
9 by marriage, or has any close business or personal  
10 relationship with Mr. Myers, if so, please stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none. Now ladies  
13 and gentlemen, I'm gonna call out some names. These folks  
14 are possible or potential witnesses in this case. The  
15 question that I just asked you regarding Mr. Myers, that  
16 is, if you're related by blood, connected by marriage, or  
17 have any close business or personal relationship, that the  
18 question that I'm gonna be asking you as it relates to  
19 these possible witnesses.

20 Now there are several names I'm gonna call out. If  
21 that -- if you hear a name and that question applies to  
22 that witness, go ahead and stand. Please continue to  
23 listen, however, because it may be that you know more than  
24 one of these folks. Following are possible or potential  
25 witnesses that may testify during this case. And if

1 you're in the courtroom I'd ask the witness to please  
2 stand and face the jury and for just a moment and then  
3 have a seat. Sandy Thompson, Roger Tilton, Ron or Ronnie  
4 Coltrane, Charles Hall, Jr., Frankie McCown, Fran Springs.  
5 Any member of the jury panel related by blood, connected  
6 by marriage, or have any close business or personal  
7 relationship with any of those folks, if so, please stand.

8 (There was no response.)

9 THE COURT: Okay. Ladies and gentlemen, is there  
10 any member of the jury panel or a member of your immediate  
11 family or close friend who has ever been prosecuted by the  
12 Twelfth Judicial Circuit Solicitor's Office? And the  
13 Twelfth Circuit is Florence and Marion Counties. If so,  
14 please stand.

15 Yes, ma'am, your name please.

16 THE POTENTIAL JUROR: My name is Myrtle Edwards.

17 THE COURT: All right. Ms. Edwards, the fact that  
18 you've had that experience in your family with the Twelfth  
19 Circuit Solicitor's Office -- that's juror number 47 --  
20 would that in any way affect your ability to be fair and  
21 impartial, ma'am?

22 THE POTENTIAL JUROR: No, sir.

23 THE COURT: Thank you very much, Ms. Edwards. You  
24 may have a seat.

25 Anyone else?

1 (There was no response.)

2 THE COURT: Is there any member of the jury panel  
3 or member of your immediate family who has ever been  
4 involved in any type of conflict or litigation with  
5 Wal-Mart, if so, please stand.

6 Yes, sir, your name please.

7 THE POTENTIAL JUROR: Steven Camlin, juror 15.

8 THE COURT: All right, sir.

9 THE POTENTIAL JUROR: I had a sister-in-law that  
10 had a lawsuit.

11 THE COURT: All right. Sir, the fact that you've  
12 had that experience in your family, would that in any way  
13 affect your ability to be fair and impartial if you were  
14 selected for this case?

15 THE POTENTIAL JUROR: No, sir.

16 THE COURT: Thank you very much. You may have a  
17 seat.

18 Is there any member of the jury panel who is a  
19 contributor either financially or with your time through  
20 volunteer work, is a contributor to any organization such  
21 as: The Fraternal Order of the Police, South Carolina  
22 Troopers Association, South Carolina Sheriff's  
23 Association, MADD, Mother's Against Drunk Driving, SADD,  
24 Students Against Drunk Driving, CAVE, Citizens Against  
25 Violence, any of those types of organization? Is there

1 any member of the jury panel who is a contributor either  
2 financially or through volunteer time to any of those  
3 organizations, if so, please stand.

4 All right, and this is juror 13, Mr. ---

5 THE POTENTIAL JUROR: Juror 15.

6 THE COURT: 15, I'm sorry, Mr. Camlin.

7 THE POTENTIAL JUROR: My brother is a city  
8 policeman and I take pictures for him and I go to  
9 charities where I take pictures for them.

10 THE COURT: Sir, would that in any way affect your  
11 ability to be fair and impartial if you were selected to  
12 be on this case?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much. You may have a  
15 seat.

16 Ladies and gentlemen, obviously the purpose in  
17 these questions -- you can tell by the way they're asked  
18 -- is where our intent is to impanel a jury that can be  
19 fair and impartial, that can take this case, listen to the  
20 evidence in this case, and apply the law to that evidence  
21 putting aside any outside influence. That's what we're  
22 looking to do. We want twelve folks that can give both  
23 the State and the Defense a fair trial. I could ask  
24 questions all afternoon to try to figure out where if  
25 anybody has a problem with that, but maybe the best way to

1 ask you is simply this: Is there any member of the jury  
2 panel who knows of any reason why if you were selected as  
3 a member of this jury panel that you would not be able to  
4 give both the State and the Defense a fair and impartial  
5 trial? If there's anyone that has any reason why you  
6 think you could not do that I would ask that you please  
7 stand.

8 (There was no response.)

9 THE COURT: Thank you. There are none.  
10 Are there any further questions or voir dire from  
11 the State?

12 MR. JEPERTINGER: No, sir.

13 THE COURT: Anything further from the Defense?

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, we'll  
16 -- you know the drill. You did it on Monday I believe it  
17 was. If you hear your name called, come forward, come  
18 through the swinging door here, or the swinging gate, and  
19 then stand by this microphone and face the back of the  
20 courtroom. If your name is called please bring anything  
21 you brought to the courtroom with you today.

22 Madam clerk will go through the questions with both  
23 the State and the Defense. They will either excuse you,  
24 and if either one excuses you you'll go back and have a  
25 seat; or they'll present you or seat you. If the State

1 presents you you'll remain standing. If the Defense seats  
2 you then you'll come have a seat in the jury box. And  
3 we'll go through that process until we have selected our  
4 jurors.

5 State ready to strike?

6 MR. JEPERTINGER: State is ready?

7 THE COURT: Is Defense ready?

8 MR. FLOYD: Defense is ready, Your Honor.

9 THE COURT: All right, five and five. All right,  
10 ladies and gentlemen, if you'd please give Ms. O'Hara your  
11 attention.

12 CLERK OF COURT: 119, Gloria McFadden (black  
13 female). What say the State?

14 MR. JEPERTINGER: Please present the juror.

15 CLERK OF COURT: What say Defendant?

16 MR. FLOYD: Please swear the juror.

17 CLERK OF COURT: Please have a seat in the jury  
18 box, ma'am.

19 99, Christopher Jordan (white male). What say the  
20 State?

21 MR. JEPERTINGER: Please present the juror.

22 CLERK OF COURT: What say Defendant?

23 MR. FLOYD: Please swear the juror.

24 CLERK OF COURT: Please have a seat in the jury  
25 box.

1           9, Kevin Briggs (black male). What say the State?

2           MR. JEPERTINGER: We'd excuse this juror for  
3 purposes of this trial only.

4           CLERK OF COURT: You've been excused for this trial  
5 only, sir.

6           132, Michael Page (white male). What say the  
7 State?

8           MR. JEPERTINGER: Please present the juror.

9           CLERK OF COURT: What say Defendant?

10          MR. FLOYD: Please excuse the juror for purpose  
11 of this trial.

12          CLERK OF COURT: You've been excused for this trial  
13 only, sir. You may return to your seat.

14          117, Lisa McBride (white female). What say the  
15 State?

16          MR. JEPERTINGER: Please present the juror.

17          CLERK OF COURT: What say Defendant?

18          MR. FLOYD: Please excuse the juror for purpose of  
19 this trial.

20          CLERK OF COURT: You've been excused for this trial  
21 only.

22          6, Rebecca Berry (white female). What say the  
23 State?

24          MR. JEPERTINGER: Please present the juror.

25          CLERK OF COURT: What say Defendant?

1 MR. FLOYD: Please swear the juror.  
2 CLERK OF COURT: Please have a seat in the jury  
3 box.  
4 17, Brenda Cannon (white female). What say the  
5 State?  
6 MR. JEPERTINGER: Please present juror.  
7 CLERK OF COURT: What say Defendant?  
8 MR. FLOYD: Please swear the juror.  
9 CLERK OF COURT: Please have a seat in the jury  
10 box.  
11 114, Amy Lovett (white female). What say the  
12 State?  
13 MR. JEPERTINGER: Please present the juror.  
14 CLERK OF COURT: What say Defendant?  
15 MR. FLOYD: Please excuse the juror for purpose of  
16 this trial.  
17 CLERK OF COURT: You've been excused for this trial  
18 only, ma'am.  
19 170, Anthony Tanner (white male). What say the  
20 State?  
21 MR. JEPERTINGER: Please present the juror.  
22 CLERK OF COURT: What say Defendant?  
23 MR. FLOYD: Please swear the juror.  
24 CLERK OF COURT: Please have a seat in the jury  
25 box.

1           59, Heather Gantt (white female). What say the  
2 State?  
3           MR. JEPERTINGER: Please present the juror.  
4           CLERK OF COURT: What say Defendant?  
5           MR. FLOYD: Please swear the juror.  
6           CLERK OF COURT: Please have a seat in the jury  
7 box.  
8           140, Kip Purvis (white male). What say the State?  
9           MR. JEPERTINGER: Please present the juror.  
10          CLERK OF COURT: What say Defendant?  
11          MR. FLOYD: Please swear the juror.  
12          CLERK OF COURT: Please have a seat in the jury  
13 box.  
14          2, Devon Anderson (black male). What say the  
15 State?  
16          MR. JEPERTINGER: Please present the juror.  
17          CLERK OF COURT: What say Defendant?  
18          MR. FLOYD: Please swear the juror.  
19          CLERK OF COURT: Please have a seat in the jury  
20 box, sir.  
21          97, Sharon Jarman (black female). What say the  
22 State?  
23          MR. JEPERTINGER: Please present the juror.  
24          CLERK OF COURT: What say Defendant?  
25          MR. FLOYD: Please excuse the juror for purpose of

1 this trial.

2 CLERK OF COURT: You've been excused for this trial  
3 only.

4 72, John Gregg (white male). What say the State?

5 MR. JEPERTINGER: Please present the juror.

6 CLERK OF COURT: What say Defendant?

7 MR. FLOYD: Please excuse the juror for purpose of  
8 this trial.

9 CLERK OF COURT: You've been excused for this trial  
10 only, sir.

11 74, C. R. Guajardo (white male). What say the  
12 State?

13 MR. JEPERTINGER: Please excuse this juror for  
14 purpose of this trial only.

15 CLERK OF COURT: You've been excused for this trial  
16 only, sir. You may return to your seat.

17 38, Lakeshia R. Davis (black female). What say the  
18 State?

19 MR. JEPERTINGER: This was juror number 38,  
20 correct?

21 CLERK OF COURT: Correct.

22 MR. JEPERTINGER: Please present the juror.

23 CLERK OF COURT: Does defendant wish to challenge  
24 juror for cause?

25 MR. FLOYD: No.

1 CLERK OF COURT: Please have a seat in the jury  
2 box.

3 152, Catherine Sanderson (white female). What say  
4 the State?

5 MR. JEPERTINGER: Please present the juror.

6 CLERK OF COURT: Does Defendant wish to challenge  
7 this juror for cause?

8 MR. FLOYD: No.

9 CLERK OF COURT: Please have a seat in the jury  
10 box.

11 64, Pamela Glasscho (black female). What say the  
12 State?

13 MR. JEPERTINGER: Please present the juror.

14 CLERK OF COURT: Does defendant wish to challenge  
15 juror for cause?

16 MR. FLOYD: No.

17 CLERK OF COURT: Please have a seat in the jury  
18 box, ma'am.

19 179, Paiglyn Washington (black female). What say  
20 the State?

21 MR. JEPERTINGER: Please present the juror.

22 CLERK OF COURT: Does Defendant wish to challenge  
23 this juror for cause?

24 MR. FLOYD: No.

25 CLERK OF COURT: Please have a seat in the jury

1 box, ma'am.

2 THE COURT: One and two on the alternate.

3 CLERK OF COURT: 147, Lindsay Robinson (black  
4 female). What say the State?

5 MR. JEPERTINGER: Please present the juror.

6 CLERK OF COURT: What say Defendant?

7 MR. FLOYD: Please swear the juror.

8 CLERK OF COURT: Please have a seat in the jury  
9 box.

10 THE COURT: All right. Any motions regarding jury  
11 selection from the State?

12 MR. JEPERTINGER: Not from the State.

13 THE COURT: Anything from Defendant?

14 MR. FLOYD: Not from Defendant, Your Honor.

15 THE COURT: Those of you that were fortunate enough  
16 to make the first team here I'm gonna get you to step back  
17 into the jury room for just a little bit. I'm going to  
18 take up some matters. I need to take up some matters with  
19 the attorneys before we begin the trial. I'm gonna give  
20 you an instruction when you go back there, and that is an  
21 instruction you'll have with you every time you leave the  
22 courtroom. And that is, to have no conversation about the  
23 case. At this point you really don't know anything. You  
24 just know about the allegations that the indictment  
25 alleges, but you don't really know any facts or any

1 evidence about the case. And even if you did, it's not  
2 appropriate to discuss the case until you've heard all of  
3 the evidence and the lawyers have had an opportunity to  
4 argue to you their final remarks and that I've charged you  
5 on the law. Once you have all of those ingredients, then  
6 you're ready to deliberate so until that time it would be  
7 inappropriate to have any conversation about the case. So  
8 when you go back into the jury room in a moment, if you  
9 need anything we've got some snacks and some soft drinks  
10 or whatever, coffee, whatever you might want, just let  
11 Ms. Joe know. But have no conversation about the case.  
12 You can get to know each other, but don't talk about the  
13 case. And I'll take care of a few matters that I need to  
14 deal with, and then I'll bring you out and we'll get  
15 started, okay? So if you would, please step back into the  
16 jury room.

17 (WHEREUPON, the jury was removed from the  
18 courtroom at 10:43 a.m., and the following proceedings  
19 commenced in open court.)

20 THE COURT: We're going to be in recess just a few  
21 minutes.

22 (WHEREUPON, a recess was taken from the  
23 proceedings.)

24 MR. JEPERTINGER: At this time, Your Honor, I  
25 understand that the Defense has a motion.

1 THE COURT: All right. Mr. Floyd.

2 MR. FLOYD: Your Honor, I understand there's some  
3 identification issues particularly out-of-court  
4 identification by at least one of the witnesses, maybe  
5 two. We would just ask that we conduct a hearing to  
6 determine whether or not testimony on that should be  
7 allowed.

8 THE COURT: All right. Mr. Jupertinger, are you  
9 prepared to go forward on that?

10 MR. JEPERTINGER: Yes, sir. I call Ms. Fran  
11 Springs to the stand.

12 THE COURT: All right, Ma'am, if you would come  
13 around to be sworn.

14 CLERK OF COURT: If you will, ma'am, go to the  
15 witness stand. Stop right there. Place your left hand on  
16 the Bible, raise your hand.

