

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAREN BAILEY,

APPELLANT

APPELLATE CASE NO. 2012-212618

RECORD ON APPEAL

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State of South Carolina)
)
County of Sumter)
)

The State of South Carolina,
Plaintiffs 2009-GS-43-372
 Trial

September 20-21, 2010
Sumter, S.C.

vs.

Sharen Bailey & Keoshaws Brewer,
Defendants

BEFORE THE HONORABLE Howard P. King, Judge.

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

Ms. Darla Pierce,
Assistant Solicitor for the State

MR. Calvin Hastie,
Attorney for Defendant Brewer

Mr. John Britton,
Attorney for Defendant Bailey.

Margaret T. Sullivan,
Court Reporter

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24

25

1 MS. PIERCE: Your Honor, this is the State
2 of South Carolina versus Sharen Bailey and
3 Keoshaws Brewer. Indictment No. 2009-GS-43-372.

4 Your Honor, Ms. Bailey is indicted for
5 one count of shoplifting. Ms. Brewer is indicted
6 for one count of shoplifting and one count of
7 failure to stop for a blue light, Your Honor.

8 THE COURT: Ladies and gentlemen of the
9 jury, you have heard the State announce that they
10 have called the joint cases of the State versus
11 Sharen Bailey and Keoshaws Brewer. What I am
12 going to tell you now is not evidence in this
13 case.

14 So first of all, let me tell you that
15 neither of the Defendants are present in the
16 courtroom at this time. I will tell you that a
17 Defendant does not have to be present in court
18 when a case is called for trial, provided they
19 were given notice of the matter coming up for
20 trial. If they were given the notice that the
21 matter was coming up for trial, they have a right
22 to be here but they don't have to be here. The
23 State can proceed in their absence.

24 You are not to presume anything from the
25 fact that the Defendant is not, neither of the

1 Defendant's or both of the Defendants are not
2 present. They are presumed in the law innocent of
3 the charges against them. And the burden is on
4 the State to prove their guilt beyond a reasonable
5 doubt. The Defendant does not have to prove
6 anything. So it is up to the State to prove guilt
7 beyond a reasonable doubt. And while the
8 Defendant has a right to be present, they do not
9 have to be present. So you should not infer
10 anything from the fact that they are not now
11 present.

12 They may be present later, or they may
13 not. In any event, the State does have the right.
14 Now the State charges that the Defendants in this
15 indictment, that the Defendants did in Sumter
16 County on or about January 2nd 2009, take
17 possession of and carry away or transfer property
18 valued at \$350 displayed, held or stored or
19 offered for sale by Rugged Warehouse at 1121 Broad
20 Street without -- with the intention depriving the
21 person of that property and not paying for it.
22 And the charges against both of them is for
23 shoplifting.

24 And the count, second count of the
25 indictment, charges Ms. Brewer, Keoshaws Brewer on

1 MR. BRITTON: No, Your Honor.

2 THE COURT: Bring the jury in, please.

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 THE COURT: Thank you, Ladies and
6 gentlemen, for your promptness in being back here.

7 We are now ready to start the trial of this case.

8 I will ask, Mr. Bradley, if you will swear the
9 jury at this time, sir.

10 (Whereupon, jury is sworn.)

11 THE COURT: All right, Ladies and
12 gentlemen, before we begin the actual trial of
13 this case, I thought it might be helpful if I
14 explain to you basically how a trial proceeds. I
15 know all of you have seen trials on television,
16 but I believe you will find a great deal of
17 difference in real life. First of all, the State
18 will make an opening statement. The opening
19 statement is not evidence. It is simply an
20 outline to help you understand what the State
21 expects the evidence will show. The defendants
22 may if they wish to, present an opening statement
23 through their lawyers but they don't have to for
24 reasons I will explain later.

25 And again, I want to tell you at this time

1 that a Defendant does not have to be present in
2 court for trial when the case is called. They
3 have been given notice of the matter to come up
4 here. They've had ample opportunity to be here if
5 they chose to do so. However, they are presumed
6 to be innocent. And the State has the burden of
7 proving their guilt beyond a reasonable doubt.
8 And the Defendant never has to prove his guilt.

9 So you should keep in mind that Defendants
10 are presumed innocent. And it is up to the State
11 to prove their guilt beyond a reasonable doubt.
12 And you should not hold the fact that they are not
13 here against them in any way. Now following the
14 opening statement, you will hear the testimony and
15 evidence in this case. This will consist of
16 testimony from the State's witnesses; as well as
17 any physical exhibits which may be introduced into
18 evidence.

19 Following the completion of the testimony,
20 the attorneys will again have an opportunity to
21 make what is called the closing statements, or the
22 summation to you. This is an opportunity for the
23 attorneys to summarize the case from their
24 respective points of view. Again, these arguments
25 are not evidence. Following the closing

1 heard all of the evidence in the case and the
2 instructions on the law by the court after the
3 arguments of counsel have been completed. You
4 will be instructed on when to begin your
5 deliberations by either me or the bailiff. Any
6 objection to my opening remarks on behalf of the
7 State, Ms. Pierce?

8 MS. PIERCE: None, Your Honor.

9 THE COURT: On behalf of the Defendant,
10 Mr. Hastie.

11 MR. HASTIE: None.

12 THE COURT: Mr. Britton?

13 MR. BRITTON: No, Your Honor.

14 THE COURT: The first order of business is
15 the opening statements. And for that purpose,
16 will recognize the Solicitor, Ms. Pierce.

17 MS. PIERCE: Thank you, Your Honor. Good
18 afternoon, Ladies and gentlemen. My name is
19 Darla Pierce, and I am an Assistant Solicitor here
20 in Sumter County. It is a different term. But in
21 other words, a Prosecutor. I represent the State
22 of South Carolina. I don't think I need to the
23 stand here and tell you that we do live in hard
24 times. You see it on the news. You feel it when
25 you get your paycheck. When you are writing and

1 paying our bills.

2 But just because we are living in hard
3 times, just because we need an extra dollar, does
4 not give us the right to steal. It doesn't matter
5 if we steal from the person next door, or if we
6 steal from a store. It is just as serious.
7 Ladies and gentlemen of the jury, the store is the
8 victim just like your next door neighbor is.

9 ~~Now you heard the judge say that the~~
10 State's burden is a is a burden beyond a
11 reasonable doubt. That is a very high burden. So
12 don't confuse beyond a reasonable doubt with no
13 doubt. I just ask you to use of your common
14 sense. I will talk to you about January 2nd 2009.
15 Ms. Brewer and Ms. Bailey, another female, went to
16 the Rugged Warehouse. You are going to hear Ms.
17 Peggy Witherspoon the lady in the fuchsia shirt,
18 was the manager on duty that day. And she is
19 going to tell you what she saw. She saw some
20 people that didn't act quite right. She noticed
21 and she walked to the front of the store to see
22 what was going on as they were leaving the store.

23 As we all know. The Rugged Warehouse
24 sometimes they have attachments on it. They come
25 and did not pay for the things. It beeps. And

1 they didn't go to the check out. They are going
2 around past her. And the alarm goes off. As she
3 is on the phone calling the police, at that
4 moment an Officer with the Sumter Police
5 Department was riding up on the alarm next door.
6 She flagged him down. She tells them they all
7 left in a Gold Honda Accord.

8 And he goes after them. He will tell you
9 that he saw the vehicle. And he initiated a blue
10 light to stop them for traffic stop. For a stop,
11 and they kept going. And he is going to show you
12 on a diagram that he drew, how far he had to go,
13 and what they did. And at that time, they were
14 all placed under arrest.

15 Ladies and gentlemen, this is going to be
16 a very brief case. And as Judge King talked
17 about, and told you and talked about, and we don't
18 have a video showing what they did. We don't have
19 that. Circumstantial evidence is evidence. But
20 again, use your common sense. And I am sure at
21 the end of this trial, you will come back with a
22 verdict of guilty of Keoshaws Brewer and Sharen
23 Bailey for shoplifting. And Keoshaws Brewer for
24 failure to stop for a blue light. Thank you.

25 THE COURT: Mr. Hastie, do you care to

1 make an opening statement on behalf of your
2 client?

3 MR. HASTIE: I do, Your Honor.

4 THE COURT: All right, sir.

5 MR. HASTIE: Thank you, Your Honor.

6 Ladies and gentlemen, my name is Calvin Hastie. I
7 am from right here in Sumter. I lived on the
8 South side. I served 20 years in the military.
9 ~~Because I served 20 years today, we cannot accuse~~
10 anyone. So that if any us are accused of an
11 offense, there's what we call in our Constitution
12 of the State and the Constitution of our Country,
13 the presumption of innocence. And the law places
14 the burden not upon the judge, not on the
15 Defendant, but the law places the burden upon the
16 State to prove to you all guilt beyond a
17 reasonable doubt. A reasonable doubt that this
18 offense occurred. Members of the jury, that means
19 your duty here today is to find the burden of
20 proof. It is not upon my client. It is not upon
21 you. If you are ever charged with a crime, the
22 law places the burden upon the State.

23 It is very high burden beyond a reasonable
24 doubt. And this presumption of righteousness is
25 like a robe we all wear. And the State can't

1 come in here and talk to you about some things.
2 They must completely take the robe away from you.
3 That presumption of innocence is solely on them
4 today. I ask you to listen to the evidence that
5 is there. Ms. Pierce said this is a brief case,
6 and explained it will be a brief case. It is a
7 very important case. And we just ask that you
8 after hearing the evidence, you find my client
9 innocent.

10 THE COURT: Mr. Britton, would you like to
11 make a statement on behalf of your client?

12 MR. BRITTON: I waive opening statements.

13 THE COURT: Ms. Pierce, you may call your
14 first witness.

15 MS. PIERCE: Thank you, Your Honor. The
16 State would call Peggy Witherspoon.

17 THE COURT: Come around, please.

18 **PEGGY LEE WIITHERSPOON, after being duly**
19 **sworn, testified as follows:**

20 THE CLERK: Please state your full name
21 and spell your last name for the record.

22 A Peggy Lee Witherspoon.

23 W-I-T-H-E-R-S-P-O-O-N.

24 Direct Examination by Ms. Pierce:

25 Q Ms. Witherspoon, where are you from?

1 A I am from here in Sumter, South Carolina.

2 Q How long have you lived here?

3 A About 41 years.

4 Q And what is your job?

5 A I am Assistant Manager for the Rugged
6 Warehouse.

7 Q And as of today, where do you work?

8 A Rugged Warehouse Florence, South Carolina.

9 Q Did you ever work in Sumter County?

10 A Yes, I have.

11 Q When did you work in Sumter County?

12 A From 2003 -- 2006 to 2008. 2009, excuse
13 me.

14 Q What is your job title?

15 A Assistant Manager.

16 Q Were you an Assistant Manager back in
17 2009?

18 A Yes, ma'am.

19 Q Now how did you become involved in this
20 case?

21 A I was the Manager on duty that night. And
22 I noticed three young ladies walked in. And one
23 of the cashiers called me and told me they looked
24 suspicious. I walked out from the back, and I
25 noticed them at the rack. They were rolling

Peggy Witherspoon-direct by Pierce

1 clothes. And one of the young lady's tucked
2 something in her bag.

