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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BORIS PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2013-000338

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2012-GS-26-4960

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	Trial Transcript
	)	
Boris Alonzo Phillips,	)	February 6, 2013
	)	
Defendant.	)	

B E F O R E :

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

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Attorney for Plaintiff

Melinda Knowles, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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Motions

5

1 (On the record, February 6, 2013. The following takes place
2 outside the presence of the jury venire.)

3 THE COURT: Mr. Holford ---

4 MR. HOLFORD: Yes, sir.

5 THE COURT: --- Ms. Knowles, do we have anything we
6 need to take up before we bring in the jury panel?

7 MS. KNOWLES: Your Honor, I would make a motion to
8 sequester the witnesses in this case.

9 MR. HOLFORD: Yes, Your Honor.

10 MS. KNOWLES: That's the only thing that I have.

11 THE COURT: All right, it's mutual.

12 MR. HOLFORD: Your Honor, obviously we have the officer
13 who would be allowed to stay.

14 THE COURT: The officer and someone representing the
15 victim.

16 MR. HOLFORD: Yes, Your Honor.

17 THE COURT: All right, let's get our jury panel. I
18 think Mr. Ropp is already down getting it; isn't he?

19 MR. HOLFORD: Your Honor, may we approach?

20 THE COURT: Yes.

21 (Whereupon, a bench conference is held.)

22 THE COURT: Do you have a witness list, Ms. Knowles,
23 Mr. Holford?

24 MR. HOLFORD: Yes, Your Honor.

25 MS. KNOWLES: I don't have a witness list.

1 THE COURT: Do you want to supplement this one? Do
2 you have anyone? Do you mean you're not going to call anyone?

3 MS. KNOWLES: I'm not calling anyone, right.

4 THE COURT: Okay. Don't we need to add Heather then?

5 MR. HOLFORD: Yes, Your Honor.

6 (Whereupon, the following takes place in the presence of
7 the jury venire.)

8 THE COURT: That's it? All right, good morning,
9 ladies and gentlemen. It's good to see you all again and I
10 believe that some of you were on my jury panel from earlier in
11 the week. I see some familiar faces. I am Larry Hyman. I am
12 a circuit judge ---

13 (Phone goes off in courtroom.)

14 THE COURT: --- can you get it - all right, I'm a
15 circuit judge here in South Carolina, and I with, I think,
16 Judge Baxley who qualified you on Monday practice all over the
17 state. They move us about, but Horry County is my home county
18 and I luckily have had the good fortune to be assigned to this
19 county almost exclusively for the next six months. So, I'm
20 going to enjoy being at home.

21 We're here today to select a jury in the case of the
22 State of South Carolina versus Boris Alonzo Phillips. Mr.
23 Phillips is seated here at defense table with Ms. Melinda
24 Knowles. Mr. Phillips, stand up if you would and turn around
25 and face the jury so that they can, they can meet you.

Voir Dire

7

1 (Complies with request.)

2 THE COURT: This is Mr. Phillips. Mr. Phillips is as
3 I - you may sit down, Mr. Phillips. Mr. Phillips, as I said,
4 is charged with the offense of shoplifting. It's alleged in
5 the indictment, and let me tell you about an indictment. An
6 indictment is nothing more than a legal document by which a
7 person is put on notice of the charge against him. It is not
8 evidence and should not be considered by you as evidence in
9 this trial or any trial. Likewise, the fact that a person has
10 been indicted is nothing that should prejudice him in any way
11 in your view of this case or the evidence in this case, but it
12 is alleged that on August the 5th of 2012 Mr. Phillips did take
13 and carry away certain goods belonging to the Sears store over
14 at Coastal Grand, that being here in Horry County.

15 Now, I'm going to ask you some questions about that
16 particular offense and relative to Mr. Phillips and other
17 witnesses who may testify in this case. The reason I do that
18 is that we are going to - going into the second phase of jury
19 qualifications. Yesterday or Monday you were qualified by
20 Judge Baxley to determine whether or not you met the statutory
21 requirements for jurors. What we want to find out today is
22 whether or not there is any reason that you should not serve
23 as a juror in this particular case, that is the case of the
24 State of South Carolina versus Mr. Phillips.