17 WHEREUPON,

18 **FRAN SPRINGS,**  
19 having been duly sworn by the Clerk of Court, testified as  
20 follows:

21 CLERK OF COURT: Please be seated. State your full  
22 name for the record.

23 THE WITNESS: Fran Springs.

24 **DIRECT EXAMINATION**

25 BY MR. JEPERTINGER:

1 Q Ms. Springs, where do you work?

2 A I work for Wal-Mart in Lake City.

3 Q Okay. What are your responsibilities there?

4 A I am the manager of asset protection.

5 Q And were you so employed doing the same thing on  
6 February 8th, 2011?

7 A Yes, sir.

8 Q Okay. Did you come in contact with David Myers, the  
9 defendant in this case, on that date?

10 A Yes, sir.

11 Q Tell His Honor how you came in contact with David Myers  
12 on that date and what you saw and what you were doing just  
13 immediately preceding coming in contact with him?

14 A When myself and my in-store, which is Frankie McCown,  
15 we were walking up towards automotive and stuff. We had  
16 noticed that David Myers had came in the store, went  
17 straight to where the automotive aisle was, and then when  
18 he selected the Armor All spray and stuff it was eight  
19 bottles he'd put inside of his coat.

20 Q Was that turtle wax?

21 A It's turtle wax.

22 Q Okay, go ahead.

23 A Put those inside his coat, left straight from the  
24 aisle, went straight out the lawn and garden door.

25 Myself, along with Frankie McCown and another assistant

1 manager, were standing at the gate at the sidewalk. And I  
2 asked David to stop and actually come back in and that's  
3 when he actually just took off running.

4 Q Now let me ask you this, let's stop right there. You  
5 keep using the name David. Did you know David Myers  
6 before?

7 A I did.

8 Q And he's been in Wal-Mart before?

9 A Correct.

10 Q And I know we can't say this in front of the jury, but  
11 was it dealing with shoplifting before at the Wal-Mart  
12 that you've had to deal with David?

13 A I've dealt with David at Wal-mart for shoplifting and  
14 also at one time I was a full-time officer with Lake City  
15 Police Department. I am a part-time officer now.

16 Q Okay. And you know him from the community; is that  
17 correct?

18 A Correct.

19 Q No question in your mind that was David Myers?

20 A Correct.

21 Q And how long have you known him, would you say, over  
22 the years?

23 A Right about nine years.

24 Q All right. And you used his name David?

25 A Correct.

1 Q What did you tell him?

2 A I'd asked him to stop and come back in and David took  
3 off going running one way, so I walked behind him 'cause I  
4 knew my in-store was actually on the phone with the police  
5 department. So he's going that way. I just steadily  
6 walked behind David, and I got in contact -- I called  
7 Frankie's cell phone, told him. I knew he was with the  
8 other officer. I could see him at Kelly Street to tell  
9 him that he was walking straight past the Cato point  
10 behind the IGA and had cut around and he was back behind  
11 the next shopping center which is where the Piggly Wiggly  
12 and stuff is at.

13 Q Did you lose eye contact with him at all?

14 A I never lost eye contact since the point I saw him in  
15 the store all the way to the end till the officers  
16 actually arrived.

17 Q All right. And at that point once the officers arrived  
18 did you see him?

19 A Correct.

20 Q Okay. And did you walk up to behind the Piggly Wiggly?

21 A Correct.

22 Q And when you walked up behind the Piggly Wiggly did the  
23 officer ask you any question whether this was the  
24 individual that was in the store shoplifting?

25 A Right. They asked me and I said that was him. I said

1 he had had a coat on, which the coat he had threw in the  
2 dumpster would be here. By the time the officers pulled  
3 around the back of building the Piggly Wiggly, he's  
4 probably just a few hundred feet from away from the  
5 dumpster where he had threw his coat with the Armor All  
6 stuff into the dumpster.

7 Q Did you see him throw the turtle wax and the coat into  
8 the dumpster?

9 A I saw when he actually walked up to it, around it,  
10 'cause his coat was black and I saw when he come back out  
11 he did not have his coat back on. And by the time he  
12 walked out just a little bit of footage-wise, the officers  
13 were coming around the side of the building and met him.

14 Q Okay. How sure are you of your identification of David  
15 Myers being the perpetrator of this shoplifting?

16 A I'm absolutely sure.

17 Q A hundred percent?

18 A A hundred percent.

19 Q All right. That's all I have in terms of for  
20 Ms. Springs.

21 THE COURT: All right. Mr. Floyd, any cross on  
22 that?

23 MR. FLOYD: Your Honor, just a few questions.

24 **CROSS-EXAMINATION**

25 BY MR. FLOYD:

1 Q You followed him for, or you went through the garden  
2 and lawn exit out of the store and out on to the sidewalk?

3 A Correct.

4 Q Okay. And you were standing there, and there's some  
5 apartment complex right there?

6 A That would be on the other side.

7 Q On the other side.

8 A That would be to the left.

9 Q To the left?

10 A Right.

11 Q And he went to ---

12 A The right.

13 Q ---the right, okay. Towards the IGA?

14 A Right.

15 Q Okay, I got you. And the police had already been  
16 called by your ---

17 A Correct.

18 Q ---coworker ---

19 A Correct.

20 Q ---at that point? Is that correct? Okay. And so you  
21 actually saw him being arrested in the parking lot?

22 A Correct.

23 Q Okay. Is that where the arrest took place in the  
24 parking lot?

25 A Not in the parking lot. If you leave from Wal-Mart,

1 just say this would be the Wal-Mart building right here,  
2 you can cut down the sidewalk. There's a cut-through that  
3 goes here, and this will actually go back behind where  
4 like the nail place is, the IGA.

5 Q Okay.

6 A And then actually you can step up over and then there's  
7 another cutaway that would go back behind the other little  
8 strip mall that has the Piggly Wiggly and stuff.

9 Q Okay, all right. That's where the arrest took place?

10 A Correct.

11 Q And you walked over towards that direction ---

12 A Right.

13 Q ---when -- okay. And you say you never lost sight of  
14 him ---

15 A Right.

16 Q ---during this whole thing?

17 A Correct.

18 Q Okay. Do you know another David Myers in Lake City?

19 A Not right offhand I don't think I do.

20 Q Okay. You don't know anybody that's related to him  
21 named David Myers?

22 A Huh-uh.

23 Q Okay. Thank you very much.

24 A You're welcome.

25 THE COURT: All right. Thank you very much, ma'am.

1 You may step down.

2 MR. JEPERTINGER: I will call Frankie McCown to the  
3 stand.

4 THE COURT: Sir, if you'd please come and be sworn.

5 CLERK OF COURT: Place your left hand on the Bible,  
6 raise your right hand.

7 WHEREUPON,

8 **FRANKIE MCCOWN,**

9 having been duly sworn by the Clerk of Court, testified as  
10 follows:

11 CLERK OF COURT: Please be seated and state your  
12 full name for the record.

13 THE WITNESS: My name is Frankie McCown.

14 BY MR. JEPERTINGER:

15 Q Thank you. Who do you work for?

16 A Lake City Wal-Mart.

17 Q How long you been employed there?

18 A Going on 13 years in September.

19 Q What do you do for them please?

20 A I am asset protection associate.

21 Q And you work with Ms. Springs who just testified?

22 A Yes, sir.

23 Q And you were so working in that capacity on February  
24 the 8th, 2011?

25 A Yes, sir.

1 Q Okay. And did you have a chance to come in contact  
2 with David Myers, the defendant in this case?

3 A Yes, sir.

4 Q Can you tell His Honor, the ladies -- excuse me, His  
5 Honor. I was about to call you ladies and gentlemen of  
6 the jury but we're not there yet. Can you tell His Honor  
7 how you know David?

8 A I've known him on previous occasions being in the  
9 store, but on that particular day me and Ms. Springs was  
10 coming back from walking in from garden center walking  
11 back into automotive and back to the office in the back.  
12 And at that time we passed David Myers coming in the  
13 garden center that passed me. And at that time he went  
14 down the automotive aisle to the turtle wax, air  
15 freshener, where he stand at, wearing a black coat and  
16 stole eight bottles of turtle wax and placed them inside  
17 his coat.

18 Q And what did you do in response to him doing that?

19 A After seeing the selection and concealment of the  
20 merchandise I informed Ms. Springs on what actually what I  
21 did saw and who he was, which she also knew who he was.  
22 At that time we automatically went ahead and reported it  
23 and called the police station at that time and that --

24 Q Did you call the cops?

25 A I called the cops, yes, sir.

1 Q And at that point what did you do?

2 A After calling the cops and everything he -- after he  
3 done concealment he then left out the store right back out  
4 of garden center.

5 Q Did y'all confront him about it?

6 A We stopped him at the land point of sale outside the  
7 lawn and garden gate.

8 Q And did you talk to him?

9 A Ms. Springs talked to him to tell him to step back in  
10 and step back inside.

11 Q No question in your mind this was David Myers that  
12 she's talking to?

13 A No question in my mind.

14 Q Okay, all right. And at that point what did you do?

15 A At that time after he refused to step back inside and  
16 follow and cooperate with Ms. Springs he decided to ran so  
17 at that time I was still on the phone with the police  
18 station giving the description of the subject.

19 Q What was the subject description you gave to the  
20 officers?

21 A Bravo Mike wearing a black coat, a/k/a David Myers.

22 Q Bravo Mike would be black male I take it?

23 A Yes, sir.

24 Q And you used the name David Myers; is that correct?

25 A Yes, sir.

1 Q And at that point did you give any clothing description  
2 at all?

3 A Give the black coat that was very distinctive on him  
4 and the dark pair of jeans he had on 'cause he was wearing  
5 -- he had a bicycle but he left the bicycle at the store.

6 Q All right. And at that point what did you do?

7 A I continued to walk and try to follow him then till the  
8 second officer came and to let me, when Officer Sandy was  
9 also in pursuit of him. And once a pursuit was taking  
10 place Officer Sandy was the one that arrested him behind  
11 the Piggly Wiggly where I came up with Officer Cook at  
12 that time and ride in his patrol car to identify and to  
13 try to find the merchandise that was taken from us.

14 Q Okay. Now the person that Officer Sandy Thompson  
15 stopped behind the Piggly Wiggly, who was that individual?

16 A David Myers.

17 Q No question in your mind?

18 A No question.

19 Q All right. Was he dressed any differently when the  
20 officers stopped him?

21 A Only thing he was dressed differently there was no  
22 coat.

23 Q Okay. And did y'all find a coat?

24 A We found the coat and stuff inside the trash can.

25 Q And what was inside the coat or near the coat?

1 A What was inside the coat was the eight bottles of  
2 turtle was placed inside the coat sleeves.

3 Q Okay. And I think that's all I have.

4 MR. JEPERTINGER: Thank you, Judge.

5 THE COURT: All right. Anything, Mr. Floyd?

6 **CROSS - EXAMINATION**

7 BY MR. FLOYD:

8 Q Mr. McCown, how long have you known Mr. Myers seated  
9 here in the courtroom?

10 A Going on six years.

11 Q About six years? Do you know him outside of being a  
12 patron of Wal-Mart or being in Wal-mart?

13 A Other than knowing him inside Wal-mart I have seen him  
14 around the community. Other than that that's basically  
15 inside Walmart.

16 Q Okay. Do you live in Lake City?

17 A No, sir.

18 Q Okay. Do you know another David Myers from Lake City?

19 A No, sir.

20 Q You don't? Okay. Thank you very much.

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

22 MR. JEPERTINGER: And just finally quickly Officer  
23 Thompson.

24 THE COURT: All right, sir. Now let me ask, for  
25 Officer Thompson for purposes of this hearing ---

1 MR. JEPERTINGER: Just that he conducted the  
2 show-up identification in terms of presenting him to ---

3 THE COURT: Okay, all right. Thank you, sir.

4 MR. JEPERTINGER: That's the only purpose, Judge.  
5 WHEREUPON,

6 **SANDY THOMPSON,**  
7 having been duly sworn by the Clerk of Court, testified as  
8 follows:

9 CLERK OF COURT: Please be seated. State your name  
10 for the record.

11 THE WITNESS: Sandy Thompson.

12 **DIRECT EXAMINATION**

13 BY MR. JEPERTINGER:

14 Q Okay. Officer Thompson, you arrested David Myers on  
15 February 8th, 2011; is that correct?

16 A That's correct.

17 Q And it was behind the Piggly Wiggly?

18 A That's correct.

19 Q All right. And both Ms. Springs and Mr. McCown arrived  
20 there?

21 A That's correct.

22 Q Okay. And did you ask them, is this the individual  
23 that say did the crime?

24 A Yes, I did. Probably tentatively identified Mr. Myers,  
25 yes, sir.

1 Q How sure were they in their identification?

2 A A hundred percent.

3 Q Thank you. That's all I have.

4 THE COURT: Anything?

5 MR. FLOYD: I don't have any questions of the  
6 officer. Thank you.

7 THE COURT: Thank you, sir.

8 MR. JEPERTINGER: That's all I have in terms of  
9 this issue, Your Honor. I don't know if the Defense has  
10 anything.

11 MR. FLOYD: I don't have anything further, Your  
12 Honor.

13 THE COURT: All right.

14 MR. JEPERTINGER: Judge, by way of argument I know  
15 that single person showups (ph) are disfavored. They're  
16 suggestive by nature. However, an identification may be  
17 relied upon the totality of circumstance even if the  
18 procedure was suggestive. And I believe that we have  
19 shown that the identification was reliable and no  
20 substantial likelihood of misidentification existed in  
21 this case.

22 THE COURT: All right. Mr. Floyd, do you have  
23 anything to -- anything contrary to that?

24 MR. FLOYD: Your Honor, I don't have anything  
25 further to add.

1           THE COURT: And I would agree, Mr. Jepertinger,  
2 that based on the situation in this case, and I agree that  
3 typically those are disfavored; but in this case I think  
4 it is appropriate and I think that the reliability of it  
5 is sufficient and so certainly would allow that testimony.  
6 Now having said that though, let me caution -- and I know  
7 Mr. Jepertinger, I don't need to tell you but you might  
8 want to talk with the witnesses 'cause you did breach the  
9 issue with ---

10           MR. JEPERTINGER: Ms. Springs.

11           THE COURT: ---Ms. Springs but, you know, they can  
12 say that they know Mr. Myers from their contact in the  
13 community but in no way are they to indicate or give any  
14 indication that it's been based on any prior illegal  
15 activity so.

16           MR. JEPERTINGER: Right. I, you know, and what I  
17 have told Mr. McCown and I think this would be proper,  
18 that they've seen him at Wal-Mart. I think Mr. McCown  
19 asked him to leave from the Wal-Mart before.

20           THE COURT: I don't think that's gonna be necessary  
21 to go into that.

22           MR. JEPERTINGER: Okay.

23           THE COURT: I think you're gonna get into some  
24 prior issues. I think it's sufficient that they know him.

25           MR. JEPERTINGER: From the Wal-Mart.

1           THE COURT: From Wal-mart as well as know him, if  
2 they know him, you know, in the community, they have seen  
3 him in the community. I think that's sufficient.