3 Q And rolling clothing, what do you mean?

4 A Well like when you take a pair of jeans,
5 and you would roll it up real tight so it will fit
6 down in the bags.

7 Q What does that mean to you?

8 A So you can get more items in the bag from
9 the store.

10 Q What did you do when you saw them rolling
11 clothes?

12 A I went to the front and I called the
13 security office. I asked the security to scan
14 certain areas of the store. And I stayed up front
15 until the young ladies were exiting the store.
16 And when I asked them to come back into the store,
17 I needed them to come back into the store. And
18 one of the young ladies said, "I am not stopping."
19 And all three of them went out and got into the
20 car. I went out after them, but I am allowed to
21 go out in the parking lot. So therefore, I can't
22 get a license plate number. And as I was going
23 out on the cell phone to call 911, and the officer
24 came up. He said the alarm went off next door.
25 Then I told him what had happened.

Peggy Witherspoon-direct by Pierce

1 Q And did you see the car that they went to?

2 A Yes, ma'am.

3 Q Could you describe that for us, please?

4 A It was a Gold Honda Accord. And when they
5 got to the parking lot, they went to Big Lots way.
6 You know where Rugged Warehouse is. Rugged
7 Warehouse faces Wesmark Plaza. So they have to
8 pass me at a high rate of speed. Then they went
9 down by Staples and across over from, past the
10 mall.

11 Q Did all three get into the same car?

12 A Yes, ma'am.

13 Q And what is the address of the Rugged
14 Warehouse here in Sumter?

15 A Oh, gosh, I don't remember.

16 Q Do you know what County it is in?

17 A It is Sumter County.

18 Q It is Sumter County?

19 A Yes, ma'am.

20 MS. PIERCE: I beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 Q Ms. Witherspoon, I am going to show you

23 what has been marked as State's Exhibit No. 1 for

24 identification purposes. Could you please look at

25 this?

Peggy Witherspoon-direct by Pierce

1 A Yes, ma'am.

2 Q Would you please tell the jury what you
3 see?

4 A I see one of the young ladies that was
5 there that night, shoplifting.

6 Q So you see a picture?

7 A Yes, ma'am.

8 Q And have you seen that lady before?

9 A Yes, ma'am.

10 Q Where have you seen her?

11 A At rugged Warehouse.

12 Q And was she just a customer, or was she
13 there?

14 A No, ma'am, she was not a customer. She
15 was there to shoplift. Her and two more young
16 ladies.

17 Q I show you what has been previously marked
18 as State's Exhibit No. 1 for identification
19 purposes. Would you please look at that?

20 THE COURT: What was that No., 2?

21 MS. PIERCE: This is No. 1. Oh, I'm
22 sorry, No. 2.

23 THE COURT: Okay.

24 A This is one of the ladies with her.

25 Q Was that lady present that day as well?

Peggy Witherspoon-direct by Pierce

1 A Yes, ma'am.

2 Q Were both of the ladies present when the
3 alarm beeped?

4 A Yes, ma'am.

5 Q Did both of these ladies get into the
6 Gold Honda Accord?

7 A Yes, ma'am.

8 Q Now let's talk about the alarm beeping.
9 Why was the alarm beeping?

10 A If there is a security tag attached to an
11 item of clothing, anything over 19.99, you have to
12 attach a security tag for that purpose. And if
13 that security tag was not removed, you go through
14 that door, it is going to sound the alarm.

15 Q So when that alarm went off, what did that
16 tell you?

17 A That told me that someone was going
18 through the door with some of our items in their
19 purse or on them or whatever.

20 Q Is it possible for the alarm to go off
21 without the security tags?

22 A Oh, yes, ma'am.

23 Q Is that normal?

24 A No, ma'am. It's possible. Because we had
25 one young she had a retainer, and if she didn't

Peggy Witherspoon-direct by Pierce

1 hold her mouth a certain way, it would go off.

2 And she was also an Assistant Manager at the
3 store, and she was transferred.

4 Q How often do you think that happens?

5 A It's not very often. If you wear
6 something from Old Navy in there, if you don't cut
7 that tag out, our alarm will still beep.

8 Q And when the alarm went off, what did
9 these ladies do?

10 A They continued to walk out the door. And
11 they continued to exit the store. And I asked
12 ~~them to step back in the store. And they~~
13 answered, "I am not coming back."

14 Q I am going to show you what's been marked
15 as State's Exhibit No. 3 for identification
16 purposes. Would you please look at this? Do you
17 recognize that?

18 A Yes, ma'am.

19 Q And how do you recognize that?

20 A Whenever we have an item in our store and
21 we run out of sticky tags, we take our ticket gun,
22 and we put the skews on them with the white tape.
23 It appears this one would be red. Either way, if
24 it doesn't have a skew on it, we have to take the
25 ticket gun and place our skews on it.

Peggy Witherspoon-direct by Pierce

1 Q Do you recognize that ticket?

2 A Yes, ma'am.

3 Q Where is that ticket from?

4 A Rugged Warehouse.

5 Q Would that have been in Rugged Warehouse's
6 possession?

7 A Yes, ma'am.

8 Q When is the last time you saw that item?

9 A In January of 2009.

10 Q Under what circumstances?

11 A When the items were brought back into the
12 store, that's the last time I saw them.

13 Q And what did you do with the items that
14 were brought back in the store?

15 A I had to identify them. And---

16 Q Identify---

17 A The officer took them from there.

18 Q Identify them as?

19 A Items that were stolen from our store that
20 night.

21 Q I am going to show you what has been
22 marked as State's Exhibit No. 4. Would you look
23 please look at this? And going back to item
24 State's Exhibit No. 3.

25 A Yes, ma'am.

Peggy Witherspoon-direct by Pierce

1 Q You testified that the last time you saw
2 that was on January 2nd 2009?

3 A Yes, ma'am.

4 MS. PIERCE: Your Honor, at this time, the
5 people would offer State's Exhibit No. 4 into
6 evidence.

7 THE COURT: 3 or 4?

8 MS. PIERCE: No 3.

9 THE COURT: Any objection, Mr. Britton?

10 MR. BRITTON: No objection, Your Honor.

11 THE COURT: Mr. Hastie?

12 MR. HASTIE: None.

13 THE COURT: State's Exhibit No. 3 admitted
14 into evidence without objection.

15 (Jeans marked as State's No. 3 into
16 evidence.)

17 Q Will you tell us what those are?

18 A This is a pair of jeans from the Rugged
19 Warehouse.

20 Q How do you know that?

21 A Because I put them out on a daily basis.
22 And this is one of our items that was taken that
23 same night.

24 Q Do you see a tag on there? A store tag?

25 A No.

Peggy Witherspoon-direct by Pierce

1 Q How are you able to tell those are jeans
2 from the Rugged Warehouse?

3 A Because these jeans and those jeans are
4 packed together in the same box. They all came
5 together under the same skew.

6 Q And when is the last time you saw that
7 pair of jeans?

8 A January 2nd 2009.

9 MS. PIERCE: Your Honor, the State would
10 move to offer State's Exhibit No. 4 into evidence.

11 THE COURT: Mr. Hastie?

12 MR. HASTIE: No, objection, Your Honor.

13 THE COURT: Mr. Britton?

14 MR. BRITTON: No objection.

15 THE COURT: Admitted into evidence,
16 State's Exhibit No. 4 without objection.

17 (Jeans marked State's Exhibit No. 4 into
18 evidence.)

19 Q Ms. Witherspoon, I am going to show you
20 what is marked as State's Exhibit No. 5 for
21 identification. What is that?

22 A It's a pair of our faded jeans that we
23 have in our store in 2009. And they came in
24 possibly all colors. Purple, gold and silver.

25 Q Is there a tag number?

Peggy Witherspoon-direct by Pierce

1 A No, ma'am, there is not.

2 Q And how is---

3 A There should have been. I got a skew off
4 of it that night that it was brought back in.

5 Q And how is it you are able to tell these
6 jeans were from the Rugged Warehouse?

7 A I know those items. I know the clothing.

8 Q And when is the last time you saw that
9 item?

10 A January 2nd 2009.

11 MS. PIERCE: Your Honor, at this time, the
12 State would move to offer Exhibit No. 5 into
13 evidence.

14 THE COURT: Mr. Hastie.

15 MR. HASTIE: No objection, Your Honor.

16 THE COURT: Admitted into evidence as
17 State's Exhibit No. 5 without objection.

18 (Jeans marked as State's Exhibit No. 5
19 into evidence.)

20 Q Ms. Witherspoon, I'm going to hand up a
21 stack of items to you. Some of these items have
22 been marked as State's Exhibits -- for purposes
23 State's Exhibit Nos. 6 through 12 for
24 identification purposes. I would like you to take
25 a moment and look at each one of those items.

Peggy Witherspoon-direct by Pierce

1 A Yes, ma'am.

2 Q Do you recognize those items?

3 A Yes, ma'am.

4 Q How do you recognize them?

5 A Our tag is on them. Also we have the
6 sticky tags. And we also have the tags that comes
7 on the items. Rugged Warehouse tags. Items of
8 clothing.

9 Q Now some of these items did not have tags.

10 A This one -- it will come off. It comes
11 off. I hold on to them. It's a unit tag. And
12 normally we have our own tags that start at 9.99.
13 I know that brand. It's the same style every
14 year. And this one is a celebrity pant. It also
15 comes in our 9.99 fold down unit.

16 Q Are you sure those were your jeans in your
17 store that day?

18 A Yes, ma'am.

19 Q What about?

20 A The Baby Phat. And it comes -- actually
21 it came in other pairs.

22 Q When is the last time---

23 A 9.99.

24 Q When is the last time you saw these items?

25 A January 2nd 2009.

Peggy Witherspoon-direct by Pierce

1 MS. PIERCE: Your Honor, at this time, the
2 State would move to introduce items 6 through 12
3 into evidence.

4 THE COURT: Any objection, Mr. Hastie?

5 MR. HASTIE: No, Your Honor.

6 THE COURT: Mr. Britton?

7 MR. BRITTON: None, Your Honor.

8 THE COURT: All right, admitted into
9 evidence as State's Exhibit Nos. 6 through 12
10 without objection.

11 (Jeans into evidence as State's Exhibits
12 No. 6 through 12.)