25 I'm going to be asking you some questions that are very

1 important. So, we're going to place you under oath again
2 concerning your responses to my inquiries.

3 Heather, if you would swear the jury.

4 (Whereupon, jury venire sworn by clerk.)

5 THE COURT: All right, listen very carefully to the
6 questions I'm going to ask. As I said, there's nothing more
7 important or no more important phase of a trial whether it be
8 a civil or a criminal trial than the selection of the jury. A
9 fair and impartial jury is the backbone, the cornerstone of
10 our judicial system and it is very important that we have fair
11 and impartial jurors to serve in these cases.

12 Now, has any one of you ever been related by blood or
13 marriage to Mr. Phillips?

14 (No response.)

15 THE COURT: And there's no response.

16 Has any one of you ever had a close social or personal
17 relationship with Mr. Phillips?

18 (No response.)

19 THE COURT: And there is no response.

20 There's several people who have been named as potential
21 witnesses in this case. Those persons would be Officer Mark
22 McIntyre, William McKenzie, Arthur Costa, Jason Plumley and
23 Heather D. Lewis.

24 Have - are any of you related by blood or marriage or do
25 you have a close personal or social relationship with any of

Voir Dire

9

1 these potential witnesses?

2 (No response.)

3 THE COURT: And there is no response.

4 As I mentioned earlier the Defense attorney in this case
5 is Ms. Melinda Knowles. Ms. Knowles, stand up so they can see
6 you.

7 (Complies with request.)

8 THE COURT: Ms. Knowles is with the Horry or the 15th
9 Judicial Circuit Public Defender's Office. She's been there
10 for a number of years and she tries cases exclusively in the
11 Court of General Sessions, that being the criminal side of our
12 court system.

13 Mr. Holford is - Joshua Holford is with the 15th Circuit
14 Solicitor's Office and he will be prosecuting this case for
15 the State. He has been with the Solicitor's Office now about,
16 is it a year yet?

17 MR. HOLFORD: Not quite.

18 THE COURT: Not quite a year, he served as clerk with
19 one of my favorite judges, Judge Cottingham. So, he's got a
20 good bit of experience and he's seen a lot of trials. So,
21 he's going to be here with you this week trying this case.

22 Now, is anyone related by blood or marriage, have you
23 been represented by, do you have any sort of social or
24 friendly relationship with either Mr. Holford or Ms. Knowles?

25 (No response.)

Voir Dire

10

1 THE COURT: And there is no response.

2 Has anyone on the jury panel formed an opinion or
3 expressed an opinion about the issues in this case? Now, I
4 know you don't know a whole lot about this case. As I said,
5 it involved an incident that allegedly took place at the Sears
6 store over at Coastal Grand and it was on the 5th day of August
7 of 2012. Were you there? Were you present? Did you see
8 anything? Has anyone discussed this case with you? Do you
9 know anything at all about this case?

10 (No response.)

11 THE COURT: And there is no response.

12 Is any member of the jury panel aware of any bias or
13 prejudice that he or she might have either for or against the
14 State or the Defendant in this matter?

15 (No response.)

16 THE COURT: And there is no response.

17 Is there any member of the jury panel who is a member or
18 contributor to any group which has as its primary concern law
19 enforcement or victims' rights, and those groups would be
20 things like MADD and SADD and CAVC, which is Citizens Against
21 Violent Crime, things of that nature?

22 (No response.)

23 THE COURT: And there is no response.

24 Finally, let me ask you this, does any one of you know of
25 any reason whatsoever why you feel that you should not serve

Voir Dire

11

1 as a juror in this case, with particular emphasis being placed
2 on your ability to be fair and impartial in your
3 deliberations?

4 (No response.)