4           MR. JEPERTINGER: That's fine. You understand,  
5 folks? Okay, that will work.

6           THE COURT: Anything else before we bring the jury  
7 out?

8           MR. JEPERTINGER: No, sir.

9           THE COURT: Anything from the Defense before we  
10 bring the jury out?

11          MR. FLOYD: Nothing further at this time, Your  
12 Honor.

13          THE COURT: All right. Ms. Joe, if you would  
14 please ask the jury to join us.

15                   (WHEREUPON, the jury was returned to the  
16 courtroom at approximately 11:11 a.m., and the  
17 following proceedings commenced in open court.)

18          THE COURT: All right, ladies and gentlemen, let me  
19 before we begin tell you that it's important that you're  
20 comfortable. There are no assigned seats in the jury box  
21 other than two. There's this very first seat where this  
22 young lady is sitting and that will be for the foreperson  
23 when you do, in fact, have a foreperson. And then the  
24 back seat there is for the alternate. The rest of you can  
25 sit anywhere where you naturally flow as you come in and

1 out of the courtroom. Also, it's important that you're  
2 comfortable so that if at any time during the trial anyone  
3 needs a break or needs to be excused, if you'll get my  
4 attention, it doesn't matter what we're at in the trial we  
5 will stop, take that break, and allow you to go back and  
6 take that break, okay? So just let me know, you know,  
7 what's going and I'll certainly try to meet that need.

8 Ladies and gentlemen, we're about to begin the  
9 trial of this case of the State of South Carolina versus  
10 David Myers. What I'm gonna tell you before we begin this  
11 trial is that most folks don't have an opportunity to sit  
12 in on real jury trials. Most folks' experience regarding  
13 jury trials are what they've read in books, what they've  
14 seen on television, or what they've seen maybe in the  
15 movies. And obviously those trials are typically fiction.  
16 They're full of high drama, intense action, rivetting  
17 circumstances. They're designed to entertain you. This  
18 trial, ladies and gentlemen, even though any one of those  
19 things may occur during the course of this trial, what's  
20 important for you to understand is this trial is not for  
21 your entertainment. This trial is a fundamental part of  
22 our democracy. It is a search for the truth in an effort  
23 to make sure that justice is done between the parties that  
24 appear before the Court. In searching for the truth and  
25 making sure that justice is done oftentimes can be slow.

1 It can be somewhat methodical, deliberate. Sometimes it  
2 can be repetitive. In other words, it's very different  
3 from what you've seen on television or read in books or  
4 seen in the movies. This courtroom is a place of honor  
5 that is dedicated to the preservation and to the  
6 protection of citizens' rights through what many have  
7 called the greatest system of justice ever created. The  
8 attorneys that appear before you are advocates for the  
9 sides that they represent; but first and foremost, they  
10 are officers of the court and they're sworn to uphold the  
11 integrity of our judicial system. You should expect them  
12 to be professional, competent, and ethical in the  
13 performance of their duties as they assist you in your  
14 search for the truth.

15 Now in just a moment Ms. O'Hara is going to place  
16 you under oath for your role as jurors in this case; and  
17 so you are also expected to be professional, reasonable,  
18 and ethical in the performance of your duties which I have  
19 absolutely no doubt you will. I want to thank you for  
20 your contribution to our system of justice here in  
21 Florence County and in the State of South Carolina by your  
22 service here today in this case. Now before we go any  
23 further I'm going to ask Ms. O'hara to give you your oath  
24 for your role as jurors in this case. So if you would  
25 please stand while she does that.

1           CLERK OF COURT: Please stand, raise your right  
2 hand to be sworn.

3           (WHEREUPON, the jury was sworn.)

4           CLERK OF COURT: You may be seated.

5           THE COURT: What I'm gonna share with you right  
6 now, ladies and gentlemen, is to serve as an introduction  
7 to the trial of the case. This is not a charge on the  
8 law. I will, in fact, charge you on the law when the case  
9 is over or when we've gotten to the end of all the  
10 evidence and the lawyers have had an opportunity to  
11 address you at their closing remarks. What I'm going to  
12 do right now is just kind of go over the trial with you so  
13 that you can better follow along with what's going on and  
14 what's happening. Now as you know, as I told you earlier,  
15 Mr. Myers is charged by an indictment which was filed with  
16 this court, and he's charged with the crime of  
17 shoplifting. As I said to you earlier, the indictment is  
18 simply the charge which brings this case into court and it  
19 is not in any sense evidence against Mr. Myers. He has  
20 pled not guilty to these charges, to this allegation, and  
21 that plea of not guilty places the burden of proving each  
22 and every element of the crime on the State of South  
23 Carolina, and they must prove those elements beyond a  
24 reasonable doubt. It is gonna be your duty, ladies and  
25 gentlemen, to decide whether or not the State has met that

1     burden. Your purpose as jurors is to find and to  
2     determine the facts. You are the sole judges of all facts  
3     in this case, ladies and gentlemen. If at any time during  
4     the course of this trial I make any comment regarding the  
5     facts I need for you to just disregard those comments  
6     because only you, the jury, can decide the facts in this  
7     case. You are to determine the facts from the testimony  
8     that you hear as well as any other evidence that may come  
9     in during the course of this trial. It is going to be up  
10    to you to determine what inferences that you feel may be  
11    properly drawn from the evidence in this case. It is  
12    especially important that you perform your duty of  
13    determining the facts diligently and conscientiously  
14    because ordinarily there's no way for us to correct an  
15    erroneous determination of facts by a jury.

16           Now, with equal emphasis, the same law that makes  
17    you the judges of the facts makes me the judge of the law.  
18    The law that I give to you is the only law that you may  
19    consider. You must accept and follow it even though you  
20    may disagree with it. I'm not allowed to tell you what I  
21    think about the facts in this case; and you on the other  
22    hand, are not allowed to disagree with me about what the  
23    law is or what you think it should be. What you are asked  
24    to do is to determine what the facts are in this case,  
25    apply the law to those facts as I give it to you in

1 reaching your verdict in this case. You're not to begin  
2 your deliberations until I instruct you that it is proper  
3 to do so. It is very important that you not begin any  
4 discussion about the trial until you have all of the  
5 evidence in the case. It's important that you keep an  
6 open mind and that you do not decide any issues in this  
7 case until all of the evidence has been presented, the  
8 parties have had an opportunity to address you with their  
9 closing remarks, and then I've charged you on the law that  
10 is applicable to this case. It is your solemn  
11 responsibility to determine the guilt or innocence of the  
12 defendant, and your verdict must be based solely on the  
13 evidence as it is presented during the course of this  
14 trial.

15 Now in just a moment I'm going to recognize Mr.  
16 Jepertinger and he's gonna have an opportunity to address  
17 you with what we call an opening statement. In that  
18 statement he will explain to you what the issues in this  
19 case are, or at least what he believes the issues in this  
20 case are. Once he concludes his remarks, then Mr. Floyd  
21 will have an opportunity to address you with his opening  
22 remarks if he chooses to do so, although he's not required  
23 to making a opening statement. What's important for you  
24 to understand is this, what the lawyers say to you in  
25 their opening statements is not evidence. They're not

1 placed under oath; they're just making their opening  
2 remarks. And so what they tell you is not evidence. It  
3 is merely their belief as to what they believe the  
4 evidence will show. The evidence in this case is gonna be  
5 presented to you by witnesses who are placed under oath,  
6 take the witness stand, and then testify, and then any  
7 other evidence which may come in during the course of this  
8 trial.

9           Now during the course of trial from time to time,  
10 ladies and gentlemen, one of the attorneys may say  
11 something along these lines: Judge, we've got a matter of  
12 law we need to take up with the court; or, Your Honor, may  
13 we approach the Bench. When I'm dealing with attorneys  
14 on matters of law or matters of admissibility sometimes it  
15 may be necessary for me to make a comment about some  
16 testimony or about a fact in this case. Well, as I told  
17 you earlier, I'm not to have any influence over you  
18 regarding the facts so I may ask you to step back into  
19 your jury room because sometimes in deciding on a ruling  
20 in whether or not a thing is admissible or not, it might  
21 require me to make comments regarding the facts in the  
22 case. And so to protect you from that I may ask you to  
23 step into your jury room so that I don't influence you as  
24 fact finders in this case. It's not that I'm trying to  
25 hide anything from you. It's just that I'm not supposed

1 to influence you regarding the facts in the case and so to  
2 protect you from that I may find it necessary to ask you  
3 to step into your jury room.

4 In determining what the true facts are in this case  
5 you have to decide whether or not the testimony of  
6 witnesses is believable or not. It's gonna be my job to  
7 determine whether certain testimony is even allowed into  
8 evidence. But once it is allowed into evidence, whether  
9 or not you believe it is gonna be solely up for you to  
10 decide. In deciding whether to believe a witness you have  
11 the right to consider the interest of any witness, the  
12 bias of any witness, the opportunity for the witnesses to  
13 have seen the matters that they testify about, the  
14 opportunities for the witnesses to hear the things that  
15 they testify about, the way a witness acts on the witness  
16 stand. You have the right, ladies and gentlemen, to  
17 consider anything that's in this record in helping you to  
18 evaluate the testimony of the witnesses. That's why it's  
19 very important that you listen carefully to the witnesses,  
20 observe the witnesses, watch them as they testify, listen  
21 to the attorneys and to the Court. Please try not to let  
22 your thoughts wander but give close and strict attention  
23 to all of the testimony and the evidence in this case so  
24 that once the case is done, the evidence is closed, and  
25 the attorneys have addressed you with their closing

1 remarks, and then I've given you the law, once you have  
2 all of that, you will then be in a position go into the  
3 jury room and to reach a verdict in this case.

4 Now before I turn it over to the attorneys let me  
5 inquire first, from the State, are there any objections or  
6 exceptions to the Court's opening remarks?

7 MR. JEPERTINGER: Not from the State, Your Honor.

8 THE COURT: Anything from Defense?

9 MR. FLOYD: Nothing from Defendant, Your Honor.

10 THE COURT: All right. Thank you, gentlemen.

11 So ladies and gentlemen, please, if you would give  
12 the lawyers your undivided attention as they address you  
13 with their opening remarks.

14 Mr. Jepertinger.

15 MR. JEPERTINGER: Yes, sir, if it please the Court.

16 THE COURT: Yes, sir.

17 MR. JEPERTINGER: Mr. Floyd, ladies and gentlemen  
18 of the jury. My name is John Jepertinger once again. On  
19 February the 8th, 2011, during the cooler part of the  
20 year, David Myers about 5:00 p.m. went to the Walmart in  
21 Lake City. It's on Kelly Street. You'll hear about that.  
22 He went over to the automotive section there, and he had a  
23 large black jacket on. And he took eight bottles of  
24 turtle wax and he stuck them in his coat. Now how do we  
25 know this all happened? Because watching him like two

1     hawks were both Ms. Fran Springs, who is the asset  
2     protection manager at the Wal-Mart, and her assistant  
3     Frankie McCown. And they observed him take the turtle wax  
4     and shove it in his jacket. As he's trying to leave the  
5     lawn and garden section of the Wal-Mart, they confronted  
6     him. They knew him from the Wal-Mart, from the community,  
7     and they confronted him about taking the turtle wax. He  
8     ran. Frankie called the police. Fran eyeballed him all  
9     the way from point A to point Z. She saw him go behind a  
10    dumpster, and when he got out from behind the dumpster he  
11    no longer had the black coat on. Within a matter of  
12    minutes Officer Frankie Thompson from the Lake City Police  
13    Department caught him behind the Piggly Wiggly there in  
14    Lake City where she saw him run. And both Fran and  
15    Frankie came up there and identified him, this is the guy  
16    that stole the turtle wax. And within a short distance  
17    they went back to the dumpster, and low and behold, what  
18    do they find in that dumpster but a black coat with turtle  
19    wax. Now those are the facts.

20           In each and every case the State has to prove this  
21    person guilty beyond a reasonable doubt and the Court is  
22    going to tell you that at the end of this trial. And what  
23    is a reasonable doubt? It's that doubt that leaves you,  
24    in determining and weighing the proof, are you firmly  
25    convinced that the State has proven him guilty. If the

1 proof leaves you firmly convinced that this is the guy  
2 that on February 8th, 2011 took that turtle wax, committed  
3 retail theft, shoplifting, then you find guilty. If, on  
4 the other hand, there's a real possibility that he didn't  
5 do it you must find him not guilty. That's the way this  
6 thing works. In this case I think the evidence is going  
7 to be overwhelming that that gentleman, for whatever  
8 reason, stole eight bottles of turtle wax in Lake City.  
9 Please listen and judge the credibility and the demeanor  
10 of the witnesses in this case, and at the end I'm sure you  
11 will do the right thing. Thank you.

12 THE COURT: Thank you, Mr. Jepertinger.  
13 Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor. May it please  
15 the Court.

16 THE COURT: Yes, sir.

17 MR. FLOYD: Mr. Jepertinger.

18 MR. JEPERTINGER: Yes, sir.

19 MR. FLOYD: Good morning, ladies and gentlemen. My  
20 name is Scott Floyd and I'm assistant public defender here  
21 in Florence. I represent Mr. David Myers. He's seated  
22 beside me at the defense table over here in the blue  
23 shirt. Mr. Jepertinger alluded to the way this works; and  
24 of course, a defendant comes into a courtroom accused of  
25 something, accused of a crime of course, whether it's a

1 speeding ticket or murder, he's entitled to what we call  
2 presumption of innocence. Our constitution was designed  
3 that way to protect people from too much government power  
4 and basically the State calls you in here, they're gonna  
5 have to prove everything they say and that's the way it  
6 should be. 'Cause the State of course, has the resources  
7 behind them to, with paid law enforcement officers, crime  
8 labs, all sorts of things that they have at their disposal  
9 to accumulate evidence and bring it into court.  
10 Oftentimes a regular citizen doesn't have those kind of  
11 resources so it makes sense, doesn't it, that the State  
12 has the burden of proof in any case to prove what they  
13 say. And that's only fair and right.

14 And of course, Mr. Jepertinger alluded to the  
15 standard of proof, which is beyond a reasonable doubt.  
16 And we would ask that you just listen to the evidence as  
17 it's presented in this case, the witnesses, the evidence  
18 they present to you, and also evidence that you may not be  
19 presented in this case and just make a determination at  
20 the end after you consider everything. Thank you very  
21 much.

22 THE COURT: Thank you, Mr. Floyd.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: Mr. Jepertinger, you may call your  
25 first witness, sir.

## SW-F. SPRINGS - DIRECT

1 MR. JEPERTINGER: I would call Ms. Fran Springs to  
2 the stand please.

3 THE COURT: Ms. Springs, if you'd come around  
4 please.

5 CLERK OF COURT: If you will, ma'am, place your  
6 left hand on the Bible, raise your right hand.

7 WHEREUPON,

8 **FRAN SPRINGS,**  
9 having been duly sworn by the Clerk of Court, testified as  
10 follows:

11 CLERK OF COURT: Please be seated and state your  
12 full name for the record.

13 THE WITNESS: Fran Springs.

14 **DIRECT EXAMINATION**

15 BY MR. JEPERTINGER:

16 Q Okay. Ms. Springs, for whom do you work?

17 A Wal-Mart in Lake City.

18 Q And can you tell the ladies and gentlemen of the jury  
19 where Wal-Mart is located?

20 A It's at 230 Kelly Street.

21 Q All right. And I'm gonna ask you a very stupid  
22 question but gonna get it out of the way. Lake City,  
23 which county is that in please?