13 Q And finally, Ms. Witherspoon, I am going
14 to show you what has been marked as State's
15 Exhibit No. 13 for identification purposes. Could
16 you look at that, and tell us what that is?

17 A This is one of the 9.99 tops. And I
18 remember this one. Because I was like, "Why would
19 someone take this, it is only 10 bucks."

20 Q Is there a tag on that item?

21 A No, ma'am.

22 Q And how were you able to tell that was
23 property of Rugged Warehouse?

24 A From the American Dream. That is one of
25 our tops that we carry. It usually hangs on the

Peggy Witherspoon-direct by Pierce

1 wall.

2 Q When is the last time you saw this item?

3 A January 2nd 2009.

4 MS. PIERCE: Your Honor, We would offer
5 Exhibit No. 13 into evidence.

6 THE COURT: Any objection, Mr. Hastie?

7 MR. HASTIE: None, Your Honor.

8 THE COURT: Mr. Britton?

9 MR. BRITTON: No, Your Honor.

10 THE COURT: Admitted in to evidence
11 without objection.

12 (Fuchsia blouse admitted into evidence as
13 State's Exhibit No. 13.)

14 Q And just to be clear, did you see the
15 defendants go through a checkout line on January
16 2nd 2009?

17 A No, ma'am. They went straight through the
18 front door.

19 Q And would you have been able to see them?

20 A Yes, I was standing up front.

21 Q And where is the cash register?

22 A Right inside the front door. As soon as
23 you exit the store, it is on your right. But
24 leaving out of the store it is right there by the
25 door.

Peggy Witherspoon-direct by Pierce

1 Q About how many feet from where you were
2 standing to the register?

3 A About 10.

4 Q Was anything blocking your view?

5 A No, ma'am.

6 Q And tell us one more time what you saw
7 when they were leaving.

8 A While they were leaving, they were walking
9 two, side by side, and one in the back. As they
10 got into the -- our security area, the alarm went
11 off. So I called them to come back into the
12 store. And one of them answered, "I am not coming
13 back." And they bolted. And they went and got in
14 the car. And I came outside. I couldn't go out
15 into the parking lot like I said. I reached for
16 my cell phone.

17 Q And you did not see them pay for those
18 items?

19 A No, ma'am.

20 Q And how were you able to tell they had
21 items on them? On their person?

22 A Their bags were open. You could see
23 inside them.

24 Q And did the alarm go off?

25 A Yes, ma'am, the alarm went off on the

Peggy Witherspoon-direct by Pierce

1 front door.

2 MS. PIERCE: Please answer any questions
3 the defense has.

4 THE COURT: Cross examination, Mr. Hastie?

5 MR. HASTIE: Yes, Your Honor.

6 Cross Examination by Mr. Hastie:

7 Q How are doing, Ms. Witherspoon?

8 A I'm all right.

9 Q Now you are the Assistant Manager?

10 A Yes.

11 Q Or the Assistant Manager at that time of
12 the incident in 2009?

13 A Yes.

14 Q You said you saw three young ladies, or
15 ladies leaving the store, right? Did they all
16 have bags?

17 A Yes.

18 Q Did all three of them have bags?

19 A Yes.

20 Q Okay. You said someone reported to you
21 that they were suspicious looking.

22 A Yes, one of the cashiers.

23 Q What does that mean?

24 A Well I don't know what it means. But they
25 called me and told me that they looked suspicious.

Peggy Witherspoon-cross by Hastie

1 Q Do you have that type of warning all the
2 time that people walk in your store, and they look
3 suspicious?

4 A No, not really. But some of the young
5 ladies, you know, some of the people that shop
6 there, customers. You know, personally know them.

7 Q So you didn't know them. But these three
8 ladies looked suspicious in the store?

9 A Uh-huh. (affirmative.)

10 Q And so they all proceeded to -- they
11 didn't go through the checkout counter, did they?

12 A No, they did not.

13 Q They just went through the exit.

14 A To the exit door, yes.

15 Q And the alarm went off.

16 A Yes.

17 Q And you have also testified that the alarm
18 on occasion has gone off at other times when folks
19 weren't stealing.

20 A Yes.

21 Q Right. It happens sometimes.

22 A Uh-huh. (affirmative.)

23 Q Probably in all stores.

24 A Uh-huh. (affirmative.)

25 Q And I'm sure when you asked some folks

Peggy Witherspoon-cross by Hastie

1 that they weren't doing anything wrong; to step
2 back in, they wondered why.

3 A Yes.

4 Q And they probably challenged you at some
5 point.

6 A Yes.

7 Q You know: "Why are you stopping me. I
8 haven't stolen anything." Shoplifting at your
9 store, is there a lot of shoplifting at your
10 store?

11 A Yes, there is.

12 Q And how often do you catch people
13 shoplifting?

14 A At the Sumter Store? I am not sure about
15 that. Quite often.

16 Q Quite often?

17 A Yes.

18 Q Okay. I guess you could tell, because you
19 were right there. Did the alarm beep on any
20 particular bag of the young lady, or did they went
21 together so fast?

22 A I couldn't see what bag it beeped on.
23 Like I said, they wouldn't turn around and come
24 back in the store. If they had, I would have
25 checked each individual. And asked them to go

Peggy Witherspoon-cross by Hastie

1 through the scanner. But they would not turn
2 around.

3 Q So you don't know whether one of them may
4 have had a bag with no stolen items, or each of
5 them could had a bag with stolen items.

6 A That's right.

7 Q You are just not sure.

8 A As far as which one of them had the alarm
9 in their bag?

10 Q Right.

11 A I am not sure. Like I said, they wouldn't
12 turn around.

13 Q You mentioned about if there was clothes
14 from the Old Navy Store that would cause the alarm
15 to go off. Did you say that?

16 A Older clothing with tags that are sewn in,
17 if you don't cut the tag out that can be
18 activated. Yes, it will set off the alarm.

19 Q You had that happen in your store as well?

20 A Yes, it happened in Florence Store.

21 Q In the Florence Store.

22 A Yes.

23 Q Not the Sumter store. Now I noticed you
24 on item 4, I believe it was, there was no tag from
25 Rugged Warehouse in the clothes. But you were

Peggy Witherspoon-cross by Hastie

1 able to identify it without a tag being in there
2 or any label being in it.

3 A Yes.

4 Q How are you able to do that?

5 A I know my clothing. I have put out
6 clothes for Rugged Warehouse going on four years.
7 It is Baby Phat with the beads on it.

8 Q So you are able to say that this
9 particular pair jeans without a doubt, are from
10 Rugged Warehouse.

11 A Yes.

12 Q Are you saying there are no other pair of
13 jeans like this?

14 A I am not saying that. But I know that is
15 one of the items that I had returned to me that
16 night.

17 Q All right.

18 A Yes.

19 Q You can't be 100 percent sure that these
20 are the particular jeans that were taken from your
21 store. There is no label. That is nothing in
22 here. Is that correct? Except you know your
23 clothes.

24 A Yes, I do.

25 Q Have you testified in another courtroom

Peggy Witherspoon-cross by Hastie

1 about this particular incident?

2 A Testified? No.

3 Q You've testified in the past about stolen
4 items. This isn't your first time.

5 A Yes, sir.

6 Q This is your first time?

7 A Yes.

8 MR. HASTIE: Court's indulgence, Your
9 Honor.

10 Q You said some people in the store know
11 certain people. Suspicious looking people that
12 they've seen them before.

13 A No, I said they know them personally.

14 Q They know them personally?

15 A Yes, sir.

16 MR. HASTIE: Your Honor, I have no further
17 questions.

18 THE COURT: Mr. Britton.

19 MR. BRITTON: Thank Your Honor.

20 Cross Examination by Mr. Britton:

21 Q Good afternoon, Ms. Witherspoon. I am
22 John Britton. Ms. Witherspoon, what time of day
23 did these ladies enter the Rugged Warehouse, do
24 you remember?

25 A No, it was in the evening. It was at

Peggy Witherspoon-cross by Britton

1 night.

2 Q It was night time?

3 A Yes.

4 Q Do you know, did they come in altogether
5 or do you know?

6 A Well, when they came into the store, I
7 wasn't up front.

8 Q Okay. You mentioned, do you know how long
9 they had been in the store?

10 A Not exactly.

11 Q Do you know whether they stayed together
12 or they went to different departments?

13 A When I came out back, they all were
14 together over in the jeans area.

15 Q Right. You don't know where they had been
16 before then. And after you saw them in the jeans
17 area, then you went up front. Isn't that right?

18 A Yes. And I saw them in the jeans area.

19 Q Okay. And you said that one of them was
20 rolling up clothes?

21 A A pair of jeans.

22 Q And stuffing them in her bag?

23 A Uh-huh. (affirmative.)

24 Q Okay. The other two were not involved in
25 that?

Peggy Witherspoon-cross by Britton

1 A No, the three of them were standing there
2 together.

3 Q Right. Okay. When they left the store,
4 were they, you said there were two that were side
5 by side and one was behind.

6 A Yes.

7 Q And at some point one of them set off the
8 alarm, is that correct?

9 A Yes. Uh-huh. (affirmative.)

10 Q Do you know which one had the bag?

11 A All three of them had bags.

12 Q All three of them had bags.

13 A Yes, sir.

14 Q Okay. Do you know which bag it was that
15 set the alarm off?

16 A No, sir, I don't.

17 Q You're not saying that all three of the
18 bags set it off.

19 A No.

20 Q Okay.

21 A It could have been all three bags. It
22 could have been one. It could have been two.

23 Q And I wrote down, you said that one of
24 them said: "I am not coming back." Is that
25 correct?

Peggy Witherspoon-cross by Britton

1 A Yes.

2 Q Do you know which one that was?

3 A I mean, no, I don't know which one it was.

4 No.

5 Q Okay. Do you know which one of, and these
6 pictures that you identified were just pictures of
7 two of the three ladies that were there.