5 THE COURT: And there is no response. So, I find that
6 the jury is qualified.

7 Any further questions, Ms. Knowles?

8 MS. KNOWLES: None, Your Honor.

9 THE COURT: Mr. Holford?

10 MR. HOLFORD: None, Your Honor.

11 THE COURT: All right, the jury is qualified.

12 Now, the way we select a jury in a criminal case is a
13 little different from what we do in a civil case. Last week I
14 had a term of civil court and which we selected jurors. In
15 that situation we put all the jurors on a list similar,
16 similar to this list and the jurors are given new numbers so
17 you don't even know who we're talking about when we're
18 referencing jurors and the attorneys just strike from the
19 list. On the criminal side of the court we do it a little
20 differently and I told this to those of you who were selected
21 on my first jury this week. On the criminal side we actually
22 require you to come forward and stand right down here and turn
23 and face the attorneys and the jurors and the parties and we
24 have you stand there while the attorneys determine whether or
25 not you should serve on that particular case. It'll begin by

1 the State's attorney saying something like, "Your Honor,
2 excuse the juror in this case," and if that's what happens you
3 just return to your seat. On the other hand Mr. Holford would
4 say, "Present the juror," then it would pass over to Ms.
5 Knowles to determine whether or not you sit on this panel, and
6 Ms. Knowles could say, "Excuse the juror," and in that case
7 you would return to your seat or she could say, "Swear the
8 juror," which means you would come around and sit, take a seat
9 in this jury box and you would serve on our jury. That's
10 probably, although it seems simple, it's probably the most
11 difficult and important thing that attorneys do in a case,
12 nothing more important than the way we select a jury or
13 getting a jury that's fair and impartial and it's particularly
14 difficult because these attorneys know very little about you
15 and they're called upon to make quick decisions concerning
16 whether or not you should sit on their case. I can tell you
17 from experience they just don't know what they're doing. It's
18 a difficult thing to do and it's basically based or usually
19 it's just based on a hunch. So don't feel bad if a juror or
20 an attorney excuses you from jury service on this case because
21 that same attorney would probably be happy to have you on the
22 next case. They're looking for someone that they think might
23 be sympathetic to their position in the case. So don't take
24 it to heart if you're, if you're excused on this case and I'm
25 telling you that, probably most of you are out there thinking,

Jury Selection

13

1 "I hope I don't get on that jury," but jury service is a high
2 civic duty and I think that if you are selected that you're
3 going to find it be rewarding and an educational experience.

4 Now, Madam Clerk ---

5 THE CLERK: Yes, sir.

6 THE COURT: --- are you ready?

7 THE CLERK: Yes, sir.

8 THE COURT: Okay, the State will strike first. Ms.
9 Lewis, call the first juror.

10 THE CLERK: When I call your juror name and number if
11 you'll please come to the front of the courtroom, turn around
12 and face the back of the courtroom, please.

13 Juror Number 120, Charles Green.

14 What say the State?

15 MR. HOLFORD: Please present this juror.

16 THE CLERK: Defense?

17 MS. KNOWLES: Please swear this juror.

18 THE CLERK: Please be seated in the jury box.

19 THE COURT: See what a good job Mr. Green did? He
20 came right up here, he knew - he was listening when I was
21 telling him what he needed to do.

22 THE CLERK: 340, Karen West.

23 What say the State?

24 MR. HOLFORD: Please present this juror.

25 THE CLERK: Defense?

Jury Selection

14

1 MS. KNOWLES: Please swear this juror.
2 THE CLERK: Please be seated in the jury box.
3 349, Cody Wilson.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 THE CLERK: Defense?
7 MS. KNOWLES: Please swear this juror.
8 THE CLERK: Please be seated in the jury box.
9 16, Patricia Barnett.
10 MS. KNOWLES: What was that number, I'm sorry?
11 THE CLERK: 16.
12 THE COURT: 16.
13 THE CLERK: What say the State?
14 MR. HOLFORD: Please present this juror.
15 THE CLERK: Defense?
16 MS. KNOWLES: Please excuse this juror.
17 THE CLERK: You're excused from this particular case.
18 270, Christopher Reavill. What say the State?
19 MR. HOLFORD: Please present this juror.
20 THE CLERK: Defense?
21 MS. KNOWLES: Please excuse this juror.
22 THE CLERK: You're excused from this particular case.
23 199, Crystal Lever.
24 MS. LEVER: Lever.
25 THE CLERK: Lever.

Jury Selection

15

1 What say the State?

2 MR. HOLFORD: Please present this juror.

3 THE CLERK: Defense?

4 MS. KNOWLES: Your Honor, may I inquire as to her

5 occupation and her spouse's occupation?