24 A That's in Florence County.

25 Q Thank you so much. What do you do for them please?

## SW- F. SPRINGS - DIRECT

1 A I am the loss prevention manager.

2 Q And how long have you been the loss prevention manager  
3 for the Wal-Mart in Lake City?

4 A Five years.

5 Q Okay. And you were so employed on February the 8th,  
6 2011?

7 A Correct.

8 Q All right. And do you have anybody that works with you  
9 in loss prevention over at the Wal-Mart?

10 A Yes, sir, I do.

11 Q And who would that individual be?

12 A That would be Frankie McCown.

13 Q And that's the gentleman with the white shirt on,  
14 correct, ---

15 A Correct.

16 Q ---in the courtroom? Okay. Can you tell the ladies  
17 and gentlemen of the jury what you were doing at  
18 approximately 5 p.m. on February the 8th, 2011 there at  
19 Wal-Mart?

20 A Myself and Frankie were walking through like from lawn  
21 and garden going back towards through the back of the  
22 store on the action alley and that would be passing like  
23 toys and sporting goods and automotive.

24 Q All right. And did you see anything that kind of  
25 caught your attention?

## SW- F. SPRINGS - DIRECT

1 A Yes, sir.

2 Q Tell the ladies and gentlemen what caught your  
3 attention?

4 A When we were coming through, both of us walking side by  
5 side, we made eye contact with David Myers in the store.

6 Q All right. And did you know David Myers previously?

7 A Yes, sir.

8 Q Okay. You knew him from -- how did you know him?

9 A From like -- from the Wal-Mart and community wise.

10 Q Okay. And when you made eye contact with David Myers  
11 did you observe David Myers after that?

12 A Yes, sir.

13 Q And what were you observing about David Myers at that  
14 point?

15 A When he had went to the automotive section where the  
16 turtle wax was, which would be to the far side of this  
17 side of the store, I went to the aisle that would be  
18 separate. Action alley here, I went to the aisle that's  
19 right beside there.

20 Q And do you know where Mr. McCown went?

21 A Right. He was on the other side of me.

22 Q All right. He was right there with you?

23 A Correct.

24 Q Okay. And then what did you observe?

25 A I observed David Myers select the eight bottles of

## SW- F. SPRINGS - DIRECT

1 turtle wax and put them inside of his coat.

2 Q And what type of coat was it?

3 A A large black coat.

4 Q All right. And at that point when you saw that what  
5 was your response and what did you do?

6 A Response was, by Wal-Mart's policy, when it comes to  
7 actually their policies with your selection, the  
8 concealment, your constant eye contact, for the last part  
9 they have to exit out past all points of purchase. And at  
10 that time when he had selected the turtle wax he went  
11 straight to lawn and garden and exited out of the lawn and  
12 garden gate.

13 Q And what -- what did you guys do? Did you follow him  
14 or what did you do?

15 A Correct, yes, sir. We followed him to the gate.

16 Q Okay. And did you confront him at the gate?

17 A Yes, sir. I confronted him and asked him by name,  
18 David, to step back inside the store so we could discuss  
19 the turtle wax.

20 Q And what was his response either in words or actions to  
21 your request?

22 A Not words, but actions were he just took off at a very  
23 fast pace running, going down to the front line of the  
24 store going towards where it would be IGA and Catos goes  
25 towards that end.

## SW- F. SPRINGS - DIRECT

1 Q Okay. What did you do at that point in terms of  
2 dealing with Mr. McCown and your response?

3 A Mr. McCown, he had already got on his cell phone, had  
4 actually already called the police department. He was  
5 walking more towards out of the parking lot this way  
6 observing him while he's going this way. It's a way we  
7 keep a safe distance. We're still able to see, but it's a  
8 safe distance. When he goes this way I went behind  
9 Mr. Myers this way behind him.

10 Q And what did you do?

11 A I followed behind him all the way past the front of  
12 Wal-Mart all the way in between the buildings back behind  
13 the others till he cut right behind the ones that would be  
14 Piggly Wiggly.

15 Q And could you tell the ladies and gentlemen of the jury  
16 at any point did he go near a dumpster?

17 A Yes, he did.

18 Q Okay. And tell them how that transpired please, what  
19 happened there, what you observed?

20 A When you actually go in front of the Wal-Mart you  
21 actually have a cut-through that's by Catos, then you can  
22 round the back of another shopping center which is like  
23 our IGA. If you can cut over the curve part there's  
24 another strip of shopping centers that actually faces US  
25 52. Behind that shopping center is a big dumpster. I

## SW- F. SPRINGS - DIRECT

1 observed him when he was cutting through. He went back  
2 behind the dumpster. When he came right back out he no  
3 longer had his coat on. And at that time I was on my cell  
4 phone with my APA, Frankie McCown, telling him exactly  
5 what had just transpired and exactly where he was at.

6 Q All right. And then what did you do?

7 A At that point after I'd already gotten in contact with  
8 Frankie, it was actually the point that the officer was  
9 around in the corner side of the building so when the  
10 officers rounded the building they're facing David because  
11 he's still walking towards the direction the patrol car is  
12 coming in at.

13 Q Okay. And then what happened, what did you observe?

14 A I observed Officer Thompson actually get out with the  
15 subject and started talking with him, and at that point I  
16 was already walking up to them.

17 Q All right. And at what point did Officer Thompson ask  
18 you anything in terms of identification of the individual?

19 A Correct, he did.

20 Q And what did you tell Officer Thompson?

21 A I told Officer Thompson this was the gentleman that was  
22 David Myers, and this was who had just taken the turtle  
23 wax.

24 Q All right. And at that point what did you do in  
25 relation to in terms of the dumpster, or did you tell the

## SW- F. SPRINGS - DIRECT

1 officer anything?

2 A I explained to the officer what I observed, where he  
3 had rounded behind the dumpster. Then when he came out he  
4 no longer had his coat on. And if you round that side of  
5 the dumpster there was an opening to the dumpster.

6 Q And what did -- did you go to that dumpster ---

7 A Yes, sir.

8 Q ---with the officer?

9 A Right. It's all in a very close proximity where all  
10 this took place between the patrol car here and the  
11 dumpster here. It's very close together.

12 Q And what did you observe in the dumpster?

13 A The black coat and the Armor All, I mean, the turtle  
14 wax.

15 Q Turtle wax, all right. And was the turtle wax in the  
16 coat?

17 A There was some that would still be in the coat, but  
18 actually I -- to the point of actually chunking in there,  
19 eight bottles would have been probably hard to stay in  
20 there.

21 Q Right.

22 A But it was all the bottles that we had witnessed him  
23 conceal inside the store.

24 Q All right. Now is it safe to say that you observed him  
25 from point A to point Z in this case?

## SW- F. SPRINGS - DIRECT

1 A Correct, yes, sir, a hundred percent.

2 Q Now was there any other individual that he would have  
3 run with?

4 A No, sir.

5 Q Okay. Was there anything that impeded your vision?

6 A No, sir.

7 Q Now as asset protection manager I believe that your  
8 store has a video; is that correct?

9 A Yes, sir.

10 Q Okay. And what is Wal-Mart's policy in terms of  
11 maintaining these videos?

12 A For this store the capability of holding it is usually  
13 every 30 days. After 30 days it's taped over again.

14 Q And was this tape or videotape of possibly Myers inside  
15 the store, was that taped over in this case?

16 A Yes, sir.

17 Q All right. And if the police had requested the tape  
18 you would have provided it to them?

19 A Correct, yes, sir.

20 Q Okay. So we don't have a videotape inside the store?

21 A Correct.

22 Q Okay. Now when Officer Thompson stopped him behind the  
23 Piggly Wiggly -- and let me ask you, what is -- when you  
24 talk behind the Piggly Wiggly, is it an alley way or how  
25 does that?

## SW- F. SPRINGS - DIRECT

1 A Right, because there is some other businesses or in  
2 that strip part, and that's actually where some of them's  
3 loading docks may be like the furniture store. Their  
4 dumpsters are back there.

5 Q But it's not a place for where people walk generally

6 ---

7 A No, sir.

8 Q ---for customers going into the Wal-Mart?

9 A No, sir, it's strictly for business wise.

10 Q All right. Now this whole scenario of seeing him at  
11 the automotive section to the point of the officer getting  
12 him at beyond the Piggly Wiggly, how long in time would  
13 you say this would have lasted?

14 A Around about maybe ten minutes or a little less,  
15 somewhere around in that time frame.

16 Q All right, okay. And once again, can you identify to  
17 the ladies and gentlemen of this jury the person on  
18 February 8th, 2011, that came into the Wal-Mart and took  
19 eight bottles of turtle wax?

20 A Yes, sir.

21 Q Would you point him out to the jury please?

22 A It would be David Myers (indicating) in the blue shirt.

23 MR. JEPERTINGER: Okay. Let the record reflect  
24 that she has identified the defendant David in this  
25 particular case.

## SW - F. SPRINGS - CROSS

1 Thank you. Please answer any questions that  
2 Mr. Floyd may have for you.

3 THE COURT: Mr. Floyd.

4 MR. FLOYD: Thank you, Your Honor.

5 **CROSS - EXAMINATION**

6 BY MR. FLOYD:

7 Q Ms. Springs, the video system that you have in  
8 Wal-Mart, it covers all areas of the store pretty much or?

9 A Not so much areas, it covers a lot of just our main  
10 issues that would be more towards some of the internal or  
11 safety issues.

12 Q Okay. But you, in fact, had video of the incident that  
13 you refer to as far as turtle wax being taken and putting  
14 in the coat?

15 A The only video that would have actually applied to this  
16 would be maybe entering the store and leaving the store  
17 and maybe like when it's going through the parking lot  
18 phase.

19 Q Okay. So it may not have actually shown anything in  
20 the aisle itself?

21 A Correct.

22 Q Okay, but just exiting and entering.

23 A Correct.

24 Q So to speak, okay. And after the arrest was made at  
25 the store is, your policy is not to make copies of the

## SW - F. SPRINGS - CROSS

1 videos in a case like that or unless they're requested or?

2 A Unless a request or if it's actually to the point that  
3 they would not be somebody that would have got  
4 apprehended.

5 Q Okay. No copy was made?

6 A Correct, yes, sir.

7 Q And so the video was eventually just recorded over? Is  
8 that what happens?

9 A Correct, yes, sir.

10 Q The tapes are recycled or ---

11 A Right.

12 Q ---or whatever the case may be? Okay. How many times  
13 had you seen Mr. David Myers here prior to this in your  
14 life that you recall?

15 A Numerous occasions.

16 Q I mean, you ---

17 A Also community wise, Wal-Mart wise. I live in Lake  
18 City, and Lake City is kind of a smaller area so it's like  
19 just like hometown community.

20 Q Sure. Okay. So you'd seen him a number of times?

21 A Yes, sir.

22 Q But mostly in the store or ---

23 A Actually could be ---

24 Q ---outside?

25 A Evenly amounts.

## SW - F. SPRINGS - CROSS

- 1 Q Right?
- 2 A Probably more so outside the store.
- 3 Q Okay. How long have you lived in Lake City?
- 4 A I've been in Lake City for right at nine years.
- 5 Q Nine years, okay. And did you work at the police  
6 department one time there?
- 7 A Correct. I was employed at the police department  
8 full-time. I am full actually part-time now.
- 9 Q Okay. And were you part-time then during this incident  
10 ---
- 11 A Yes, sir.
- 12 Q ---February 8 of 2011? And do you know another David  
13 Myers in Lake City?
- 14 A Not right offhand, no, sir. I can't think of one that  
15 I would.
- 16 Q Okay. You said Mr. Myers was wearing a black coat; is  
17 that correct?
- 18 A Correct.
- 19 Q What was he wearing when you saw him after the police  
20 apprehended him? Do you know what he had on then?
- 21 A It would have been like a darker like burgundy, reddish  
22 color. I believe that would have been up under the black  
23 coat.
- 24 Q Okay. A shirt or a sweater?
- 25 A Yes, sir.

## SW - F. SPRINGS - CROSS

1 Q And after you saw an arrest made did you have any  
2 further contact with the person who was arrested after he  
3 was taken by the police?

4 A No, sir.

5 Q Okay. So at the point he was arrested you went back to  
6 the store?

7 A Correct.

8 Q And then he went wherever he went?

9 A Correct.

10 Q Okay. And that was the last contact that you had?

11 A Yes, sir.

12 Q Okay. Now the turtle wax itself, was it in like a  
13 bottle or was it one of those that has a screw stop can.

14 ---

15 A It's like the bottle container.

16 Q Bottle that you can squirt or kind of or ---

17 A Or spray.

18 Q ---or spray?

19 A Yes, sir.

20 Q Okay, I see. And you said you located those things in  
21 a dumpster?

22 A Correct.

23 Q Okay. What did you do with those items? Did the  
24 police take them or did you get them?

25 A Those items, actually after the police had saw they

## SW - F. SPRINGS - CROSS

1 recovered, they turned those back over to us. We had took  
2 those back to the store with us.

3 Q Okay. And that was done immediately?

4 A Correct, yes, sir.

5 Q Okay. So you returned -- you just returned those into  
6 the merchan-- or into the inventory in the store?

7 A Right.

8 Q I mean, you didn't save them for evidence or anything  
9 like that?

10 A No, sir.

11 Q Okay. So as far as you know they weren't tested for  
12 prints or anything of that nature?

13 A No, sir.

14 Q Okay, all right. Thank you very much. I appreciate it.

15 A Thank you.

16 THE COURT: Anything further?

17 MR. JEPERTINGER: Nothing on redirect, Your Honor.

18 THE COURT: Thank you very much, ma'am. You may  
19 step down.

20 MR. JEPERTINGER: We call Mr. McCown.

21 THE COURT: Come around please, sir.

22 WHEREUPON,

23 **FRANKIE MCCOWN,**

24 having been duly sworn by the Clerk of Court, testified as  
25 follows:

SW - F. MCCOWN - DIRECT

1 CLERK OF COURT: Please be seated and state your  
2 full name for the record.

3 THE WITNESS: My name is Frankie McCown.

4 DIRECT EXAMINATION

5 BY MR. JEPERTINGER:

6 Q Mr. McCown, where do you work?

7 A Lake City Wal-Mart.

8 Q And how long have you been employed for Lake City  
9 Wal-Mart?

10 A Going on 13 years.

11 Q And what are your responsibilities there at the Lake  
12 City Wal-Mart?

13 A I'm asset protection associate.

14 Q And I take it you work with Ms. Springs?

15 A Yes, sir.

16 Q Okay. And you were so employed doing that February  
17 8th, 2011?

18 A Yes, sir.

19 Q Can you tell the ladies and gentlemen of the jury if  
20 anything unusual happened around 5 p.m. on February  
21 the 8th, 2011?