8 A Yes.

9 Q You are not saying either one of these had
10 the bags with the clothes in it.

11 A All three of them had bags.

12 Q I know. You're not saying that either one
13 of these ladies had a bag that caused the alarm to
14 go off.

15 A I don't know who caused the alarm to go
16 off.

17 Q This is just a picture of---

18 A It could have been either one of them.

19 Q And there was a third one.

20 A Yes.

21 Q And their picture is not here before the
22 court.

23 A Exactly.

24 Q Am I correct?

25 A Yes.

Peggy Witherspoon-cross by Britton

1 Q Okay, thank you. Did you see the ladies
2 get into the, you said it was a gold van?

3 A No, I didn't.

4 Q I'm sorry, what did you say?

5 A I said a Gold Honda Accord.

6 Q A Gold Honda Accord, I'm sorry.

7 A Yes.

8 Q Did you know which one was actually
9 driving the Gold Honda Accord?

10 A I don't know which one was driving. All I
11 know is all three of them got in there, and sped
12 out of the parking lot at that time. And then the
13 officer came.

14 Q Then they stopped you said, at the Staples
15 parking lot?

16 A No, sir. They just exited by Staples.

17 Q Exited.

18 A Yes.

19 Q I am sorry. Okay. And that's the last
20 you saw them until they were apprehended?

21 A Yeah, exactly.

22 MR. BRITTON: Okay. That's all I have.

23 Thank you, judge.

24 THE COURT: Redirect, Ms. Pierce?

25 MS. PIERCE: Very briefly.

Peggy Witherspoon-cross by Britton

1 REDIRECT EXAMINATION BY MS. PIERCE:

2 Q How many of the three women had bags?

3 A All three.

4 Q Small bags?

5 A No, big bags.

6 Q Large bags?

7 A A handbag. A purse. A big size purse.

8 Q Could all three have had items in their
9 bags?

10 MR. BRITTON: Your Honor, I object.

11 That's speculative. She's already testified she
12 didn't know.

13 THE COURT: I'll overrule the objection.

14 She can say that they could have. I am going to
15 overrule.

16 Q Could they have had, could all three women
17 have had items in their bags?

18 A Yes.

19 Q And if all three had items in their bags,
20 would the alarm still go?

21 A Yes. It would depend on what they have.

22 What item in the bag that had the security tags.

23 The security tags could have been in either bag or
24 it could have been in all three bags.

25 Q And you testified that on cross

Peggy Witherspoon-redirect by Pierce

1 examination while you recognized that item, that
2 basically had been returned to you that night.
3 What exactly?

4 A When the officers brought the stuff back
5 to the store for me to look at it and see if those
6 were our items.

7 Q So you got -- so you had items returned to
8 you that night?

9 A Yes.

10 Q From your store.

11 A Uh-huh. (affirmative.)

12 Q ~~And where did you get those items?~~

13 A I assume those three young ladies that got
14 in the car.

15 Q And Mr. Hastie asked if you knew the
16 Defendant, correct?

17 A Yes. But I don't know them.

18 Q ~~Never seen them before.~~

19 A I don't know them at all.

20 MS. PIERCE: No further questions, Your
21 Honor.

22 THE COURT: Recross, Mr. Hastie?

23 MR. HASTIE: Yes, sir.

24 Recross Examination by Mr. Hastie:

25 Q The security tags, are they placed on, is

Peggy Witherspoon-redirect by Pierce

1 something placed on every piece of clothing in the
2 store?

3 A It's 19.99 and up they get a security tag.
4 Like a stick pin and the back is green. And it's
5 like magnetized. When you put a stick pin through
6 the clothing and it clips on it.

7 Q And you all started in 1999 to 19, what?

8 A No, 19 -- the total cost is 19.99 and up.

9 Q Price.

10 A Yes. In order to get the security tag.

11 MR. HASTIE: Thank you.

12 THE COURT: Mr. Britton, anything else?

13 MR. BRITTON: Thank you.

14 Recross Examination by Mr. Britton:

15 Q Just to be sure you did observe those
16 three ladies in the jeans section, correct?

17 A Yes.

18 Q And there was only one that you saw
19 putting it in the bag.

20 A I saw one of the girl's rolling jeans.

21 MR. BRITTON: Thank you.

22 THE COURT: Thank you, ma'am. You may
23 step down. Ms. Pierce, you may call your next
24 witness.

25 MS. PIERCE: Yes, Your Honor, the State

Peggy Witherspoon-recross by Britton

1 would call Officer Linville.

2 THE COURT: Come forward.

3 Officer Michael A. Linville,

4 being first duly sworn, testified as follows:

5 THE CLERK: State your full name and spell
6 your last name.

7 A Michael A. Linville. L-I-N-V-I-L-L-E.

8 Direct Examination by Ms. Pierce:

9 Q Officer Linville, what is your job?

10 A Police officer with the City of Sumter.

11 Q What is your rank and title?

12 A Patrolman.

13 Q Patrol officer. How long have you been
14 employed by the City of Sumter Police Department?

15 A About three and a half years.

16 Q What did you do before coming in to the
17 Police Department? As far as job wise?

18 A I own a construction company.

19 Q Where are you from?

20 A I'm from here in Sumter.

21 Q How long have you lived here?

22 A 10 years. Since 1990. With the exception
23 of just a couple of years.

24 Q And what are your present duties in being
25 a patrol officer?

Officer Linville-direct by Pierce

1 A Answer calls from citizens, check
2 property, public relations.. We get out and talk,
3 work wrecks, stop cars. Deal with the public.

4 Q And did you have any training? Law
5 Enforcement training?

6 A Oh, yes, ma'am. I went to the police
7 academy. It's 9 weeks at the Police Academy. And
8 you have training every day.

9 Q Did you ever go through any specialized
10 training? Or Any seminars?

11 A Only when the Police Department offers it.
12 We constantly have training every quarter.

13 Q Were you working on January 2nd 2009?

14 A I was.

15 Q What were you doing that day, if you
16 remember?

17 A Just answering calls for service. We were
18 on the night shift. It went off at 6 o'clock. We
19 have to answer calls as they come out. If it's in
20 an area, wherever you have to go. It doesn't
21 matter what it is, my job title, I respond to just
22 about everything.

23 Q And will you tell us how you became
24 involved in this case?

25 A Somewhere in the neighborhood of about

Officer Linville-direct by Pierce

1 7:30 in the evening, we got an alarm activation at
2 Mayo Discount Suites, which is either right next
3 door or two doors down from Rugged Warehouse.
4 It's kind of in the corner of Wesmark Plaza. If
5 you're familiar with Wesmark Plaza, there used to
6 be a movie theater in the corner. It's very
7 close to the corner.

8 As I was riding up on the stores, and I
9 observed Ms. Witherspoon hollering out in the
10 sidewalk area. She was yelling that, "They got my
11 stuff." And that's when they get in the Gold
12 Honda Accord. And that's when they drove past
13 her, and past me. And turned the corner and went
14 by Big Lots and Staples. I said she yelled that.
15 And I said, "What did they take. A bunch of
16 clothes." And that's when I just followed. I
17 fell in behind them.

18 Q What did car look like?

19 A It was an older model Honda Accord.
20 Goldish/Champagne color. Really nothing distinct
21 about it. A regular Honda Accord.

22 Q You said you took off behind them?

23 A Yes, ma'am. By the time I got back in the
24 car and was pulling up to the corner of Wesmark
25 Plaza to make a turn right in front of Big Lots,

Officer Linville-direct by Pierce

1 they were pulling out of the Staple's turning
2 right on Wesmark heading towards the mall.

3 MS. PIERCE: Your Honor, may I have
4 permission for the witness to step down at this
5 point from the witness stand?

6 THE COURT: You may. You have to keep
7 your to voice up.

8 (Whereupon, the witness steps down from
9 the witness stand.)

10 A Basically this is Rugged Warehouse. This
11 is Wesmark Plaza. Okay. You are going to turn,
12 the corner and come out to Wesmark Boulevard.
13 Staples would be here and Big Lots would be here.
14 I was here. She come out of the doors here, and
15 was yelling at them. The car drove right down in
16 front of the businesses, turned the corner.
17 Turned the corner here. They turned out on
18 Wesmark Boulevard left. I was somewhere right
19 along in here when I saw them turn, okay.

20 They went down to the stop sign. I was
21 waiting on traffic to try to get behind them. I
22 got behind them at the stop sign. They turned
23 right. Proceeded down Pike Road. We had a lot of
24 radio traffic, and I couldn't get on the radio
25 right away. So you can't initiate the blue light

Officer Linville-direct by Pierce

1 until you've let them know you are going to stop
2 the car. No matter what the reason is. For
3 officer's safety, you have to call the radio
4 first.

5 And just before I arrived at where Bultman
6 Drive extension runs in to Pike, there is a sign
7 company and what not there. I initiated a blue
8 light and I was able to get on the radio. And I
9 finally got to turn on the blue lights and siren.

10 Q Where were you?

11 A I am going to be approaching Bultman and
12 Pike.

13 Q Okay.

14 A I can tell there is a lot of movement
15 around in the car. She hit the brakes. Turned
16 real hard. She turned right on to Bultman Drive
17 heading back towards Broad Street. Okay. When
18 she got up, she sped up. And when she got to Rast
19 Street, she slammed on brakes and turned
20 immediately left. Okay. Rast Street is going to
21 head towards Wise Drive. I just want to make sure
22 you all are following me, okay.

23 She got to the stop sign at Wise Drive,
24 ~~she didn't even stop. She just ran the~~
25 intersection, okay. I lost her a little bit. She

Officer Linville-direct by Pierce

1 got a little bit of ground on me okay, because I
2 had to stop. She proceeded down, I continued to
3 follow her. Lights and siren going the whole
4 time. Rast Street kind of makes a little bit of a
5 right hand curve. And then it straightens up like
6 it's heading towards Broad Street.

7 Just when you come out of that curve,
8 there is a road to the left called Dicks Street.
9 She slammed on the brakes to turn left on to Dicks
10 Street. There were two cars in front of them.
11 Traveling, we were all traveling in the same
12 direction. Everybody turned on. These two cars
13 were in front of us. There is a double yellow
14 line. She pulled out in the left lane, and passed
15 both cars. She pulled back in. I caught up with
16 her. They pulled off for a minute. The cars
17 pulled off when they saw me coming.

18 When she got the stop sign of Broom Hill
19 Street and Dicks Street, she didn't stop. She
20 just run it. Turned right. Went down about one
21 or two blocks. And there's a place called Broom
22 Hill Court, Broom Hill Circle. It's just a dead
23 end cul-de-sac. She drove up in the driveway of
24 19 Broom Hill. All three ladies threw the doors
25 open, and attempted to jump out and run.