6 THE COURT: Yes, you may.

7 MS. LEVER: I'm a bookkeeper with Contract Data and my

8 husband is sergeant with investigations at the Myrtle Beach

9 Police Department.

10 MS. KNOWLES: Thank you. Please excuse this juror.

11 THE CLERK: You're excused from this particular case.

12 276, Andrea Robey.

13 What say the State?

14 MR. HOLFORD: Please present this juror.

15 THE CLERK: Defense?

16 MS. KNOWLES: Please swear this juror.

17 THE CLERK: Please be seated in the jury box.

18 225, Gary McIntyre.

19 What say the State?

20 MR. HOLFORD: Please present this juror.

21 THE CLERK: Defense?

22 MS. KNOWLES: Please swear this juror.

23 THE CLERK: Please be seated in the jury box.

24 281, Tina Roe.

25 What say the State?

Jury Selection

16

1 MR. HOLFORD: Please excuse this juror.
2 THE CLERK: You're excused from this particular case.
3 142, Bradley Hein.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 THE CLERK: Defense?
7 MS. KNOWLES: Please swear this juror.
8 THE CLERK: Please be seated in the jury box.
9 264, Thomas Profitt.
10 What say the State?
11 MR. HOLFORD: Please present this juror.
12 THE CLERK: Defense?
13 MS. KNOWLES: Please excuse this juror.
14 THE CLERK: You're excused from this particular case.
15 83, Ginger Dunn.
16 What say the State?
17 MR. HOLFORD: Please present this juror.
18 THE CLERK: Defense?
19 MS. KNOWLES: Please swear this juror.
20 THE CLERK: Please be seated in the jury box.
21 6, Angela Andrew.
22 What say the State?
23 MR. HOLFORD: Please present this juror.
24 THE CLERK: Defense?
25 MS. KNOWLES: Please swear this juror.

Jury Selection

17

1 THE CLERK: Please be seated in the jury box.
2 231, Gwen Miller.
3 What say the State?
4 MR. HOLFORD: Please present this juror.
5 THE CLERK: Defense?
6 MS. KNOWLES: You said 241?
7 THE CLERK: 231.
8 MS. KNOWLES: 231, please swear this juror.
9 THE CLERK: Please be seated in the jury box.
10 50, James Church.
11 MR. CHURCH: You got my name wrong in there. It's Todd
12 James Church.
13 THE CLERK: What say the State?
14 MR. HOLFORD: Please excuse this juror.
15 THE CLERK: You're excused from this particular case.
16 338, Stanley Weber.
17 What say the State?
18 MR. HOLFORD: Please present this juror.
19 MS. KNOWLES: Please swear this juror.
20 THE CLERK: Please be seated in the jury box.
21 256, Georgina Phillips.
22 What say the State?
23 MR. HOLFORD: Please excuse this juror.
24 THE CLERK: You're excused from this particular case.
25 273, Debbie Richardson.