22 A As the date in question, that day me and Ms. Springs  
23 were walking back in from garden center and walking action  
24 alley between toys and sporting goods and headed back to  
25 the action alley of the store. At that point in time we

## SW - F. MCCOWN - DIRECT

1 observed and we saw Mr. David Myers coming entering the  
2 store. Right behind us we made eye contact with him which  
3 he then headed into sporting good department on the car  
4 washing aisle.

5 Q Let me ask you, did you know David Myers?

6 A Yes, sir.

7 Q Did you know him from -- how did you know him?

8 A Know him from previous at times seen him in the store.

9 Q Okay, all right. And at that point when you saw him  
10 come in the store did you observe where he went?

11 A Yes, sir. We observed him as he went and turned down  
12 the car care aisle, and at that time we observed him from  
13 two different points of view to make -- to see if any  
14 suspicious activity would have been attempted at that  
15 time.

16 Q Okay. How was he dressed?

17 A He was dressed with a dark shirt and a black coat on  
18 and dark colored jeans.

19 Q All right. And what did you personally observe?

20 A I observed him selected eight bottles of turtle wax and  
21 then place them inside his coat liner, all eight bottles,  
22 then exiting out the garden center, exiting out the garden  
23 center, exiting out the garden center patio.

24 Q How far were you away from him when you saw him take  
25 the turtle wax?

## SW - F. MCCOWN - DIRECT

- 1 A Less than a hundred feet away from him.
- 2 Q Okay. And at that stage you said he went towards the
- 3 -- exited the garden center?
- 4 A Yes, sir.
- 5 Q And what did you do in response to that?
- 6 A At that time myself and Ms. Springs, we followed behind
- 7 him and whenever he passed the last point of sales
- 8 Ms. Springs asked him to step back inside to deal with the
- 9 turtle wax matter.
- 10 Q How far were you away from David Myers when she asked
- 11 him to do that?
- 12 A Less than -- probably less than 15 feet away from him
- 13 'cause when we -- when he passed the gates. We asked him
- 14 after he passed the gates, and after that he decided just
- 15 instead of dealing with us he decided to ran.
- 16 Q Did you have a chance to talk to him at that point?
- 17 A I didn't. Ms. Springs did.
- 18 Q And did you have a chance to look at him?
- 19 A Yes, sir.
- 20 Q No doubt in your mind that it was David Myers?
- 21 A No, doubt in my mind, sir.
- 22 Q And at that point what did you do?
- 23 A At that time I was already on the phone with the police
- 24 at that time, and after that we was on the way describing
- 25 him and pinpointing the direction he was traveling to, or

## SW - F. MCCOWN - DIRECT

1 walking to, and running to.

2 Q What did you do after you went through that process?

3 A I walked in -- I walked into the parking lot to keep  
4 visual inside the parking lot. And after he was going  
5 straight down front of the store while Ms. Springs was  
6 walking down the store behind him keeping eye contact. At  
7 that time I was taked up with the Lake City officer at  
8 that time to go around the store while Ms. Springs was  
9 still keeping contact on him.

10 Q And that other Lake City officer would have been  
11 Officer Cook, correct?

12 A Yes, sir.

13 Q And tell us what you did with Officer Cook.

14 A While in Officer Cook patrol car I was also on the  
15 phone with Fran which was giving the direction where David  
16 Myer had went to and was at that point in time in. And  
17 with being in the car with Officer Cook he also  
18 communicated with Officer Sandy Thompson which way to go.

19 Q Okay. And then what happened?

20 A After that Officer Sandy Thompson was -- went behind  
21 the Piggly Wiggly building where Fran Springs also met him  
22 and to identify to the officer what he was -- also  
23 apprehended.

24 Q Okay. Did you -- did you go there?

25 A Yes, sir, I went there with Officer Cook. Me and

## SW - F. MCCOWN - DIRECT

1 Ms. Springs identified him.

2 Q All right. And approximately the length of time from  
3 the first time you saw him with the turtle wax in the  
4 store to the point of you identifying him was about how  
5 long?

6 A Give or take 10 or 15 minutes, give or take.

7 Q Okay. And was he dressed any differently when you saw  
8 him at the apprehension?

9 A At apprehension he was without his black trench coat --  
10 black long coat at that time.

11 Q All right. What did you do at that point after you  
12 identified him?

13 A After identifying and Officer Sandy had him in custody  
14 and everything, we observed the area and tried to  
15 reconcile the area where he could have done disarm the  
16 coat. And by looking in the trash can we saw the coat  
17 thrown in the trash can along with the bottle eight turtle  
18 wax.

19 Q And did you or Ms. Springs or the officer retrieve the  
20 turtle wax out of the dumpster?

21 A Myself jumped inside the dumpster and retrieved the  
22 turtle wax and the black coat out of the trash can.

23 Q Okay. That's the difference between the manager and  
24 the associate. You got to jump in the dumpster, correct?

25 A A little.

## SW - F. MCCOWN - CROSS

1 Q Okay, I got you. And you did get the eight bottles of  
2 turtle wax; is that correct?

3 A Yes, sir.

4 Q And you returned them to the store, correct?

5 A Yes, sir.

6 Q And the coat?

7 A The coat was given to him when he was put in the patrol  
8 car.

9 Q He didn't refuse the coat, did he?

10 A No, sir.

11 Q All right. Okay, at that point what did you do?

12 A After we collected the eight bottles of turtle wax me  
13 and Ms. Springs, we took him back and we -- after the  
14 police left we walked back to the store and we took them  
15 back and cleaned them out.

16 Q Okay. And that's your only involvement in this case?

17 A Yes, sir.

18 Q All right. And I think that's all I have. Please  
19 answer any questions Mr. Floyd may have.

20 THE COURT: Mr. Floyd.

21 MR. FLOYD: Thank you, Your Honor.

22 **CROSS - EXAMINATION**

23 BY MR. FLOYD:

24 Q Mr. McCown, how long have you known Mr. Myers?

25 A Throughout the community and throughout Lake City I

## SW - F. MCCOWN - CROSS

1 would probably say about six years.

2 Q About six years, okay. Do you live in Lake City?

3 A No, sir.

4 Q Have you ever lived there?

5 A No, sir.

6 Q You've just known him from, I assume you've been  
7 employed Wal-Mart?

8 A Yes, sir. I was employed ---

9 Q Going on six years?

10 A 13, and going on 13 years and from the 6 years knowing  
11 him I seen him constant time throughout the area.

12 Q And that's been through your employment in Lake City?

13 A Yes, sir.

14 Q Have you worked for that particular Wal-Mart store for  
15 13 years?

16 A Yes, sir.

17 Q Okay. Now do you remember what he had on after he was  
18 arrested?

19 A After he was arrested it was a dark colored shirt and  
20 dark colored jeans.

21 Q And after the arrest was made you went back to the  
22 store; is that correct?

23 A Correct.

24 Q Okay. So you didn't have any further contact with ---

25 A No, sir.

## SW - T. MCCOWN - REDIRECT

1 Q ---anybody after the arrest was made?

2 A No, sir.

3 Q Okay. Do you recall anything else about the clothing  
4 he was wearing as far as shoes or anything like that?

5 A Not shoe-wise, no, sir.

6 Q Do you know anybody else in Lake City named David  
7 Myers?

8 A No, sir.

9 Q You do not? Okay. Do you know Mr. Myers' family?

10 A No, sir.

11 Q Did you ever tell the Solicitor's Office or anybody you  
12 associated with that you did?

13 A No, sir.

14 Q You never said that out here in this building?

15 A Only thing that was said here of anything was that he  
16 said he might have a brother that looked like him, but I  
17 don't know of it myself and don't know none of his family.

18 Q Okay. Thank you very much.

19 **REDIRECT EXAMINATION**

20 BY MR. JEPERTINGER:

21 Q Have you ever seen any kin of his ---

22 A No, sir.

23 Q ---that you're aware of? The individual that was  
24 arrested behind the Piggly Wiggly in close proximity to  
25 that jacket and turtle wax, who is that individual?

SW - T. MCCOWN - REDIRECT

1 A That will be David Myers sitting to my left.

2 Q And next to Mr. Floyd?

3 A Yes, sir.

4 Q All right. Thank you.

5 THE COURT: Anything further?

6 MR. FLOYD: I don't have anything.

7 THE COURT: Thank you very much, sir. You may step  
8 down.

9 MR. JEPERTINGER: Your Honor, may Mr. McCown  
10 be excused? Apparently he has another engagement that he  
11 has to get to.

12 THE COURT: Any objection, Mr. Floyd?

13 MR. FLOYD: I don't have any objection, Your Honor.

14 THE COURT: Thank you, Mr. McCown, you're free to  
15 go, sir.

16 MR. JEPERTINGER: I would call Officer Sandy  
17 Thompson from the Lake City Police Department.

18 WHEREUPON,

19 **SANDY THOMPSON,**  
20 having been duly sworn by the Clerk of Court, testified as  
21 follows:

22 CLERK OF COURT: Please be seated. State your name  
23 for the record.

24 THE WITNESS: Sandy Thompson.

25 **DIRECT EXAMINATION**

## SW - S. THOMPSON - DIRECT

1 BY MR. JEPERTINGER:

2 Q Officer Thompson, you work for the Lake City Police  
3 Department?

4 A Yes, sir.

5 Q How long have you been an officer with the Lake City  
6 Police Department?

7 A Going on six years.

8 Q All right. And would it be safe to say that you'd be  
9 what's called a patrol officer?

10 A That's correct.

11 Q And how long have you been a patrol officer?

12 A Six years with law enforcement in Lake City.

13 Q And sometimes, you know, I think ladies and gentlemen  
14 -- well, tell them what a patrol officer does. Sometimes  
15 I think, you know, I think they know the term. They may  
16 not know what a patrol officer does.

17 A We answer calls that come through dispatch. If they  
18 get a call with reference to a wreck, shoplifting,  
19 whatever it maybe. We answer calls, house calls, wrecks,  
20 whatever, that's what we do.

21 Q So you guys are normally what are the initial  
22 responding officers, correct?

23 A That's correct.

24 Q Okay. So when we call a police officer to come to our  
25 house for whatever reason we'd see a patrol officer first?

## SW - S. THOMPSON - DIRECT

1 A Patrol officer, first response officer, yes, sir.

2 Q All right. And you were working on 5:00 on  
3 February 8th, 2011?

4 A That's correct.

5 Q And were you dispatched out to the Wal-Mart on Kelly  
6 Street?

7 A Yes, sir.

8 Q And can you tell what the dispatch was about?

9 A We received call from dispatch stating there was a  
10 shoplifting at Wal-Mart.

11 Q Okay. And were you provided any information about who  
12 might be involved in that?

13 A Yes, sir. They give a description of the subject and  
14 told us what direction he was going in.

15 Q Did they provide the name?

16 A Yes, sir.

17 Q And which name was provided to you?

18 A David Myers.

19 Q All right. How long did it take you to get from where  
20 you were to the Wal-Mart?

21 A Three, probably three to five minutes.

22 Q Okay. And tell the ladies and gentlemen what you did?

23 A I received information that Mr. Myers was running  
24 behind the Piggly Wiggly. They was watching him. I went  
25 around to the opposite side of Piggly Wiggly and came up

## SW - S. THOMPSON - DIRECT

1 to the back of Piggly Wiggly. I observed Mr. Myers  
2 walking away from the trash dumpster.

3 Q All right. And did you see anybody else behind that  
4 strip mall of stores?

5 A No, sir, not at that time.

6 Q All right. And then what did you do?

7 A I spoke with Fran and Frankie. They came to where I  
8 was at and they identified Mr. Myers. I looked in the  
9 trash can after that IN the dumpster and I seen the black  
10 coat and the wax.

11 Q And you gave the coat back to Mr. Myers?

12 A Mr. Myers, yes, sir.

13 Q All right. And they got the turtle wax; ---

14 A That's correct.

15 Q ---is that correct?

16 A Yeah.

17 Q And he was arrested and taken to jail, I take it, at  
18 that point?

19 A Yes, sir.

20 Q All right. And that was your only involvement in this  
21 case other than writing a small report?

22 A That's correct.

23 Q Okay. And you never asked for the video; is that  
24 correct?

25 A Excuse me?

## SW - S. THOMPSON - CROSS

1 Q You never asked for the store video; is that correct?

2 A No, sir.

3 Q All right. I thank you so much. Please answer any  
4 questions that Mr. Floyd may have for you.

5 THE COURT: Mr. Floyd.

6 MR. FLOYD: Thank you, Your Honor.

7 **CROSS - EXAMINATION**

8 BY MR. FLOYD:

9 Q Officer Thompson, you did the -- you completed an  
10 incident report after you made an arrest in this case; is  
11 that right?

12 A Yes, sir.

13 Q Okay. You mind taking a look at this and telling me if  
14 that's the report that you completed?

15 A Yes, sir, this appears to be my report. I signed the  
16 bottom of it.

17 Q Okay, thanks. You noted here that, I believe that, you  
18 got a complaint and you basically went there and found  
19 items and you returned them to the complainant. Do you  
20 know -- do you normally not note when you make an arrest  
21 in your report?

22 A Can I see that a minute?

23 Q Certainly.

24 A If you look on the left hand side right here.

25 Q Yes, sir.

## SW - S. THOMPSON - CROSS

1 A It's marked arrest, right there, suspect arrest. Right  
2 there.

3 Q All right.

4 A I don't have to put --

5 Q But you don't put a narrative ---

6 A No, sir, not all the time, no, sir.

7 Q ---that you made an ---

8 A No, sir.

9 Q So it was just a brief detail that you actually went to  
10 a location and you found items and ---

11 A Right.

12 Q But you didn't actually detail the arrest itself?

13 A No, sir.

14 Q Okay. Would you have transported the person to  
15 booking?

16 A Excuse me?

17 Q Would you have transported the person at booking?

18 A Yes, sir, he was in my patrol car.

19 Q And would you have handled that process yourself?

20 A Yes, sir.

21 Q Okay. And would you have taken a photograph there?

22 A Yes, sir, there would have been one taken, yes, sir. I  
23 wouldn't have done it. Dispatch would have done it.

24 Q Somebody ---

25 A Yes, sir.

## SW - S. THOMPSON - CROSS

1 Q And I assume you would have gone through the  
2 fingerprinting process and all that sort of thing as well.

3 A Yes, sir.

4 Q Okay. All that is pretty standard. As far as the  
5 items themselves that were alleged to be taken from the  
6 store you gave those back to the store?