Officer Linville-direct by Pierce

1 (Whereupon, the witness resumes the
2 witness stand.)

3 Q What happened when all three jumped out of
4 the vehicle? What did you do?

5 A I jumped out of the car and started
6 yelling hoping maybe they would stop. Three of
7 them, one of me. When talking and somebody is not
8 stopping or attempting to flee or something like
9 that, your primary focus is always on the driver.
10 Focus on the driver. When I jumped out and
11 started screaming and yelling and told them all to
12 get down, they acted like they were going to run.

13 They got away from the car. Then they all
14 just froze at that time. They didn't want to get
15 down on the ground. By that time, I had a couple
16 of backup officers that arrived. And they helped
17 me to control the situation. They were all placed
18 in handcuffs. And were read their rights. And
19 they were all placed in separate cars at that
20 time.

21 Q I am going to show you what has been
22 marked, previously marked as State's Exhibit No. 1
23 for identification purposes. Do you recognize
24 this person?

25 A I do.

Officer Linville-direct by Pierce

1 Q Who is that?

2 A That is the driver, Ms. Keoshaws Brewer.

3 Q She is the one driving?

4 A Yes, ma'am.

5 Q Do you recognize this person on State's
6 Exhibit No. 2 for identification purposes?

7 A I do.

8 Q Who is that?

9 A That is Ms. Sharen Bailey, who was the
10 passenger in the vehicle.

11 Q Did you arrest both of those persons?

12 A I did.

13 MS. PIERCE: Your Honor, at this time the
14 State would offer State's Exhibit No. 1 and 2 for
15 evidence.

16 THE COURT: Any objection, Mr. Hastie?

17 MR. HASTIE: None, your honor.

18 THE COURT: Mr. Britton?

19 MR. BRITTON: On what?

20 THE COURT: On photographs Exhibit Nos. 1
21 and 2.

22 MR. BRITTON: No objection.

23 THE COURT: They will be admitted into
24 evidence without objection.

25 (Photographs marked State's Exhibit Nos. 1

Officer Linville-direct by Pierce

1 and 2 into evidence.)

2 MS. PIERCE: Thank you, Your Honor.

3 Q Let's back up a minute. You said that you
4 saw the car while you were still at the shopping
5 plaza, correct?

6 A That's correct.

7 Q And did you see how many people were in
8 the car there?

9 A I did. There were three people in the
10 car.

11 Q Now let's back up a little bit. You said
12 you saw the car driving through the stop sign,
13 correct?

14 A That's correct.

15 Q And did you see how many people were in
16 the car?

17 A I did. There were three.

18 Q And then when you showed us on the diagram
19 and took us through all the different roads and
20 everything, how would you describe the driver's
21 speed?

22 A They were fluctuating. If she had any
23 opportunity, the car had opportunity at any time
24 to gain any different speed, if you will. They
25 attempted. They attempted. They excelled. Very

Officer Linville-direct by Pierce

1 hard on the corners. The only thing they didn't
2 stop at was a couple of stop signs.

3 Q Were you ever directly behind the Gold
4 Honda?

5 A I was directly behind it when I initiated
6 the blue light. Maybe A couple of three --
7 couple of seconds. There were cars in front of
8 us.

9 Q And you initiated the blue lights?

10 A I did. I was right in behind them.

11 Q And you used your siren.

12 A Yes.

13 Q Once?

14 A No, ma'am, I turned it on.

15 Q For how long?

16 A The entire time it took to stop the car.
17 From the time we were on Pike and Bultman when I
18 initiated the blue lights and siren, until even
19 after we got them apprehended.

20 Q When you placed them under arrest, what
21 did you do with the vehicle?

22 A Nothing. We left the vehicle sitting. At
23 that time my focus was trying to get control of
24 the individuals. The car was not going to go
25 anywhere. Once I placed them under arrest, the

Officer Linville-direct by Pierce

1 fact that they didn't stop, I made the decision to
2 tow the car. At which at that time, I had
3 voluntarily towed the vehicle and all its
4 contents. And that was when I had located the
5 merchandise in the car.

6 Q The merchandise?

7 A The stolen clothes.

8 Q And what did you do with those items?

9 A I put them in a bag, and put them in the
10 trunk of the patrol car and had them taken back
11 into the store along with all three of the
12 subjects. So that the subjects could be
13 identified, and I could find out and make sure the
14 clothes could be identified by the merchant.

15 Q Were the subjects identified?

16 A Yes, sir.

17 Q Were the clothes identified?

18 A They were.

19 Q And what did you do with them?

20 A I took the clothes and placed them into
21 evidence at the Police Department. And all three
22 subjects were read their rights and taken to jail.

23 MS. PIERCE: Please answer any questions
24 defense counsel has.

25 Cross Examination by Mr. Hastie:

Officer Linville-direct by Pierce

1 Q This case, how long did it take?

2 A Mr. Hastie, I am not real sure. A couple
3 of minutes maybe.

4 Q Just a couple of minutes?

5 A A couple minutes. Just a couple of
6 minutes. Maybe 3 or 4 minutes.

7 MR. HASTIE: Thank you.

8 THE COURT: Mr. Britton.

9 Cross Examination by Mr. Britton:

10 Q Officer Linville, who was the third
11 person? I notice you have got a photograph of two
12 people.

13 A Yes, sir.

14 Q There was a third person, was there not?

15 A Yes, sir.

16 Q Was that Ms. Antoinette Anderson?

17 A It was, sir.

18 Q Okay.

19 MR. BRITTON: That's all we have. Thank
20 you, Your Honor.

21 THE COURT: Ms. Pierce, redirect?

22 MS. PIERCE: Just briefly.

23 REDIRECT EXAMINATION BY MS. PIERCE:

24 Q Did you know of the disposition of
25 Ms. Anderson's charges?

Officer Linville-cross by Britton

1 A No, I don't.

2 Q You don't know that?

3 A No.

4 MR: PIERCE: No further questions, Your
5 Honor.

6 THE COURT: Any further questions, Mr.
7 Britton or Mr. Hastie?

8 MR. HASTIE: Nothing, Your Honor.

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

11 MS. PIERCE: Your Honor, at this time the
12 State would rest.

13 THE COURT: Ladies and gentlemen, you
14 have heard the State announce that they have
15 rested their case there are certain matters of law
16 which I now need to take up with the attorneys in
17 this case. And I am going to do at this time and
18 let you go to your jury room and relax for a few
19 minutes. Do not discuss this case among
20 yourselves while you are there in the jury room.
21 It would be premature for you to have any
22 discussions in this case. Because you have not
23 heard the arguments of counsel or the instructions
24 on the law by the court. So do not discuss the
25 case among yourselves. But you can talk about

1 closing arguments on behalf of the Defendant
2 Keoshaws Brewer.

3 MR. BRITTON: Your Honor, could I lead on
4 that?

5 THE COURT: Yes, sir. Sure. That would
6 be fine.

7 MR. BRITTON: Thank you, Your Honor.
8 Ladies and gentlemen of the jury, this is the
9 State in a lawsuit in which the attorneys recap
10 the evidence that has been given to you thus far.
11 The judge will charge you what the law is, and he
12 said that from the outset. The law will be given
13 to you as the judge tells you what the law is.
14 But you are the sole judges of the facts as to
15 what happened in this case. The facts in this
16 case are extremely important. They are extremely
17 important because you know there were three people
18 involved in this shoplifting charge.

19 I am representing Ms. Bailey. Ms. Bailey
20 is presumed to be innocent unless the State proves
21 in a sufficient manner that she is guilty. And
22 the judge will charge you what sufficient manner
23 is. It is a weight of the evidence that we have.
24 All of you have seen the live weight of the
25 evidence. You stand there and hold the scales.

1 In a Civil lawsuit, those scales have been titled
2 in favor of the one who prevails by the
3 preponderance of the evidence; that is, the scales
4 are slightly titled in favor of the person who
5 prevails in a Civil lawsuit by the preponderance
6 of the evidence. In a Criminal suit when someone
7 is charged criminally, that is not sufficient
8 weight. In a Criminal lawsuit, these scales have
9 to be titled beyond a reasonable doubt.

10 Now you, Ladies and gentlemen, you are a
11 cross section of our community and you represent
12 our community. Our system is built on a
13 reasonable man's standard. You represent our
14 community. So the evidence the State has to
15 present to you as a reasonable cross section of
16 our community, is that Ms. Bailey is guilty;
17 without a doubt, she is guilty.

18 And I would say and present to you the
19 fact that we have three people that were involved
20 in this particular matter. Three of them went in
21 to Rugged Warehouse. And we have an Assistant
22 Manager who noticed them coming in, Peggy
23 Witherspoon. And she watched them long enough to
24 see one of those person's was rolling clothing up,
25 stuck it in her bag. She didn't know which of the

1 three it was. She said when they left and got to
2 the alarm sensors, and the alarm went off. And
3 one of them said she wasn't coming back.

4 She didn't know how long they had been in
5 the store. She doesn't know whether they stayed
6 together or had different places they were going
7 in the store. But I suggest that, and she saw one
8 of them put it into their bags. That should cause
9 you to pause. And evidence that causes you to
10 pause, is evidence that would free any
11 consideration beyond a reasonable doubt. Because
12 evidence that is beyond a reasonable doubt has to
13 convince you, is evidence that convinces you,
14 causes you to pause. It is not just a
15 preponderance of the evidence. We're talking
16 about someone who has been charged with a crime.
17 We're talking about someone who has been charged
18 with a simple offense of being negligent or
19 running into someone else in an automobile. We
20 are talking about criminal charges.

21 She didn't see all three of the ladies.
22 Or even two of the ladies put anything in the bag.
23 She saw one. And the stipulation of the parties
24 has been one had in fact pled guilty. You all
25 need to consider all the evidence we have in this

1 case. You need to consider whether or not that
2 evidence convinces you beyond a reasonable doubt
3 that Ms. Bailey is in fact guilty as charged of
4 the crime. If there is any doubt, that doubt has
5 to be resolved in Ms. Bailey's favor. The
6 responsibility that you have is to consider the
7 facts and the law that the judge gives to you and
8 come back with a verdict. Verdict comes from the
9 Latin word, veredicto, which means to speak the
10 truth. Is it true that there is evidence beyond a
11 reasonable doubt that Ms. Bailey is a criminal as
12 charged in this case?

13 The system we have, the justice system, is
14 the best. It is the best because we have people
15 with fair minds who consider the facts and who do
16 seek what the truth is in this case.