Jury Selection

18

1 MR. HOLFORD: Can you give me that number one more time,
2 please?

3 THE CLERK: 273.

4 What say the State?

5 MR. HOLFORD: Please excuse this juror.

6 THE CLERK: You're excused from this particular case.
7 290, Robert Sciascia, I'm sorry.

8 MR. SCIASCIA: Sciascia.

9 THE CLERK: Sciascia.

10 What say the State?

11 MR. HOLFORD: Please present this juror.

12 THE CLERK: Defense?

13 MS. KNOWLES: Please excuse this juror.

14 THE CLERK: You're excused from this particular case.
15 214, Chancelor Martini.

16 What say the State?

17 MR. HOLFORD: Please excuse this juror.

18 THE CLERK: You're excused from this particular case.
19 151, Glenda Housand.

20 What say the State?

21 MR. HOLFORD: Please present this juror.

22 THE CLERK: Defense?

23 MS. KNOWLES: Please swear this juror.

24 THE CLERK: Please be seated in the jury box.
25 300, Deborah Skovinski.

Jury Selection

19

1 What say the State?

2 MR. HOLFORD: Please present this juror.

3 THE CLERK: Defense?

4 MS. KNOWLES: We get five; right?

5 Please swear this juror.

6 THE CLERK: Please be seated in the jury box.

7 THE COURT: Bobby, Ms. Dunn, Ms. Dunn on the end. Ms.

8 Dunn?

9 One alternate be sufficient, one alternate?

10 MR. HOLFORD: Yes, Your Honor.

11 THE COURT: All right.

12 THE CLERK: One.

13 THE COURT: One and two.

14 MR. HOLFORD: Yes, Your Honor.

15 THE CLERK: 159, Timothy Icard.

16 What say the State?

17 MR. HOLFORD: Please present this juror.

18 THE CLERK: Defense?

19 MS. KNOWLES: Please swear this juror.

20 THE CLERK: Please be seated in the jury box.

21 THE COURT: All right, Mr. Icard, if you would always

22 occupy that seat. You will be our alternate. Ms. Dunn, if

23 you will please always occupy that seat. You will be my

24 foreman. The rest of you may sit wherever you choose when you

25 come into the courtroom.

Opening Instructions by Court

20

1 Ladies and gentlemen, the rest of you are excused.
2 Please be back in your jury assembly room at two o'clock.

3 (Remaining jury venire exits courtroom.)

4 THE COURT: Please swear the jury.

5 (Whereupon, jury is sworn by clerk.)

6 THE COURT: Ladies and gentlemen, before we begin this
7 trial let me make a few remarks to you concerning how the
8 trial will proceed. This is certainly not intended as an
9 instruction on the law. I will instruct you on the law at the
10 end of the case but I wanted to give you some idea of how I
11 conduct my trials and what you can expect as the trial
12 progresses.

13 First let me say this, I try not to make you sit more
14 than about an hour and a half at the time. I figure that's
15 about the length of preaching. If you can make it through
16 preaching you can make it through jury service in my court.
17 However, if at any time during the trial of the case you
18 become uncomfortable and you need to refresh yourself, you're
19 not on my schedule. Please just raise your hand and let me
20 know and I promise you that we will take a break.

21 We have very comfortable jury facilities here in this
22 courthouse. How many of you have never been in this courtroom
23 or this courthouse? About half of you have never been here.
24 You were surprised when you got here I bet. Horry County
25 Council when they decided to provide a new court facility,

Opening Instructions by Court

21

1 which was long overdue, they really tried to do it right. We
2 have groups that come to Horry County on a regular basis from
3 all over the county to look at this courthouse because it is
4 state of art in every regard. It is the nicest courthouse
5 that we have anywhere in the state. As I said earlier when I
6 was talking to you, I have to travel around and I talk to
7 other judges and there's not another one as nice as this and
8 that carries over to the areas we have set aside for jurors.
9 When Mr. Ropp takes you back to your, to your jury room you'll
10 see it has a nice view, it's very spacious, there are always
11 refreshments there for you. If you find that not to be the
12 case you let Mr. Ropp know or you let me know and we'll take
13 care of that problem. Also there will always be someone right
14 outside your door. Mr. Ropp or one of these sheriff's
15 deputies will be available for you. They're there to help
16 you. If you have any problems, you need anything, just bring
17 it to their attention and we'll take care of that for you. We
18 want jury service to be as comfortable and as pleasant as it
19 possibly can be made. We understand that we're taking you
20 away from your daily routines and things that you probably
21 need to be doing, but this is an important job that you're
22 called upon to do. It's very seldom that we are called upon
23 to serve as jurors, but when we are it is probably one of the
24 highest civic duties that you could be called upon to perform.
25 Now, this case as it progresses will probably not be what

1 you expected it to be. It seems that every time I turn on the
2 TV there's some sort of court show or police show or
3 something, every time I turn it on, and all those cases that
4 we see being tried on TV are, you know, riveting and charged
5 with excitement. You're probably going to see that in reality
6 the search for truth is very slow and deliberate at times and
7 that may be what we have here. Of course we may have some
8 exciting moments. I don't know. That does occur, but - and
9 generally when we try cases it is a very slow and deliberate
10 presentation of the evidence to help you reach the truth.
11 During the trial of this case you will come to see that these
12 trials are not for entertainment as they are on TV. They're
13 here because we are testing the basic rights that we have as,
14 excuse me, as citizens to a fair trial by a jury of our peers
15 and Mr. Phillips has that right and he is exercising that
16 right today.