7 A Gave them back to Frankie, yes, sir.

8 Q And once again, you didn't request any video or  
9 anything from the store ---

10 A No, sir, I did not.

11 Q ---to confirm the allegations, okay? All right.

12 That's all I have. Thank you very much.

13 MR. JEPERTINGER: Thank you, Your Honor. And that  
14 would be the State's case.

15 THE COURT: Thank you, Officer. You may step down.

16 All right. Ladies and gentlemen, the State has  
17 rested their case. Hold on.

18 MR. JEPERTINGER: They were asking if he could be  
19 excused. He worked all night last night.

20 THE COURT: Any objection, Mr. Floyd?

21 MR. FLOYD: I don't have any objection, Your Honor.

22 THE COURT: Thank you very much, sir. You are free  
23 to go.

24 Ladies and gentlemen, the State has rested their  
25 case and so I need to take up some matters of law with the

1 attorneys before we proceed any further so I'm gonna get  
2 you to step back into your jury room. I'm gonna get you  
3 to do me a favor while you're back there, if you would  
4 please. I'm gonna get you to elect a foreperson to serve  
5 as the foreperson of the jury, and I'll tell you a little  
6 bit about that. The foreperson of a jury is simply the  
7 person who communicates between the jury panel and the  
8 Court. When you have 12, 13 folks who are on a panel it's  
9 just not efficient to have to deal with -- if anyone has a  
10 question or whatever, it's just not efficient to deal with  
11 folks individually. It's easier to have one person who  
12 represents the jury panel convey or converse with the  
13 Court so. One of the main reasons, purposes for the  
14 foreperson, is to be the communicator between the jury  
15 panel and the Court so that if anybody has a question the  
16 foreperson would write that question out on a sheet of  
17 paper and pass it out to me. I would review the question,  
18 and depending on what the question is, I may have just the  
19 foreperson come out and answer and I'll give the answer.  
20 Or I may have you come out as a panel and give the answer.  
21 It just depends on what the question is. But that's the  
22 main role of the foreperson.

23 Another role that the foreperson has is, when you  
24 do finally get the case for your consideration and your  
25 deliberations, then the foreperson would be the one who

1 starts and stops the deliberations. I'll tell you now  
2 that when you do deliberate and discuss the case, when you  
3 get to that point everyone must be present for those  
4 conversations so that if one of you has to excuse  
5 yourselves to use the restroom or whatever, the foreperson  
6 would then say, okay, let's stop talking, let's stop the  
7 deliberations until they return. Then that person comes  
8 back then the foreperson would say, okay, let's go ahead  
9 and start back.

10           What you need to understand is this, your verdict  
11 in this case must be unanimous. You must all agree on the  
12 verdict. I tell you that for a couple of reasons.  
13 Obviously because it's important that you know that. But  
14 the other thing is to tell you, to emphasize to you that,  
15 you are all equal members of the jury panel. Not --  
16 there's no one person whose opinion or vote carries any  
17 more weight than anyone else. And I tell you that because  
18 whoever is elected as the foreperson, they have those  
19 roles to fulfill as I just discussed with you; but when it  
20 comes to deliberations they're just another member of the  
21 jury panel. Their opinion or their vote carries no more  
22 weight than any one of you. You are all equal members in  
23 the jury room so it's important that you also understand  
24 that. The final thing the foreperson does is, when you do  
25 finally reach a verdict the foreperson will have the

1 verdict form and they will then reflect what the jury's  
2 verdict is on that form, sign it as the foreperson, and  
3 then knock on the door and let us know that you've reached  
4 a verdict. So that's basically the role of the  
5 foreperson. If you would, when -- while I'm taking up  
6 these matters with the attorneys I'm gonna ask that you  
7 please elect a foreperson to serve in that capacity for  
8 this jury. Now everyone is eligible to serve in that  
9 capacity other than the alternate. The alternate is the  
10 only one that would not be considered as a foreperson,  
11 but anyone else could be elected as that individual. When  
12 you have elected a foreperson, whoever what person is, if  
13 you would just write your name on a piece of paper and  
14 pass it out to me so that I'll have that information. And  
15 then when you do return to the jury box here, as I said,  
16 sit anywhere you're comfortable but I need the foreperson  
17 to occupy this first seat and then everyone else can sit  
18 wherever you're comfortable, okay? I'm gonna get you to  
19 come back and do that for me while I take up these matters  
20 with the lawyers.

21 (WHEREUPON, the jury was removed from the  
22 courtroom at 12:13 p.m., and the following proceedings  
23 commenced in open court.)

24 THE COURT: All right. At this time I will take up  
25 any motions at the close of the State's case.

1 MR. FLOYD: Thank you, Your Honor. At this time  
2 the Defense would move for a directed verdict on the  
3 grounds that there is insufficient evidence to support a  
4 conviction in this case on the evidence that's viewing in  
5 a light most favorable to the State, Your Honor.

6 THE COURT: All right. I'm gonna respectfully deny  
7 the motion, Mr. Floyd. I think it is a factual issue that  
8 is appropriate for the jury.

9 MR. FLOYD: Certainly, Your Honor.

10 THE COURT: All right. Have you had a chance to  
11 discuss with Mr. Myers what the Defense intends to do?  
12 You need some time?

13 MR. FLOYD: Your Honor, if I could have a minute  
14 with Mr. Myers.

15 THE COURT: Yeah. But Mr. Myers, I'm gonna get you  
16 to talk with Mr. Floyd and y'all can discuss what, if  
17 anything, the Defense intends to do. Why don't we take  
18 about 10, 15 minutes, and then we'll start back.

19 MR. FLOYD: Thank you, Your Honor.

20 (WHEREUPON, a recess was taken from the  
21 proceedings.)

22 THE COURT: All right, back on the record.  
23 Mr. Floyd, have you had an opportunity to discuss with  
24 Mr. Myers what the Defense's intention is?

25 MR. FLOYD: Yes, Your Honor.

1 THE COURT: All right. Do you intend to -- well,  
2 let me ask you first, does Mr. Myers intend to testify or  
3 exercise his right to remain silent?

4 MR. FLOYD: He's wanting to exercise his right to  
5 remain silent, Your Honor.

6 THE COURT: All right. Mr. Myers, let me just talk  
7 to you briefly about that. You certainly have the right  
8 to testify if you wanted to, but you also, as I've  
9 instructed juries before that you have the right to remain  
10 silent. You've discussed that with your lawyer Mr. Floyd?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And have you -- is that, in  
13 fact, your desire to not testify?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, sir. And has anyone forced  
16 you or coerced you into making that decision or has that  
17 been your decision?

18 THE DEFENDANT: My decision.

19 THE COURT: All right, sir. I will certainly honor  
20 that request, and I will instruct the jury that they  
21 cannot hold that against you in any way; that that is your  
22 constitutional right and that you don't have to prove  
23 anything; that it's the State's burden of proof. And I'll  
24 instruct the jury of that as well. Thank you, sir.

25 Mr. Floyd, now does the Defense intend to put up

1 any testimony?

2 MR. FLOYD: None, Your Honor. Your Honor,  
3 yesterday I was given the names of two possible witnesses  
4 that would have been in the nature of an alibi.

5 THE COURT: Okay.

6 MR. FLOYD: I was given those yesterday by  
7 Mr. Myers. I sent my investigator Ron Smith to Lake City  
8 to locate those individuals who were Ron, or Ronnie,  
9 Coltrane and Mr. Charles Hall, Jr. or Charlie Hall, Jr.  
10 He did, in fact, locate Mr. Coltrane and spoke to him and  
11 actually had a subpoena for him which he delivered.  
12 However, after I received the report of what Mr. Coltrane  
13 said I did not think he would establish an alibi, and  
14 therefore, I'm not going to call Mr. Coltrane. The other  
15 individual he was unable to locate.

16 THE COURT: All right. Well, let me suggest this  
17 to you then, gentlemen. Let me bring the jury out and  
18 excuse them to go to lunch, and then during that -- and of  
19 course, I'll give them -- it's 12:30. I'll get them to  
20 come back 2:15 and we'll discuss the charge and get that  
21 lined up. And then of course, then we'll take lunch and  
22 we can just go with argue and charge when we come back.  
23 So that's my thought process as far as with this jury.  
24 But once I let them go for the lunch break I'd like to go  
25 ahead while they're out and go ahead and take up motions

1 at the close of all the evidence so that when we start  
2 back we can just let you rest on the record and then move  
3 into closing arguments. Okay? So I'm gonna bring the  
4 jury out, Ms. Joe, and please ask them to come on out and  
5 we'll send them off.

6 (WHEREUPON, the jury was removed from the  
7 courtroom at 12:30 p.m., and the following proceedings  
8 commenced in open court.)

9 THE COURT: All right. Ms. Berry, I want to thank  
10 you for your willingness to serve as forelady of the jury.  
11 And ladies and gentlemen, in talking with the lawyers and  
12 kind of seeing where we're at with the case, I noticed  
13 that we've kind of gotten ourselves into a situation where  
14 it's time for lunch. And what I'm gonna do, I'm gonna  
15 excuse you at this time. This is a good breaking point in  
16 the trial to excuse you and let you go to lunch. It is  
17 about 12:30 now. I'm gonna ask if you would please be  
18 back at 2:15. That gives you an hour and 45 minutes for  
19 lunch. I'm giving you a little bit of extended lunch  
20 because I still have some matters I need to take up with  
21 the attorneys once we return from lunch before we start  
22 back. So I'm gonna give you a little bit extra attention  
23 so that we can do that and not bore you in the back there.

24 It's very important now that, 'cause you're gonna  
25 be leaving the courthouse. The case is not at the point

1 yet where you can discuss it, and so when you leave here  
2 please have no conversation with anyone. Do not allow  
3 anyone to talk with you about the case. If anyone does  
4 attempt to speak you about the case you just let them know  
5 that you're a juror and you're not allowed to talk about  
6 it. If they persist though and still try to speak with  
7 you, let me know and I'll make sure that that person  
8 doesn't do that again. We got a place we can house them.  
9 So it's very important that they not in any way try to,  
10 anyone try to convey or talk with you about the case. So  
11 if you would do that for me, have no conversation. Just  
12 enjoy your lunch. Just put this out of your mind for a  
13 while and have a good lunch. And then if, you would,  
14 please be back in your jury room at 2:15. Then once we  
15 get everybody reassembled we'll then proceed with the  
16 case, okay?

17 So everyone else just remain in the courtroom, and  
18 ladies and gentlemen y'all are free to go to lunch.

19 (WHEREUPON, the jury was removed from the  
20 courtroom at 12:32 p.m., and the following proceedings  
21 commenced in open court.)

22 THE COURT: Let me go ahead and then take up  
23 motions at the close of all the evidence at this time.

24 MR. FLOYD: Thank you, Your Honor. Your Honor, I  
25 would just renew my motion for directed verdict that I

1 previously made on the same grounds as I stated before.

2 THE COURT: All right, sir.

3 MR. FLOYD: Thank you.

4 THE COURT: I'm going to respectfully deny that as  
5 I indicated. I think it's an issue of fact that the jury  
6 must determine, and they are gonna have to judge the  
7 credibility or believability of the witnesses so. What  
8 we'll do is, are there any specific requests to charge?  
9 I'm gonna charge obviously the jury that Mr. Myers right  
10 to remain silent and that they cannot hold that against  
11 him. I've got a standard charge on the law on shoplifting  
12 which -- and I'll, you know, go over this with y'all  
13 before we actually start back but. If you have any  
14 specific requests or anything that you would like just  
15 over the lunch break kind of put that together for me if  
16 you would and then you can let me know at that time.  
17 Okay?

18 MR. FLOYD: Thank you.

19 THE COURT: Why don't we get back together then in  
20 my office at 2:00, and we'll go over the jury charge at  
21 that point, okay? Court will be in recess till 2:15 but  
22 we'll meet at 2, okay.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: We have taken up all the motions at the  
25 close of all the evidence. What I would anticipate then

1 is, Mr. Floyd, when we bring the jury back out that I will  
2 recognize you on behalf of the Defense and allow you to  
3 then rest on the record and then we'll move into closing  
4 arguments.

5 MR. FLOYD: Yes, sir.

6 THE COURT: And I'm assuming, I don't believe you  
7 put up any testimony or any evidence so ---

8 MR. FLOYD: That's correct.

9 THE COURT: ---you wish to have final argument?

10 MR. FLOYD: Yes, sir.

11 THE COURT: All right. Mr. Jepertinger, is the  
12 State ready, sir?

13 MR. JEPERTINGER: The State is ready, Your Honor.

14 THE COURT: All right. And Defense ready?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right. Ms. Joe, if you would  
17 please ask the members of the jury to join us.

18 (WHEREUPON, the jury was returned to the  
19 courtroom at approximately 2:25 p.m., and the  
20 following proceedings commenced in open court.)

21 THE COURT: All right. Ladies and gentlemen, hope  
22 everyone had a good lunch and enjoyed your break and  
23 everybody is ready to go back and get to work. If you  
24 recall when we adjourned for the lunch break the State had  
25 rested their case, and I was taking up various motions at

1 the close of the State's evidence. Then at that point we  
2 broke for lunch. So now I would recognize Mr. Floyd on  
3 behalf of the Defense.

4 Mr. Floyd.

5 MR. FLOYD: Thank you, Your Honor. The Defense  
6 rests, Your Honor.

7 THE COURT: All right. Thank you, sir. Ladies and  
8 gentlemen, the Defense has rested their case and typically  
9 what I would do is send you back out and take up motions  
10 at the close of all the evidence. Mr. Floyd indicated to  
11 the Court during the lunch break that the Defense would be  
12 resting and so we have gone ahead and taken those motions  
13 up so that we wouldn't waste your time so that's been  
14 done. So now we have arrived at the portion of the trial  
15 where all the evidence is in. The evidence is closed.  
16 But now it is the opportunity for the attorneys to address  
17 you with what we call closing arguments or final  
18 summation.

19 Ladies and gentlemen, closing arguments are the  
20 same as opening statements as far as this goes. What the  
21 lawyers tell you in their closing arguments is not  
22 evidence. As I told you just a moment ago the evidence is  
23 closed. The evidence is what has been presented through  
24 the testimony of the witnesses, but it is important that  
25 you listen to the attorneys. This is their opportunity to

1 argue to you what they believe the evidence in this case  
2 has shown. Once they've concluded their closing arguments  
3 I will then charge you on the law that is applicable to  
4 this case and then you will then have everything you need  
5 to go back into the jury room and to do your job of  
6 deliberation and in arriving at a verdict. So having said  
7 that, please give the attorneys your undivided attention  
8 as they address you with their closing arguments.

9 Mr. Jepertinger.

10 MR. JEPERTINGER: Thank you. If it please the  
11 Court, Mr. Floyd, Madam Forelady, and ladies and gentlemen  
12 of the jury. I am cognizant that this trial was a short  
13 trial in duration, but don't confuse the length of the  
14 trial with the lack of its importance. In 1863 President  
15 Lincoln gave a small speech at a Pennsylvania battle field  
16 called Gettysburg. As children we probably all had to  
17 memorize the Gettysburg address. He was not the featured  
18 speaker that afternoon. It was a gentleman by the name of  
19 Edward Everette who gave a speech that lasted over two  
20 hours. Whose speech do we memorize? Because even though  
21 it was even though it was short in duration it packed a  
22 wallop in terms of importance.