17 I submit to you if you consider all of the
18 facts we have that are truth, does not show beyond
19 a reasonable doubt that Ms. Bailey is guilty of
20 shoplifting. We have this person that pled
21 guilty. Ms. Bailey should be not be found guilty
22 in the case. Thank you.

23 THE COURT: Mr. Hastie.

24 MR. HASTIE: Thank Your Honor. She
25 started off telling you this afternoon, stating

1 that this may be a brief case. And it certainly
2 has been a brief case. But I submit how important
3 it is, certainly to my client. I also spoke this
4 afternoon about the burden. The burden of proof
5 beyond a reasonable doubt that Ms. Brewer
6 shoplifted on this particular day in 2009. And
7 you all know now that the burden is on the State
8 to prove to you guilt beyond a reasonable doubt.

9 Let's just talk about a few things. You
10 heard Ms. Witherspoon's testimony that there were
11 three people in the store. Three people at the
12 store. And only one was seen rolling up as she
13 said, some items of clothing, and putting them in
14 her bag. Three people left the store. The alarm
15 went off. We have no testimony. We don't know
16 for sure whether or not one of them had something
17 stolen in their bag, or all three of them had
18 something in their bag. We just don't know that
19 for sure. We see no evidence of that here today.

20 You also heard testimony that the alarm
21 goes off sometimes for other reasons. And I think
22 that is important. She talked about Old Navy had
23 some kind of sensor alarm on it. If you know, how
24 often do people steal from your store. A lot. All
25 the time. Have you ever been to a courtroom and

1 testified. No, never. You've never been to
2 court before. No, this is my first time. And she
3 said people steal from the store all the time.

4 Now I am concerned about the tags that we
5 saw today and the tags you did not see. And she
6 can get on this stand and testify that our store
7 tags are not on some of this merchandise. But I
8 am sure that it belongs to our store. Well how
9 are you sure. Well I know. You know many of the
10 stores in this town and other towns have the same
11 merchandise all the time. And to accuse someone
12 of taking something, and no tags at all on some of
13 this merchandise, I think is a little stretch.

14 I also concerned about, you know, you have
15 got to have some policies in that store about tags
16 being on certain items. And perhaps you have not
17 heard enough evidence that looks like our stuff.
18 I am concerned about them walking in the store and
19 they say well, "These individuals look suspicious.
20 Let's watch these individuals."

21 Ladies and gentlemen, the key here today
22 is, you must be convinced beyond a reasonable
23 doubt that Ms. Brewer was the one that stole from
24 that particular store. I submit to you today that
25 you have not heard or seen enough evidence for

1 that fact to be true. Thank you.

2 THE COURT: Ms. Pierce.

3 MS. PIERCE: Thank you, Your Honor.

4 Ladies and gentlemen, at the beginning of this
5 trial, I asked that you listen and use your common
6 sense and good reason. And you have the heard
7 both of the Defense counsel say that the State's
8 burden is beyond a reasonable doubt. Now
9 Mr. Britton mentioned if you have any doubt. No,
10 if you have any reasonable doubt. That is the
11 standard. And what is a reasonable doubt? That's
12 up to you to decide.

13 The judge will give you the law. He will
14 explain the elements of the offense. He can
15 explain what reasonable doubt is. That is up to
16 you. But right now I want to talk to you about
17 what is reasonable. We have three women, three
18 women in a store. You've heard testimony, the
19 three women, at one point were together.
20 Ms. Witherspoon told you that. She saw them there
21 together. And one of the women were rolling up a
22 pair of jeans. The other two were right there.
23 They are not across the store. They are right
24 there together.

25 And another thing I want to tell you, the

1 judge is going to charge you and explain to you,
2 one part of the law is the hand of one is the hand
3 of all. Accomplice liability. You work together
4 with people to commit a crime. And if one person
5 is guilty, the other people can be guilty as well.
6 I wasn't there that day. Ms. Witherspoon was
7 there. She wasn't in privy, or she wasn't in
8 concert with them. She doesn't know what their
9 plan was. What their goal was.

10 I can only agree that if you have one
11 woman rolling up a pair of jeans, and the two
12 standing there, they can be the look out. They
13 all had big bags. We don't know if the items were
14 in one bag or if they were in all three. But they
15 were all together. Mr. Britton made the point
16 about well Ms. Anderson has already pled guilty.
17 Yes, back in 2009, she came forward and took the
18 responsibility for her actions. She pled guilty.
19 That doesn't mean that the other two Defendants
20 Ms. Brewer and Ms. Bailey aren't doing the same
21 thing, or helping out.

22 Now again, back to reasonable. What is
23 reasonable? You heard them say, you heard
24 Mr. Hastie say, well, we can't prove or how does
25 she know that some of these clothes came from the

1 Rugged Warehouse. Ladies and gentlemen, you are
2 going to go back in your jury room and you are
3 going to get a look at the clothing, items of
4 clothing, and you will see that Rugged Warehouse
5 is on some of those tags.

6 You heard the testimony that once officer
7 Linville stopped the vehicle, he got the three
8 women. He took them back to Rugged Warehouse,
9 and Ms. Witherspoon identified them. And even
10 identified the clothes as belonging to Rugged
11 Warehouse. All three women. And Mr. Britton
12 said well we don't know if they were going or if
13 they were together or what they were doing. They
14 got in the same car. They all jumped out of the
15 car and went to run. And when he stopped them,
16 they were all arrested together.

17 Yeah, reasonable doubt. What makes sense
18 to you? Let's talk about the beeping. She
19 testified she can't tell you if all three bags had
20 items or if just one bag. She said that items
21 19.99 and over have a sensor in it. She testified
22 that this shirt would not have a sensor because it
23 was on sale for 9.99. This could have been in a
24 bag that didn't beep. We don't know, but again
25 what is reasonable?

1 Now Let's look at Ms. Witherspoon. She
2 came up here. She spoke. The judge told you
3 ahead of time, credibility is an issue in this
4 case. And it's in every case. You are allowed to
5 form your own opinions. She didn't know, and she
6 doesn't know the Defendants in this case. She
7 testified she has never known them. Or has no
8 clue who they are. Why would she make up a story
9 about them? When she sees their picture she says
10 yes, those are the women. That night those women
11 were brought back to the store. Yes, those are
12 the women. Why would she make that up? Is that
13 reasonable? Does that make sense to you?

14 And then think about this. The clothes
15 came back to the store. It's not just like they
16 left. They were brought back, and the clothes
17 came back to the store. And then, I forgot which
18 one, Mr. Hastie or Mr. Britton one, kept asking
19 her, well you know your clothes. Yes, sir, I
20 think I do. Great she was able to identify the
21 items without a tag on them. She is the Assistant
22 Manager. I think that she would know the clothes
23 in her store. And then Mr. Hastie asked about,
24 well she has never testified before. So what,
25 does that make her less credible to you? That she

1 has never been called in to the court by the
2 Solicitor's Office to testify? You heard yourself
3 that the Co-defendant has pled guilty. There is
4 no trial when somebody pleads guilty.

5 Now my job is to prove to you, that the
6 Defendants, Ms. Brewer and Ms. Bailey, took
7 possession, carried away and transferred items
8 offered for sale in a store without paying the
9 retail value. Ladies and gentlemen, we know that
10 they were -- someone was rolling a pair of jeans.
11 They all had these bags. That all left the store
12 together. And the alarm beeped. They left. They
13 were brought back. And they had items from that
14 store. They took away, carried away, had
15 possession of items that they did not pay for.
16 And Ms. Witherspoon told you. She was there at --
17 near the counter. She would have watched them go.
18 And they did not pay for those clothes.

19 I want to go back to one other thing about
20 leaving. They said well when the alarm beeped
21 Ms. Witherspoon asked them to step back, and come
22 back. And she said that sometimes when you do get
23 a false beep, you come back and find out it
24 somebody's retainer. You find out it is Old Navy
25 clothes. Ask yourself is it reasonable to just

1 flee out the door and hop in the car and take off?
2 Put that as well with what you consider in this
3 case. And knowing you had the blue light and
4 siren behind you and you keep on going.

5 Second thing I have to prove to you; is
6 that, Ms. Brewer did not stop for a blue light.
7 And that she was in a motor vehicle, the Gold
8 Honda. On the public streets. I think it is
9 Wesmark and Bultman. Bultman I am sorry; that she
10 did not stop when signaled by either lights or
11 siren by the Law Enforcement Officer. Ladies and
12 gentlemen, Mr. Linville testified he is a Law
13 Enforcement Officer. He used the siren and the
14 blue lights.

15 They were on public streets in a motor
16 vehicle. And she did not stop. She didn't stop,
17 Ladies and gentlemen until she got to a dead end.
18 That's when she stopped. And I think when you
19 take all of this and you put it together, I don't
20 think you are going to have any pause to say you
21 know what, I know those two Defendants are guilty
22 beyond a reasonable doubt. Because what is
23 reasonable?

24 Ladies and gentlemen, when you go in the
25 jury room think about what is reasonable. And I

1 am confident that you are going to come back with
2 a verdict of guilty for Ms. Brewer and for
3 Ms. Bailey for shoplifting. And a verdict of
4 guilty for Ms. Brewer for failure to stop for a
5 blue light. Thank you.

6 THE COURT: Ladies and gentlemen of the
7 jury, if you will give me your attention. It now
8 becomes the duty of the Court to charge and
9 instruct you on the law applicable to this case.
10 The State of South Carolina by this indictment,
11 charges the Defendants that they did on or about
12 January 2nd 2009, transfer, that they did -- the
13 charge is one of shoplifting. And one of two
14 charges in the case, took possession of, carried,
15 transferred to another area of the store, alter,
16 transfer or remove the price, label or tag,
17 transfer one container to another container, or
18 willfully conceal certain merchandise;
19 specifically, several items of clothes displayed,
20 held in the store or offered for sale by the
21 Rugged Warehouse on Broad Street. The charge is
22 without paying or paying full retail value. And
23 the charges are for shoplifting.

24 In addition to that, Ms. Brewer is charged
25 on that same day, that while operating a motor

1 vehicle on the public streets and highways of the
2 State, she failed to do so by law enforcement
3 vehicle by means of a siren or flashing light. To
4 these charges and to this Indictment the two
5 defendants have pled not guilty. This plea of not
6 guilty by the defendants places the burden on the
7 State to prove the guilt of the Defendant beyond a
8 reasonable doubt before you the jury can convict
9 the defendants and find either of them or both of
10 them guilty.