17 Whenever these attorneys come into the court they are
18 expected to conduct themselves professionally, ethically,
19 responsibly. I am also put to that same test. I am expected
20 to conduct myself professionally, ethically and responsibly,
21 but you know, you as jurors also are expected to rise to that
22 standard. We expect of you professional, ethical and
23 responsible conduct during the trial of this case. You should
24 take your job very seriously because you as a jury are the
25 sole judges of the facts in this case. You will determine

Opening Instructions by Court

23

1 what actually occurred. Everything that goes on in this
2 courtroom over the next few hours or days is for you to help
3 you determine what actually occurred, and you know, if I make
4 a mistake during the course of the trial, if I do something
5 inappropriate, an appeal could be taken and it could go up to
6 the Supreme Court and the Supreme Court could correct me and
7 send the case back for a retrial but there's nothing that can
8 be done if a jury makes a mistake because we don't know what
9 goes on in that jury room. We don't know what goes on in your
10 mind. We don't know if you followed the law or followed the
11 evidence as you should have and there's no way for a higher
12 court to correct it. So it's important that at this level you
13 as jurors take your job seriously and go forward with an idea
14 that you have to conduct yourself responsibly, professionally
15 and ethically.

16 Now, as I said, you as jurors are the sole judges of the
17 facts. You may ask yourselves, "Well, how will we determine
18 what the facts are when we hear contradictory evidence in
19 court," and I assure you that you probably will hear some
20 contradictory evidence, one witness against another witness.
21 Let me tell you, in doing that you apply the same test that
22 you are used to applying in your daily lives. The truth here
23 is no different from the truth outside those doors. You can
24 consider such things as the opportunity a witness may have had
25 to hear or see what he or she is testifying about. You can

Opening Instructions by Court

24

1 consider whether the witness might have a prejudice or a bias
2 or an interest in the case. All those things are for you to
3 consider in determining whether or not you believe one witness
4 over many or many over the one or part or all of the witness's
5 testimony. It's for you to make that decision.

6 Now in a moment we're going to begin the case and let me
7 tell you a little bit about how it will proceed. We'll begin
8 by the State making an opening remark and in that opening
9 remark Mr. Holford is going to tell you what he believes that
10 he can show or prove in this case and what he needs to prove
11 in this case. He will set out the theory of his case, but let
12 me remind you that nothing that Mr. Holford says is evidence
13 in this case. It's not evidence till you have heard it from a
14 witness that you believe who has testified under oath from
15 this witness stand.

16 Following the State's presentation of its case you will
17 hear from Ms. Knowles and Ms. Knowles will tell you what her
18 theory is of the case. Again, what Ms. Knowles tells you is
19 not evidence in the case. You will consider only the evidence
20 that comes from the witness stand.

21 Afterwards Mr. Holford will put up what we call the
22 State's case. The burden is on the State of South Carolina to
23 convince you of Mr. Phillips' guilt beyond a reasonable doubt,
24 each and every one of you must be convinced beyond a
25 reasonable doubt of his guilt, and Mr. Holford is aware that

Opening Instructions by Court

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1 that is his, his burden, his duty in this trial and he will
2 put up evidence to try to prove that.

3 Afterwards Ms. Knowles may or may not, she has nothing to
4 prove. Mr. Phillips has nothing to prove. She may or she may
5 not put up evidence to contradict what you have heard from the
6 State and you will draw no conclusion from the fact that she
7 puts up no evidence if that's what they choose to do. That is
8 the right of the Defendant.

9 Following the presentation of all the evidence you will
10 hear a closing remark by Mr. Holford and Mr. Holford will sum
11 up what he has shown you through the evidence in the case and
12 tell you why that should lead you to a conclusion that he has
13 proven his case beyond a reasonable doubt. Thereafter, Ms.
14 Knowles will have an opportunity also to or perhaps before
15 depending on how the case goes, she will have an opportunity,
16 likewise, to sum up or point out to you why the State has not
17 met its burden. Following that I will give you a charge on
18 the law, the law that you will apply in this case.