23 This case is important. It's important to the  
24 citizens of Florence County primarily. It's important to  
25 the representatives of Wal-Mart. And it is important to

1 this defendant. For in this case you, ladies and  
2 gentlemen, are sitting as the arbiters, the referees of  
3 what's been presented to you in terms of testimony. And  
4 as His Honor has already told you, your ultimate goal is  
5 to determine the truth of the matter to reach a decision  
6 that speaks the truth. And what is the truth in this  
7 case?

8           As you've heard from the witness stand, back on  
9 February 8th, 2011, on Kelly Street at the Wal-Mart, David  
10 Myers went in to the store and stole eight bottles of  
11 turtle wax. Now one of the things that we don't have to  
12 address as the State is why he did this because, folks,  
13 the thing that perplexes me the most about this is why in  
14 the world would anybody steal eight bottles of turtle wax.  
15 I don't know if he was doing detailing work on the side.  
16 I don't know if, you know, I -- and your mind can just  
17 imagine anything, that this was six days before  
18 Valentine's day which would be a bizarre Valentine's  
19 present. You know, I can't answer the why and we're not  
20 required to answer the why. But what we are required to  
21 prove is the what and the how. And you have two  
22 individuals that have worked multiple years. Ms. Springs  
23 and Mr. McCown, who came in and testified that both  
24 working as loss prevention officers there at the Wal-Mart,  
25 observed David Myers, a person they knew from the Wal-Mart

1 and from the community, that that's him and we eyeballed  
2 him, we observed him. And we saw him walk over to the  
3 automotive section. We saw him grab those bottles of the  
4 car wax and we confronted him as he exited the lawn and  
5 garden section. In fact, we used his name: David, we  
6 need to talk to you about the turtle wax. And Ms. Springs  
7 said, I saw him from point A to point Z. He had the coat  
8 on, then he went by the dumpster. The coat was thrown in  
9 the dumpster. They found the turtle wax in the dumpster  
10 that had been in the coat. And he was arrested shortly  
11 thereafter by Officer Thompson. And think about where he  
12 was arrested. The back of that strip mall where the  
13 Piggly Wiggly is, where no one else was at the time, and  
14 she observed him from point A to point Z. No one else.

15           And do you remember the one thing that -- I don't  
16 know if you caught this -- very quickly, that Mr. McCown  
17 the other loss prevention officer said, he said well, you  
18 know, I got the turtle wax off. What did they do with the  
19 coat? Well, they gave it back to David Myers. He  
20 accepted the coat. Don't you think if it'd been anybody  
21 else other than David Myers he'd have said, hey man,  
22 that's not my coat. Folks, even though the video was  
23 taped over what would that video show according -- it  
24 would have shown ingress and egress out of the store and  
25 some of the parking lot. It wouldn't have shown the

1 automotive section. There's only one verdict that will  
2 speak the truth in this case, and it is that this man  
3 committed shoplifting on February 8th, 2011. Thank you.

4 THE COURT: Thank you, Mr. Jepertinger.  
5 Mr. Floyd.

6 MR. FLOYD: Thank you, Your Honor. May it please  
7 the Court.

8 THE COURT: Yes, sir.

9 MR. FLOYD: Mr. Jepertinger.

10 MR. JEPERTINGER: Yes, sir.

11 MR. FLOYD: Good afternoon, ladies and gentlemen.  
12 This is a case of strictly eyewitness identification.  
13 There's no question about that. We heard the witnesses  
14 who were there at the store, and they said what they said  
15 insofar as eyewitness I.D. You know, sometimes people can  
16 be mistaken about who it is they think they see. And of  
17 course, when we get right down to it and we think about  
18 the reasonable doubt and all that sort of thing, what we  
19 have to think about is what could have cleared everything  
20 up, what was on that video. Mr. Jepertinger just asked  
21 that question. The person's face was on that video.  
22 Regardless of whether it would just show ingress and  
23 egress out of the store it would have showed the face.  
24 Unfortunately, the video wasn't asked for, okay. It was  
25 there at the store. The police were there. They had

1 every opportunity to ask for it and it was available.  
2 They didn't do it. So that evidence is gone through no  
3 fault of the defendant in this case.

4 Also, there was testimony that another picture was  
5 taken, a video. Did we see that? It showed a face,  
6 presentably what that person was dressed in. They had  
7 testimony about who was wearing what. We could have seen  
8 that but that wasn't shown to us either. Again, that's in  
9 the custody of the State, not the Defendant. And so when  
10 you go back and consider the burden of proof and  
11 reasonable doubt in this case just ask yourself what's  
12 missing and who had it or who has it and why you didn't  
13 see it and resolve any doubts in favor of the defendant.  
14 Thank you.

15 THE COURT: Thank you very much, sir.

16 Ladies and gentlemen, when we started this trial I  
17 told you that you are the judge of the facts of this case  
18 and that I was to have no influence or get involved in  
19 that area of the case at all and that was solely your  
20 venue. And so it's been appropriate that during the time  
21 when the evidence has been presented to you that I be back  
22 over on the Bench out of the way while the attorneys are  
23 presenting the evidence to you. But we have reached a  
24 portion of this trial now where you and I are in this  
25 together, you as the judges of the facts and me as the

1 judge of the law, so it's appropriate I think for me to  
2 come down and be with you and give you the charge on the  
3 law. I'm going to read this charge to you verbatim so  
4 that I don't leave anything out and ask that you please  
5 give me your undivided attention.

6 Madam forelady and members of the jury, you've  
7 heard all of the evidence. You've heard the arguments of  
8 both parties. I will now explain to you the law which  
9 applies to this action. The indictment charges the  
10 defendant David Myers with a charge of shoplifting. I  
11 remind you that the fact that the defendant was arrested,  
12 charged, and indicted in this case is not evidence in this  
13 case and it cannot be considered by you as evidence of  
14 guilt in this case, nor does it create any presumption of  
15 innocence or inference of guilt. The indictment is simply  
16 the formal written instrument which contains the charge  
17 made against the defendant, is the formal document by  
18 which this case is brought into this court.

19 Now ladies and gentlemen, I will give you a copy of  
20 these instructions in written form to have with you in the  
21 jury room. During your deliberations you may refer to  
22 these instructions to guide you in your decision making.  
23 However, you must consider the instructions as a whole,  
24 and not follow some and ignore others. The defendant has  
25 pled not guilty to shoplifting and that plea puts the

1 burden on the State to prove the defendant guilty. In  
2 other words, the burden is on the State to prove each and  
3 every element of the crime charged. A person charged with  
4 committing a criminal offense in South Carolina is never  
5 required to prove him or herself innocent. I charge you  
6 that it is an important rule of law that the defendant in  
7 a criminal trial, no matter what the seriousness of the  
8 charge may be, will always be presumed to be innocent of  
9 the crime for which the indictment was issued unless guilt  
10 has been proven by evidence satisfying you of that guilt  
11 beyond a reasonable doubt. This presumption of innocence  
12 does not end when you begin your deliberations, but it  
13 accompanies the defendant throughout the trial until you  
14 reach a verdict of guilt based on evidence satisfying you  
15 of that guilt beyond a reasonable doubt. The presumption  
16 of innocence is not a mere legal theory; it's not just a  
17 legal phrase. But it is a substantial right to which  
18 every defendant is entitled unless you, the jury, are  
19 satisfied from the evidence of the defendant's guilt  
20 beyond a reasonable doubt.

21 Now as I stated, the State has the burden of  
22 proving the defendant guilty beyond a reasonable doubt.  
23 Some of you may have served as jurors in civil cases where  
24 you were told that it is only necessary to prove that a  
25 fact is more likely true than not true such as by the

1 greater weight or the preponderance of the evidence. In  
2 criminal cases the State's proof must be more powerful  
3 than that. It must be beyond a reasonable doubt. You  
4 cannot find the defendant guilty based on suspicion,  
5 conjecture, or speculation. Proof beyond a reasonable  
6 doubt is proof that leaves you firmly convinced of the  
7 defendant's guilt. There are very few things in this  
8 world that we know with absolute certainty, and in  
9 criminal cases the law does not require proof that  
10 overcomes every possible doubt. If based on your  
11 consideration of the evidence you are firmly convinced  
12 that the defendant is guilty of the crime charged you must  
13 find the defendant guilty. If on the other hand you think  
14 there's a real possibility that the defendant is not  
15 guilty, then you must give the defendant the benefit of  
16 that doubt and find him not guilty.

17 I remind you that during this trial you and I have  
18 certain duties to perform. As the trial judge it is my  
19 responsibility to preside over the trial of this case, and  
20 I also have the duty to rule on the admissibility of the  
21 evidence offered during this trial. You are to consider  
22 only the competent evidence before you. You are to  
23 consider only the testimony which has been presented from  
24 the witness stand and any exhibits which may have come  
25 into this record as part of this case. I have the

1 additional duty to charge you the law that is applicable  
2 to this case. As the presiding judge I am the sole judge  
3 of the law in this case, and it is your duty as jurors to  
4 accept and to apply the law as I now state it to you. If  
5 you already have an idea as to what the law is or what the  
6 law ought to be and it does not agree with what I now tell  
7 you the law is, you must abandon your idea because you are  
8 sworn to accept the law and apply the law exactly as I  
9 state it to you. In every case tried in this court before  
10 a jury the jury becomes the sole and the exclusive judge  
11 of the facts of the case. A trial judge cannot intimate,  
12 state, comment on, or make any statement to a trial jury  
13 about the facts of the case. Since you, the jury, are the  
14 sole judge of the facts of this case you are not to infer  
15 from what I have said during the progress of this trial  
16 and ruling on the admissibility of the evidence or  
17 otherwise, or anything that I say now during the course of  
18 this instruction to you, that I have any opinion about the  
19 facts of this case. The law does not allow me to have an  
20 opinion about the facts. This is a matter solely for you,  
21 the jury, to determine. As jurors it is your duty to  
22 determine the effect, value, weight, and truth of the  
23 evidence presented during this trial. So necessarily, you  
24 must determine the credibility of witnesses who have  
25 testified in this case.

1           And credibility simply means believability. It  
2 becomes your duty as jurors to analyze and to evaluate the  
3 evidence and determine which evidence convinces you of its  
4 truth. In evaluating eyewitness testimony you should  
5 remember that the State must prove the identity of the  
6 defendant as the person who committed the crime beyond a  
7 reasonable doubt. In determining the believability of  
8 witnesses who have testified in this case you may believe  
9 one witness over several or several over one. You may  
10 believe a part of a witness' testimony and reject the  
11 remaining part, or you may believe the entirety of a  
12 witness' testimony or reject the entirety of that  
13 testimony. You may believe the testimony of -- excuse me,  
14 you may consider whether any witness in this case has an  
15 interest, bias, prejudice or other motive in this case.

16           You must also consider the appearance and the  
17 manner in which a witness acts while on the witness stand.  
18 Now ladies and gentlemen, I instruct you and I emphasize,  
19 that the fact that the defendant in this case did not  
20 testify is not a factor to be considered by you in any way  
21 in your deliberation and in your consideration on the  
22 question of guilt or innocence of the defendant. It must  
23 not be considered by you in any manner whatsoever. A  
24 defendant has a constitutional right to remain silent, and  
25 the assertion of this right must not be considered by you

1 in your deliberations. I repeat, under your oath you are  
2 to draw no conclusion whatsoever on the fact that the  
3 defendant in this case did not testify. The fact that  
4 this defendant did not testify should not even be  
5 discussed in the jury room. The burden of proof as I have  
6 stated to you is on the State. The defendant is not  
7 required to prove his innocence. The burden of proof  
8 remains on the State to prove guilt beyond a reasonable  
9 doubt.

10 Now Mr. Myers is charged with shoplifting. The  
11 State must prove beyond a reasonable doubt that the  
12 defendant took possession of, carried away, or caused to  
13 be carried away, or transferred merchandise with the  
14 intent to deprive the merchant of the possession, use, or  
15 benefit of the merchandise without paying the full retail  
16 value. Full retail value means the merchant stated or  
17 advertised price for the merchandise. Merchandise means  
18 any goods, chattels, or wares of any type and description  
19 regardless of value. And merchant means the owner or  
20 operator of the store, or any agent, employee, officer, or  
21 independent contractor of the owner or operator.

22 Intent means willful, intending the result which  
23 actually occurs. In other words, not accidentally or  
24 involuntarily. Intent may be shown by acts and conduct of  
25 the defendant and other circumstances from which you may

1 naturally and reasonably infer intent. If the defendant  
2 willfully concealed unpurchased goods or merchandise on  
3 the premises, outside of the premises of a store, on the  
4 defendant's person or among the defendant's belongings,  
5 you may consider this as evidence that the defendant has  
6 concealed the merchandise with the intent to convert it to  
7 his own use without paying the purchase price. Concealed  
8 means to hide the merchandise on the person or among the  
9 belongings of a person so that although there may be some  
10 notice of its presence, it is not visible through ordinary  
11 observation.

12           Now Madam Forelady and members of the jury, as you  
13 retire to begin your deliberations I want to express to  
14 you the hope that each of you will be mindful of the  
15 importance of your responsibility. You're not called upon  
16 to serve as jurors very often, and the proper performance  
17 of the duty requires each of you to reach the height of  
18 freeing your mind of all improper influences. You and I  
19 are acting for the community, and that's why we must see  
20 to it that this trial is fair and that the verdict is  
21 just. You observe that the presiding officer of this  
22 court is addressed as Your Honor. Well, the reason is not  
23 because of the person wearing this robe, but that this  
24 court is entrusted with the honor of this community, the  
25 honor of this state, and the honor of this country in

1 seeking that every case tried here receives a fair and  
2 impartial justice. Do not get the idea that I'm trying to  
3 intimate to you how I think you should decide this case.  
4 As I've already told you, under the laws of the State of  
5 South Carolina you, the jury, are the sole judge of all  
6 questions of fact. It would be highly improper for me to  
7 influence you in the performance of that duty. However,  
8 as the presiding officer of this court I am vitally  
9 concerned that whatever verdict you find will be the  
10 result of you going into the jury room, confining your  
11 consideration to the evidence that was presented during  
12 the course of this trial and to the law that I have given  
13 you in this courtroom weighing it fairly and impartially  
14 as I have every confidence you will do.

15           Your verdict in this case cannot be based on  
16 sympathy, compassion, prejudice, or emotion, or some other  
17 consideration that's not found in the evidence. The Court  
18 is of the confirmed opinion that whatever verdict you  
19 reach will represent truth and justice for all parties  
20 involved. Now as I told you earlier, your verdict must be  
21 unanimous. All of you must agree on the verdict. And  
22 Ms. Berry, the verdict form is in the front of this  
23 notebook in the front flap. It's a very simple form.  
24 Ladies and gentlemen, it's just simply after your  
25 deliberations that you'll either find Mr. Myers either not

1 guilty or guilty. The order in which those verdicts are  
2 appearing on the indictment have no significance. It's  
3 just when you list more than one item you have to list one  
4 in front of the other so there's no significance to the  
5 order.