11 Now when I use the word defendants in
12 these instructions, I refer to Ms. Bailey and Ms.
13 Brewer. The defendants are presumed in the law
14 innocent of the charges contained in this. The
15 presumption of innocence accompanies the
16 defendants from the time of their appearance in
17 this Court and throughout every stage of this
18 trial until you the jury have reached a verdict of
19 guilty based upon evidence which satisfies you of
20 the guilt of the Defendant or either one of them
21 beyond a reasonable doubt. The presumption of
22 innocence is a substantial right in which every
23 Defendant including these Defendants, are
24 entitled.

25 Now I want to explain to you the words

1 reasonable doubt. The State is not required to
2 prove the guilt of a Defendant beyond a reasonable
3 doubt or beyond every doubt, but beyond a
4 reasonable doubt. What is a reasonable doubt? It
5 is not an imaginary or a fanciful doubt or a weak
6 doubt. It is a substantial doubt. It is a doubt
7 which the words imply. A doubt for which you can
8 give or assign a reason based on the testimony and
9 evidence the case. A reasonable doubt is not any
10 sort of doubt.

11 You and I know from every day life
12 experiences that you may have a sort of a doubt
13 about any matter that arises no matter how trivial
14 it may be or how serious may be. A reasonable
15 doubt is a doubt which makes an honest, sincere,
16 conscientious juror in search of the truth,
17 hesitate to act. Proof beyond a reasonable doubt
18 is proof which leaves you firmly convinced of the
19 defendant's guilt. If you have a doubt for which
20 you can give or assign a reason as to the guilt of
21 the Defendant then she is entitled to a verdict of
22 not guilty.

23 A reasonable doubt may arise from evidence
24 that is in the case, or from the lack or absence
25 of evidence in the case. You the jury must make

1 the determination as to whether or not reasonable
2 doubt exists as to the guilt of either of the
3 defendants in this case. The very fact however
4 that the jury engages in a full and free
5 discussion of the issue of the guilt or non-guilt
6 in the case with the normal conversation or the
7 ebb and flow on these issues, does not
8 automatically mean that reasonable doubt exists in
9 this case or in any other case. I instruct you
10 that each Defendant is entitled to every
11 reasonable doubt arising in the whole case.

12 If then upon any issue of fact this is a
13 conviction or a verdict of guilty, you have a
14 reasonable doubt as to how that issue should be
15 resolved, it would be your duty to resolve that
16 reasonable doubt in favor of that Defendant. A
17 Defendant, Ladies and gentlemen, is not required
18 to prove his innocence. The State is required by
19 law to prove every essential element of the
20 offense charged against the Defendant by evidence
21 which satisfies you the jury of the guilt of the
22 Defendant beyond a reasonable doubt before you can
23 convict the Defendant and find her guilty. If
24 then upon the whole case you have a reasonable
25 doubt as to the guilt or innocence of the

1 Defendant, she is entitled to that reasonable
2 doubt and would be entitled to an acquittal or a
3 verdict of not guilty.

4 But on the other hand if upon the whole
5 case, you find the State has proven by evidence
6 which satisfies you the jury of the guilt of the
7 Defendant beyond a reasonable doubt then in such
8 circumstances it would equally be your duty to
9 convict the Defendant and find her guilty. Now
10 during this trial, Ladies and gentlemen, you and I
11 have certain duties to perform. These duties are
12 fixed by the law of this State.

13 You the jury are the sole judges of the
14 facts in this case. The Court is the sole judge
15 of the law. The Court also has the duty to rule
16 upon and pass upon the admissibility of the
17 evidence offered during the process of the trial.
18 The Court determines only whether the evidence is
19 admissible. The Court is not concerned with the
20 weight or believability. The Court has simply to
21 determine if the evidence was admissible and not
22 believable or what weight it should have. Your
23 responsibility is to determine if you believe such
24 evidence, and if so, what weight should be given
25 to them.

1 In every case tried before a jury, the
2 jury as I have stated, is the sole and exclusive
3 judge of the facts. The Constitution of this
4 State has declared that the trial judge shall not
5 intimate, state, comment upon or make any
6 statement to the trial jury about the facts in a
7 case. It is your exclusive duty as jurors to
8 determine the effect, the value and the weight,
9 and the truth of the evidence presented during the
10 course of the trial.

11 Necessarily then, you must evaluate the
12 credibility of the witnesses that have testified
13 in a case. Credibility is simply a legalistic
14 term which means believability. I instruct you
15 that in determining the believability of the
16 witnesses, you may believe one witness as against
17 several witnesses, or several witnesses as against
18 one witness. You may believe a part of the
19 testimony of the witnesses, and reject the
20 remaining part of the testimony of that same
21 witness. You may believe the testimony of a
22 witness in its entirety or reject the testimony of
23 a witness in its entirety. You may consider
24 whether any witness has exhibited any interest,
25 any bias or any prejudice in the case. You may

1 also consider the appearance of a witness upon the
2 witness stand. That is sometimes referred to as
3 the demeanor.

4 You may consider the opportunity for
5 knowledge concerning those things about which a
6 witness should testify. These considerations you
7 do not exercise arbitrarily, but if in your good
8 judgment there is sound reason in the record for
9 so doing. Because your objective, Ladies and
10 gentlemen, is to find the truth whether it comes
11 from one or more witnesses. And in doing so in
12 exercising your mental process, and in determining
13 what you consider to be true, the law simply
14 requires that you exercise your good common sense.
15 Your sense of logic and reason and your
16 experiences in life. You then apply these
17 attributes to the evidence and determine what you
18 consider to be the truthful evidence. And to
19 these true state of facts as determined by you the
20 jury, you take and apply the law as I now state it
21 to you and thus arrive at a true verdict in the
22 case.

23 Both Defendants in this case are charged
24 with the offense of shoplifting. Let me define
25 that offense for you. A person is guilty of

1 shoplifting if he takes possession of, carries
2 away, transfers from one person to another or from
3 one area of the store to another or other retail
4 mercantile establishment to another area or causes
5 to be carried away or transferred, any merchandise
6 displayed and held in the store and offered for
7 sale by any store or other retail mercantile
8 establishment by depriving the merchant of the
9 possession or use or benefit of the merchandise
10 without paying the full retail value.

11 Section 16-13-120 provides that it is
12 permissible to infer that any person willfully
13 concealing unpurchased goods or merchandise of any
14 store or other mercantile establishment either on
15 the premises or outside premises of a store, has
16 concealed the article with the intention of
17 converting it to his own use without paying the
18 purchase price thereof within the meaning of
19 Section 16-13-120. The section I previously read
20 to you.

21 It is also permissible to infer that the
22 binding of the unpurchased goods or merchandise
23 concealed upon the person or under the authority
24 among the belongings of a person would be evidence
25 of willful concealment. A person that conceals or

1 causes to be concealed the unpurchased goods or
2 merchandise, among the person or among the
3 belongings of another, it is also permissible to
4 infer that the person so concealing such goods,
5 willfully concealed them with the intention of
6 concealing them to his own use without paying the
7 purchase price thereof within the meaning of the
8 law.

9 Now the Defendant Ms. Brewer is also
10 charged with the offense of failing to stop for a
11 motor vehicle when signaled to do so by a law
12 enforcement vehicle. Or commonly referred to as
13 failing to stop for a blue light. Section
14 56-5-750 of the code of laws provides: it is
15 unlawful for a motor vehicle driver when driving
16 on the roads, streets or highways of this State
17 fails to stop when signaled by a law enforcement
18 vehicle by means of a siren or flashing light.
19 And attempts to increase the speed of a vehicle or
20 in any other matter, avoid the pursuing law
21 enforcement vehicle when signaled by a siren or a
22 flashing light, is prima facie evidence of
23 violation of this section.

24 Failure to see the blue flashing light or
25 hear the siren does not excuse a failure to stop

1 when the distant away from the vehicle and other
2 road conditions were such that it would be
3 reasonable for a driver to hear or see when
4 signaled by a law enforcement vehicle.

5 Now, Ladies and gentlemen, I also want to
6 charge you and instruct you on the principle known
7 in the law as accomplice liability. And sometimes
8 that is referred to as the hand of one is the hand
9 of all. Under the hand of one, the hand of all
10 theory, one who joins with another to accomplish
11 an illegal purpose is liable criminally for
12 everything done by each Defendant incidental to
13 the execution of the common design or purpose.

14 A principle in a crime is one who actually
15 commits a crime or who was present aiding,
16 abetting or assisting in the commission of a
17 crime. When two or more persons aid, abet or
18 encourage each other in the commission of a crime
19 all being presented, each is guilty of the crime.

20 So if two or more persons combine together
21 to commit an unlawful act and in the execution of
22 a criminal act do commit the criminal act, one is
23 as guilty as the other. The law is that if a
24 crime is committed by two or more persons who are
25 acting together in the commission of an offense,

1 the act of one is the act of all, if there are
2 more than two defendants.

3 To give you an illustration for example,
4 two people can be guilty of killing another person
5 or guilty of murder when only one of the two have
6 a pistol and only one shot the pistol. If two or
7 more people are together or substantially
8 together, acting together, assisting each other in
9 the commission of an offense, the law says that
10 under those circumstances, the act of one is the
11 act of all. The hands of one is the hands of all.

12 I would also tell you that ordinarily
13 there are two types of evidence generally
14 presented during a trial. Direct evidence and
15 circumstantial evidence. Direct evidence is the
16 testimony of a person who asserts or claims to
17 have actual knowledge of a fact; such as, an eye
18 witness. Circumstantial evidence is proof of a
19 chain of facts and circumstances indicating the
20 existence of a fact. The law makes absolutely no
21 distinction between the weight or value to be
22 given to either direct or circumstantial evidence.
23 Nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence.

25 You should weigh all of the evidence in

1 this case. After weighing all of the evidence if
2 you are not convinced of the guilt of a Defendant
3 beyond a reasonable doubt, you would find that
4 Defendant not guilty. On the other hand after
5 weighing all of the evidence you are convinced of
6 the guilt of the Defendant beyond a reasonable
7 doubt, you would find that Defendant guilty.

8 Now, Ladies and gentlemen, I want to tell
9 you that a Defendant in this case, one or more has
10 not testified. This is his or her constitutional
11 right. It is not a circumstance that you can
12 take into consideration or even allow to enter
13 your discussions in the jury room. Under the
14 constitution of the State of South Carolina, and
15 the United States Constitution, it is a
16 defendant's constitutional right not to take the
17 stand. The burden of proof is upon the State of
18 South Carolina to establish the guilt of the
19 Defendant by competent evidence beyond a
20 reasonable doubt.