19 The deliberation process is really a three-part process.
20 First of all you as the jury are the sole and exclusive judges
21 of the facts. You go through all the evidence and you
22 determine what happened, what are the facts in the case, what
23 has been proven to you beyond a reasonable doubt as the facts,
24 and then you will take the law, the law as I give it to you.
25 You may not agree with it. You may think that the law should

Opening Instructions by Court

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1 be something else or is something else, but you are bound by
2 your oath to follow the law as I give it to you. That's the
3 second part, you take the law, that's the easy part because
4 I'm going to spoon feed it to you when I give it to you.

5 The third part is the difficult part and that is where
6 you bring the law and the facts together and see how they fit
7 and that is where you determine whether or not probable cause
8 exists or whether or not the State has or, excuse me, whether
9 or not there is reasonable doubt or whether the State has
10 proven its case beyond a reasonable doubt and that's what you
11 will do.

12 Let me tell you that at some during the trial of this
13 case you might hear one of these lawyers say something like,
14 "Your Honor, we have a matter to take up outside the presence
15 of the jury," or, "Your Honor, we have a motion that you need
16 to hear," and if that happens I will probably be sending you
17 back into your jury room for a discussion with the attorneys.
18 It's not that we are trying to keep anything from you. It's
19 just that we are probably going to discuss the way a piece of
20 evidence is introduced into evidence or whether or not it
21 should be introduced into evidence, and in doing that I often
22 have to express my opinion about that particular piece of
23 evidence. In your right to make a determination of the, of
24 the evidence in this case or the facts in this case it's so
25 complete that it would be improper for me to influence you in

Opening Instructions by Court

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1 any way by stating in your presence what I thought about a
2 piece of evidence. That's why we send you out. It's not that
3 we're trying to keep anything from you. That's not the case
4 at all.

5 Let me remind you that you should not begin your
6 deliberations in this case until you have heard all the
7 evidence, both sides. That means you should not discuss it
8 among yourselves. You should not discuss it with family or
9 friends. You should not, please do not try to find out
10 anything about this case or do any independent research on
11 your I Phones or computers or anything to that - of that
12 nature. Don't be looking up terms or words if you have a
13 question about something that's been said or a term or a word
14 that's being used. Ask me. Don't go to the web to find out.
15 That's highly improper, okay?

16 Now, we're about to begin our opening remarks. I want to
17 give you an opportunity, though, to refresh yourself before we
18 do it. Mr. Ropp, if you'd take them into their jury room,
19 show them their jury room, let them refresh themselves and
20 let's come back in in about ten minutes; all right, and we'll
21 have opening remarks.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Mr. Holford, any objections to the Court's
25 preliminary remarks?

Opening Instructions by Court

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1 MR. HOLFORD: No objections, Your Honor.

2 THE COURT: Mr. - Ms. Knowles?

3 MS. KNOWLES: None to the preliminary remarks, Your
4 Honor. I do have one issue that I think needs to be addressed
5 before they come back.

6 THE COURT: Okay.

7 MS. KNOWLES: And that is the two priors that we are
8 relying on to support this charge.

9 THE COURT: That the State is relying on.

10 MS. KNOWLES: We would offer to stipulate to him having
11 the two priors. I just feel that's it more prejudicial than
12 it is probative.

13 THE COURT: Well, the, the - there's case law to the
14 effect that that is an element of this offense. Mr. Holford
15 has the ability to say that it is stipulated. However, if he
16 chooses not to he can have the record put back in or put in.
17 Now, Mr. Holford, I don't know whether that'll help you or not
18 if she stipulates that there's been at least two prior
19 convictions. That's essentially the same thing I believe
20 you're going to have Ms. Lewis do is just say that there's two
21 prior convictions.

22 MR. HOLFORD: Your Honor, as the burden is on the State
23 to prove these two prior convictions I believe that I would
24 prefer to call Ms. Lewis to have her testify.

25 THE COURT: You can call her if you wish.

Opening Instructions by Court

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1 MS. KNOWLES: And I don't know how we're going to
2 characterize it, but the sentencing sheets are for shoplifting
3 third or greater. I just feel that that is really prejudicial
4 to my client how they're titled.

5 THE COURT: Well, they don't get the sentencing sheet.

6 MS. KNOWLES: How is he going to characterize the charge
7 to the jury?

8 THE COURT: He's going to characterize it by saying
9 it's a third or greater offense, third or. He's not going to
10 say one way or the other. Is that what you had planned on
11 doing?