6 But ma'am, when the jury has reached a unanimous  
7 verdict you'll take the verdict form, check the  
8 appropriate verdict, and then sign as the forelady. Once  
9 you have reached a unanimous verdict, then if you will  
10 knock on the door and let the bailiff know we'll bring you  
11 out and receive your verdict.

12 Ladies and gentlemen, I'm gonna ask you to step  
13 back into the jury room. And Ms. Berry, don't begin  
14 deliberations yet. I'm gonna just double check with the  
15 attorneys to make sure that I've covered everything in the  
16 charge. If there's anything that I've left out or  
17 anything I need to add, I'll bring you back out and I'll  
18 give you that information. But if the charges are good as  
19 I've given it to you, I will then send this notebook back  
20 into the jury room. When you receive this notebook that  
21 will be your cue to begin your deliberations. Okay? So  
22 if you would please step back into the jury room, be back  
23 with you shortly.

24 (WHEREUPON, the jury was removed from the  
25 courtroom at 2:52 p.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: Any exceptions or objections to the  
3 charge by the State?

4 MR. JEPERTINGER: No, sir.

5 THE COURT: Anything from the Defense?

6 MR. FLOYD: Nothing, Your Honor.

7 THE COURT: All right. I don't think there are any  
8 exhibits; is that correct?

9 MR. JEPERTINGER: That's correct.

10 THE COURT: All right. Ms. Joe, if you would take  
11 this back, ask them to begin their deliberations but send  
12 the alternate out first.

13 (Alternate is returned to the courtroom.)

14 THE COURT: Ms. Robinson, thank you for your  
15 service. I know it's not easy being an alternate because  
16 now they're going to get a chance to go back and talk  
17 about everything and you can't play. We're having the  
18 jury panel call back after six, but there are plenty of  
19 folks in the jury panel and I'm not sure if we're gonna  
20 have another trial so I'm just gonna go ahead and excuse  
21 you for the week. So you're done.

22 (Alternate was excused.)

23 THE COURT: We'll be at ease while the jury is  
24 deliberating.

25 (WHEREUPON, a recess was taken from the

1 proceedings.)

2 THE COURT: It's my understanding that the jury has  
3 reached a verdict. Is that correct, Ms. Joe?

4 THE BAILIFF: Yes, sir.

5 THE COURT: The State ready to proceed with the  
6 jury's verdict?

7 MR. JEPERTINGER: Yes, sir.

8 THE COURT: Defense ready?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: All right. Ms. Joe, ask the jury to  
11 join us please.

12 (WHEREUPON, the jury was returned to the  
13 courtroom at approximately 3:23 p.m., and the  
14 following proceedings commenced in open court.)

15 THE COURT: Ms. Berry, has the jury reached a  
16 unanimous verdict, ma'am?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: If you'd please hand that to Madam  
19 Clerk.

20 (Verdict form tendered to the Court.)

21 THE COURT: If you would please publish the jury's  
22 verdict.

23 CLERK OF COURT: State of South Carolina versus  
24 David Myers, indictment number 2011-GS-21-981,  
25 shoplifting: We, the jury, find the defendant David Myers

1 guilty of shoplifting. Signed, foreperson, Rebecca Berry,  
2 dated June 29th, 2011. Members of the jury, if this is  
3 your verdict please raise your right hand.

4 (All jurors complied by raising their hand.)

5 CLERK OF COURT: That's everyone, Judge.

6 THE COURT: All right. Ladies and gentlemen, I  
7 want to thank you for your service this week. I realize  
8 it's not convenient for anybody but obviously there's no  
9 way we can do the work of the court without your help. I  
10 always tell juries -- and I'm gonna excuse you at this  
11 time and you are free to go -- but you worked the case and  
12 if you want to be here for sentencing, we're gonna proceed  
13 to sentencing in just a moment. I just -- I welcome you  
14 to do that if you choose to do that. You worked the case.  
15 You were involved throughout the whole thing, and if you  
16 want to stay for the sentencing you're certainly welcome  
17 to do that. If you want to leave and go about your  
18 business you're welcome to do that as well. I'm going to  
19 excuse you officially and tell you that you do not have to  
20 return. Again, I want to thank you for your service.

21 (WHEREUPON, the jury was removed from the  
22 courtroom at 3:27 p.m., and the following proceedings  
23 commenced in open court.)

24 THE COURT: Y'all ready to proceed to sentencing,  
25 Mr. Floyd?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: All right. Mr. Jepertinger, I'll be  
3 happy to hear from the State regarding sentencing.

4 MR. JEPERTINGER: Your Honor, obviously since this  
5 gentleman did not take the stand we were precluded to go  
6 into any sort of record he might have had so I'd like to  
7 tell the Court what his record is. It starts back in  
8 1979, Your Honor. He pled to assault and threatening,  
9 Your Honor. In 1980 he had a housebreaking and grand  
10 larceny. He also had a forgery in 1981. He had two  
11 counts of housebreaking in 1983. He had a burglary  
12 conviction in 1986 for which he received ten years and  
13 resisting arrest. He had a possession of crack cocaine at  
14 school in 1993. It also looks like he had some sort of  
15 distribution of cocaine for which he received in the  
16 Department of Corrections. I don't know if that was  
17 related to that I would take as a proximity charge, Your  
18 Honor.

19 He also in 1996 had a manufacturing distribution of  
20 crack cocaine. He was given eight years in '96. He had a  
21 criminal domestic violence in 2002. He had a loitering  
22 charge in 2003 and a resisting arrest and possession of  
23 drug paraphernalia in 2003. He had a criminal conspiracy  
24 in 2003. He had a loitering in 2003, a petit larceny in  
25 2003, a resisting arrest in 2003. He had a shoplifting in

1 2006, a shoplifting in 2007, an open container conviction  
2 in 2007, another shoplifting conviction in 2007, and a  
3 resisting arrest. He had another resisting arrest in  
4 2008, as well as another shoplifting conviction in 2008.  
5 He had another property offense third or subsequent in  
6 2009. Another shoplifting in 2010, which he received five  
7 years suspended 95 days, time served, with two years  
8 probation, Your Honor. I don't know if he'd be on  
9 probation now based on that fact, Your Honor.

10 THE COURT: Well, if it was 2010 I would think it  
11 would be.

12 MR. JEPERTINGER: Yeah, two years. If he's on --  
13 was he revoked?

14 MR. FLOYD: He says he was revoked.

15 MR. JEPERTINGER: Okay.

16 THE COURT: Oh, so that case is over. He got  
17 revoked on that case?

18 MR. FLOYD: Yes, Your Honor.

19 THE COURT: You don't have any pending probation  
20 cases on Mr. Myers?

21 PROBATION OFFICER: No, sir.

22 THE COURT: Okay.

23 MR. JEPERTINGER: He was trespassing also in 2010.  
24 And that brings us to the present. Of course, Your Honor,  
25 he took this to trial, Your Honor, even though it was only

1 42 dollars worth of turtle wax that was stolen. His  
2 record merits that he gets the maximum sentence, Your  
3 Honor, in the State's opinion.

4 THE COURT: All right, sir.

5 Mr. Floyd, I'll be happy to hear from you on behalf  
6 of Mr. Myers and then if Mr. Myers would like to address  
7 the Court I'll be more than happy to hear from him as  
8 well.

9 MR. FLOYD: Certainly, Your Honor. And Your Honor,  
10 I understand obviously Mr. Jepertinger's current position  
11 as far as maximum sentence. However, he was offered  
12 basically four years to plead to this charge, and you  
13 know, last week. So I mean, it appears the reason now he  
14 wants max sentence because Mr. Myers decided to go to  
15 trial. I mean, he does have a right to a trial if he  
16 wants one. You know, you may feel he deserves the whole  
17 ten years regardless, which is fine, but I don't think he  
18 should be penalized ---

19 THE COURT: Well, I'm not sure -- I'm not sure with  
20 that record I would have offered him four.

21 MR. FLOYD: Certainly, I understand that.

22 THE COURT: I know your position.

23 MR. FLOYD: But my position is he shouldn't be  
24 penalized just because he came in here and had a trial.

25 THE COURT: Correct.

1 MR. FLOYD: That's really all I have to say about  
2 that. I mean, obviously his record is his record and it's  
3 not good. We understand that. Your Honor, but Mr. Myers  
4 is -- he spent a lot of time in jail and he, you know, he  
5 told me that he spent about half his life in there I  
6 think. And hopefully when he gets this behind him I hope  
7 that will be his last time. It's unfortunate that he's  
8 put himself in this position again, but I hope that he  
9 won't do it after he gets through with this sentence. I  
10 don't know if -- do you want to say anything? He wants to  
11 speak.

12 THE COURT: Mr. Myers, I'll be happy to hear from  
13 you, sir.

14 THE DEFENDANT: Your Honor, I'd like to say I know  
15 I made a mistake in life. I made a lot of mistakes. But  
16 I ain't never hurt nobody. I made a crime, I make crime,  
17 but I ain't never hurt nobody on a crime, you know what  
18 I'm saying. I make -- we make that crime trying to eat.  
19 You can't get a job. When you get out of prison still  
20 can't get no job. I go to prison then I'm -- and I get  
21 out, the same thing.

22 THE COURT: I mean, I understand Mr. Myers but ---

23 THE DEFENDANT: It wouldn't ---

24 THE COURT: If it was a matter of eating, why  
25 didn't you go to the grocery store and steal food. You

1 stole turtle wax.

2 THE DEFENDANT: You know why?

3 THE COURT: No, sir, I don't. I'd like to know.

4 THE DEFENDANT: Detailing trucks, 18 wheelers,  
5 trying to make a dollar. That's all I steal it for.

6 THE COURT: Well, let me ask you this. Mr. Myers,  
7 you're 44 years of age?

8 THE DEFENDANT: No, I'm 50.

9 THE COURT: 50?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: 50 years old. I don't know this, I  
12 feel pretty confident you don't enjoy the Department of  
13 Corrections. You don't want be there, right?

14 THE DEFENDANT: No, sir.

15 THE COURT: Why do you keep doing this foolish  
16 stuff? I mean, this is one, two, three, four, five, this  
17 is your seventh shoplifting offense. And I don't know, it  
18 could be that maybe you've done a hundred and you've only  
19 been caught seven times so you're taking a risk. But it's  
20 a terrible risk to take, sir. If you're detailing  
21 vehicles I'm assuming you get paid for that, right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Well, why couldn't you just buy some  
24 turtle wax?

25 THE DEFENDANT: Time ran out. I had no money to

1 get it. I made a stupid mistake; that's all.

2 THE COURT: Mr. Myers, here's -- and I understand  
3 what you're telling me and the way you look at it, and the  
4 way you think about it. But here's the truth, is what  
5 you're doing it hurts a lot of people because we go into  
6 the store, these ladies and gentlemen, they go into the  
7 store and they purchase items and when they get to the  
8 cash register and they bought diapers and clothing for  
9 their kids and food for their kids and they get to the  
10 cash register and they have to ring it all up, and when  
11 they get that total it could be a 160-dollars. If it  
12 wasn't for all the folks who shoplift and steal the  
13 merchants would be able to charge less for their goods.  
14 But because shoplifting and stealing is so prevalent, they  
15 kind of raise their prices to make up for what they lose  
16 in people who shoplift. So it -- I know what you mean,  
17 you didn't hurt anybody physically by doing this. But  
18 folks who -- and you got a habit of doing it. Folks who  
19 shoplift, all of that comes back to where all of us end up  
20 paying higher prices for everything that we have to buy  
21 and it does hurt. It also hurts your family, that they  
22 lose you. It hurts you obviously.

23 There's, with your record, there's no other option  
24 for me other than to give you some type of a jail sentence  
25 which means now that the State of South Carolina is gonna

1 pay 60-dollars a day to house you in the Department of  
2 Corrections. There's a lot more to it than you're just  
3 thinking, I just took eight cans of turtle wax. Anyway...

4 On indictment 2011-GS-21-981, the sentence of the  
5 Court is that you be committed the State Department of  
6 Corrections for a period of ten years. You're to be given  
7 for credit for any time that you have served on this  
8 charge. Good luck to you, sir.

9  
10 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

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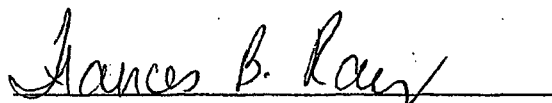
## CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina,  
this 14th day of August, 2011.



FRANCES BAKIS-RAY, RPR  
My Commission Expires: 9-13-2014

WITNESSES

Sandy Thompson Lake City Police Department

DOCKET NO. 2011-GS-21-0981

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2011

THE STATE

vs.

DAVID MYERS

PATRICIA S. PARR

ARREST WARRANT NUMBER

1332933

ACTION OF GRAND JURY

TRUE BILL

*Samuel K. Dale*  
Foreperson of Grand Jury

Date: 6-9-11

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

SHOPLIFTING THIRD OR SUBSEQUENT  
OFFENSE

CERTIFIED: A TRUE COPY  
*Connie Reel Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

2011 JUN -9 PM 2:53  
CONNIE REEL-SHEARIN  
CLERK OF COURT  
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA )

INDICTMENT FOR

COUNTY OF FLORENCE )

SHOPLIFTING THIRD OR SUBSEQUENT OFFENSE

At a Court of General Sessions, convened on JUNE 9, 2011 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE- SHOPLIFTING THIRD OR SUBSEQUENT OFFENSE**

That DAVID MYERS did in Florence County on or about February 8, 2011, take possession of, carry away, transfer to another area of the store, or cause to be carried away or transferred, alter, transfer, or remove the price label or tag on, and/or did transfer from its container to another container, merchandise displayed, held, stored or offered for sale by WALMART, to wit: 8 bottles of car wax valued at forty two dollars (\$42.00) , in violation of Section 16-13-110(A), S.C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, S.C. Code of Laws, 1976, as amended.

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




---

**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 16th, 2011

  
Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Florence County  
Thomas A. Russo, Circuit Court Judge  
\_\_\_\_\_

ORIGINAL

RECEIVED

DEC 16 2011

SC Court of Appeals

THE STATE,

RESPONDENT,

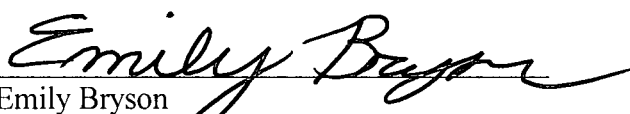
V.

DAVID MYERS,

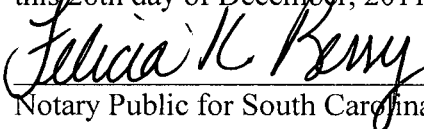
APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 16th day of December, 2011.

  
\_\_\_\_\_  
Emily Bryson  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 26th day of December, 2011.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: June 21, 2020 .