21 The fact that a Defendant has not taken
22 the stand and testified in his or her own behalf
23 does not create an inference of guilt against her.
24 The jury must not permit that fact to weigh in the
25 slightest degree against a Defendant. Nor is that

1 fact to be considered in your deliberations in any
2 manner whatsoever.

3 Now, Ladies and gentlemen, I have just
4 about finished my instructions to you. And I will
5 tell you that you are not partisans or advocates
6 for the State of South Carolina or for this
7 Defendant. You do not serve as jurors to reward
8 friends or punish enemies. Obviously such a
9 perverted system of justice would be intolerable.
10 You have been selected by both the State and this
11 Defendant as fair and impartial jurors. It is
12 your duty then by your joint deliberations to
13 determine the truth in this case, and giving to
14 this Defendant or either Defendant the benefit of
15 each and every reasonable doubt on each and every
16 issue. Then to the facts which you determine to
17 be the truth, you then take and apply the law
18 which the court has given to you and arrive at a
19 verdict which speaks the truth.

20 So the word verdict, Ladies and gentlemen,
21 has a Latin derivative which comes from Latin word
22 veredicto, which means to speak the truth, or
23 truth saying. And when you will have accomplished
24 these responsibilities you will satisfied your
25 oath as jurors, and you will have discharged your

1 duty to this Court.

2 Now I want to instruct you on the form of
3 the verdict in this case. If the State has failed
4 to prove the guilt of the Defendant beyond a
5 reasonable, your verdict would be two words, not
6 guilty.

7 If the State has proven the guilt of the
8 Defendant beyond a reasonable doubt, your verdict
9 would be one word, guilty. The verdict that you
10 render in this case must be the verdict of each
11 and every juror. It must be your unanimous
12 verdict. All 12 of you must agree on the verdict
13 that you authorize the foreperson to write.

14 Now, Ladies and gentlemen, on the back of
15 indictments and there are two indictments in this
16 case. One is the original and the other is a
17 copy. We do that so you will be able to keep the
18 two Defendants separated. But on the Indictment
19 2009-GS-43-372 this is the indictment on
20 Ms. Keoshaws Brewer. And her name is highlighted
21 there. And I have written down here where it says
22 verdict, on the charge of shoplifting, guilty, or
23 not guilty and a blank by each one of those. You
24 simply put an x or a check mark or whatever is the
25 unanimous verdict of the jury with regards to the

1 to the jury room. Thank you.

2 (Whereupon, the following takes place
3 outside the presence of the jury.)

4 THE COURT: Any additions or exceptions on
5 behalf of the State, Ms. Pierce?

6 MS. PIERCE: None, your honor.

7 THE COURT: On behalf of the Defendant,
8 Ms. Brewer, Mr. Hastie?

9 MR. HASTIE: No, sir.

10 THE COURT: On behalf of the Defendant
11 Bailey, Mr. Britton?

12 MR. BRITTON: Your Honor, the only
13 question I would raise, is that I don't think the
14 Court charged the jury on the failure of that
15 Ms. Bailey was not here. And that they should not
16 draw any conclusions from that.

17 THE COURT: Well I had previously told
18 them that. And I think the same thing goes to the
19 burden of proof and everything. I am not going to
20 over emphasize that point. Your exception is
21 noted. Thank you. Here is the indictments and
22 the verdict form. And also the exhibits. It
23 should be the stack of clothes there.

24 (Whereupon at 5:03 p.m. jury commences
25 deliberates.)

1 On Indictment number 2009-GS-43-372 the
2 State versus Keoshaws Brewer on the charge of
3 shoplifting, we find the Defendant guilty. On the
4 charge of failure to stop for a blue light, we
5 find the Defendant guilty. And it is signed
6 Kimberly Osborne, foreperson and dated today. On
7 the charge of Ms. Bailey, Sharen Bailey, on the
8 charge of shoplifting, we find the Defendant,
9 guilty. And it is signed Kimberly Osborne,
10 foreperson. And dated 9-20-10.

11 If these be your verdicts so say you all.
12 signify by raising your right hand.

13 (Whereupon, all jurors affirm.)

14 THE COURT: Thank you, very much. You may
15 be seated. Anything before the jury is excused?

16 MR. HASTIE: Your Honor, I would like to
17 poll the jury.

18 THE COURT: Mr. Bradley. And this would
19 be on behalf of -- do you want the same thing, Mr.
20 Britton?

21 MR. BRITTON: Yes, sir.

22 THE COURT: It will be on behalf of both
23 Defendants, both Ms. Bailey and Ms. Brewer.

24 MR. BRADLEY: Ladies and gentlemen, when I
25 call your name, please stand and answer my

1 (Whereupon, at 5:30 p.m. the jury is
2 dismissed.)

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 THE COURT: Mr. Hastie, motions on behalf
6 of the Defendant, Ms. Brewer?

7 MR. HASTIE: Your Honor, I have no motions
8 at this time.

9 THE COURT: Mr. Britton, motions on behalf
10 of the Defendant Ms. Bailey?

11 MR. BRITTON: Yes, Your Honor. I would
12 move for a new trial on the basis that the letter
13 that was written by Ms. Antoinette Anderson dated
14 August 16th 2010, was not allowed in to evidence.
15 The first one. And then the second one, has to do
16 the with the Court failing to charge the jury.
17 The jury should not consider anything negative by
18 the fact that Ms. Bailey was not in the courtroom
19 during this process.

20 THE COURT: I respectfully deny that
21 motion. I told them early on that the Defendants
22 do not have to be present. It was pretty clear
23 that the Defendants did not have to be present.
24 The burden of proof is on the State to prove guilt
25 of the Defendant beyond a reasonable doubt. And

1 the Defendant doesn't have to present any
2 evidence. And I even told them the Defendant did
3 not even have to be present. So I did do that.

4 With regard to the letter, I am
5 comfortable with the ruling on that. My thought
6 is that if the defense wished to present that,
7 Ms Antoinette Anderson, taken full responsibility
8 on the way to presenting that testimony, would
9 have presented Ms. Anderson. So that the State
10 would have had an opportunity to cross examine
11 her. They certainly could have cross examined her
12 on the letter.

13 Mr. Bradley, tells me that the Clerk's
14 Office is closed. And all the paperwork in
15 connection with this matter is not available for
16 this afternoon. Ms. Pierce, what I would ask that
17 you do is complete the sentencing sheets. And we
18 will convene at 9:30 tomorrow morning with regards
19 to sentencing on this case. We will ask the
20 Sheriff's Department to take Ms. Brewer into
21 custody. Of course a conviction has been
22 rendered. I know both bonds have expired at the
23 time the case started for trial. And this jury
24 has found a verdict of guilty. And I am going to
25 take Ms. Brewer in to custody. Also I am going to

STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF SUMTER)

DOCKET NO. 2009-GS-43-0372

STATE OF SOUTH CAROLINA)

Plaintiff)

vs.)

SHAREN BAILEY)

Defendant)

TRANSCRIPT OF RECORD

July 19, 2012

Sumter, South Carolina

B E F O R E:

THE HONORABLE GEORGE C. JAMES, JR., JUDGE

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

DARLA F. PIERCE, ESQ.
Attorney for the State

JOHN BRITTON, ESQ.
Attorney for the Defendant

Transcribed by:
JOYCE C. RUEGER, CVR-M
Court Reporter

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No exhibits were introduced

PROCEEDINGS

MS. PIERCE: Your Honor, Ms. Bailey has been picked up on a General Sessions bench warrant. I believe the Clerk just passed up a civil sentence [phonetic]. I had her transported so we could read that sentence today.

[SHAREN BAILEY, having been first duly sworn, testified as follows:]

THE COURT: All right. You are Sharen Bailey?

THE WITNESS: Yes, sir.

THE COURT: Ms. Bailey, according to the envelope that I have here you were tried on September 21, 2010 for shoplifting. The sentence date was the following day, September 22, 2011 [phonetic]. All I can do is publish the sentence. There is no input to be made; at least at this stage with me.

The sentence signed by Judge Howard P. King says you are committed to the State Department of Corrections for a determinate term of 10 years.

All right. She will get credit for any time she has served on this warrant.

MS. PIERCE: Thank you, Your Honor.

THE COURT: Thank you.

*****END OF TRANSCRIPT OF RECORD*****

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Family Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, transcribed by Joyce C. Rueger, reported by Melissa Singletary, in the Court of General Sessions for Sumter County, South Carolina on the 19th day of July, 2012.

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

August 13, 2012



Joyce C. Rueger, CVR-M

Court Reporter

WITNESSES

SPD

Sims

ARREST WARRANT NUMBER

M000276, M000274; Ticket # 88078 EN

D/A: 01/04/09

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2 Apr 2009

VERDICT

On the charge of shoplifting:
Guilty or Not Guilty.

Foreperson of Petit Jury

Date: 9/20/10

DOCKET NO. 2009-GS-43- 372

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE

vs.

SHAREN BAILEY

KEOSHAWS BREWER

Indictment for

SHOPLIFTING, FAILURE TO STOP FOR
BLUE LIGHT

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER) INDICTMENT FOR
) SHOPLIFTING, FAILURE TO STOP FOR BLUE
) LIGHT

At a Court of General Sessions, convened on April 2, 2009, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – SHOPLIFTING

That SHAREN BAILEY and KEOSHAWS BREWER did in Sumter County on or about January 2, 2009, take possession of, carry away, transfer to another area of the store; alter, transfer, or remove the price label or tag on; transfer from its container to another container; and/or willfully conceal certain merchandise, to-wit: several items of clothing valued at approximately \$350, displayed, held, stored, or offered for sale by Rugged Wearhouse, 1121 Broad Street, with the intention of depriving said merchant of the possession, use, or benefit of such merchandise without paying the full retail value, as prohibited by Section 16-13-110 of the Code of Laws of South Carolina (1976), as amended; the said SHAREN BAILEY and KEOSHAWS BREWER having two (2) or more prior convictions for offenses for which the punishment is contingent upon the value of the property involved as proscribed by Section 16-1-57.

COUNT TWO – FAILURE TO STOP FOR BLUE LIGHT

That KEOSHAWS BREWER did in Sumter County on or about January 2, 2009, violate Section 56-5-750 of the Code of Laws of South Carolina (1976), as amended, in that while operating a motor vehicle upon the public streets or highways in the State of South Carolina, the said KEOSHAWS BREWER did fail to stop when signaled to do so by a law enforcement vehicle by means of a siren or flashing light.

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

P. Kelly Jackson

 SOLICITOR

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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."

March 28th, 2013


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