12 MR. HOLFORD: Your Honor, I planned on asking Ms. Lewis
13 if she recognizes these, they're not from Horry County but
14 she's from the Clerk's Office and that she can testify as to
15 what the document is. It's a certified conviction and I'll
16 ask her what is this certified conviction for. I believe I
17 have to show that it is a property offense. Both are
18 certified convictions for shoplifting third or more, I think
19 one says, and the other says third or greater. That'll be the
20 end of my questioning with her.

21 THE COURT: But you don't have to show that those
22 prior property offenses were third or greater. All you have
23 to do is show that those were prior property offenses.

24 MR. HOLFORD: That's correct, Your Honor.

25 THE COURT: So, so, I would have you then ask her if

1 the offense was for a proper - if, if the, if the conviction
2 was for a property offense and then just have her say it was
3 shoplifting.

4 MS. KNOWLES: Thank you.

5 MR. HOLFORD: Yes, Your Honor,

6 THE COURT: Okay, I think that if we say it's third or
7 more we're getting into a same situation where we're - I think
8 there's ten or 12 or something like that, but if we talk about
9 all those we're certainly committing error. So, let's just
10 say they were prior property offenses.

11 MS. KNOWLES: Thank you very much.

12 MR. HOLFORD: For shoplifting.

13 THE COURT: For shoplifting, yeah.

14 MR. HOLFORD: Thank you, Your Honor.

15 THE COURT: All right.

16 MS. KNOWLES: Do I have time to run to the restroom?

17 THE COURT: Yes, certainly, certainly, that's what I'm
18 taking a break for.

19 OFF THE RECORD

20 (On the record. The following takes place in the presence of
21 the jury.)

22 THE COURT: All right, we have all our jurors back.
23 We ready to proceed, Mr. Holford?

24 MR. HOLFORD: Yes, Your Honor.

25 THE COURT: All right, you may address the jury.

Opening by State

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1 MR. HOLFORD: Thank you, Your Honor. May it please the
2 Court?

3 THE COURT: Yes, sir.

4 MR. HOLFORD: Good morning, ladies and gentlemen of the
5 jury. My name is Josh Holford. As the Judge alluded to
6 earlier I did get to sit up there on the bench with another
7 Circuit Court Judge for a couple of years. I have only been
8 doing this less than a year now. I do represent the State of
9 South Carolina. I represent the County of Horry and I'm
10 pleased to be here today with this case.

11 Now, you're going to hear the facts of this case. You're
12 going to hear it's a shoplifting case. We'll get into the
13 value of it. The value doesn't really matter. We're talking
14 about a couple of hundred dollars stolen from a Sears at the
15 Coastal Grand Mall here in Myrtle Beach in Horry, South
16 Carolina. Now, what you need to decide is not the value of
17 what was stolen but the fact that something was stolen. Mr.
18 Phillips here on August 5th, 2012, went into that Sears, walked
19 into the Coastal Grand Sears, got a buggy, put some Craftsman
20 mechanic tool sets in it, put a power drill in there. Then he
21 walks out of the store, doesn't pay for it. Ladies and
22 gentlemen, that's shoplifting. We can make it complicated.
23 We can get into alter or transfer, remove labels, any of that
24 kind of stuff. That's not what happened in this case. What
25 happened in this case is the common sense definition of

1 shoplifting. He took items from a store, placed them in a
2 basket and walked out of that store without paying for them
3 and he never paid for those items.

4 Now, you're going to hear testimony today. First you'll
5 hear from our officer. He's going to say that he showed up
6 and he was given information that it was, in fact, Mr.
7 Phillips who was caught on the video. You'll see the video.
8 You'll hear from Mr. Plumley. He's the loss prevention
9 manager at that store, and he'll say, "Yeah, I was doing
10 training. We had a guy from Florence up there who ID's Mr.
11 Phillips as the person who shoplifted on that day."

12 On August 5th Mr. Plumley didn't know that it was Mr.
13 Phillips. He didn't know Mr. Phillips, hadn't seen him,
14 didn't know who he was. Fortunately for us you will also hear
15 from a Chris McKenzie or William McKenzie. He's a loss
16 prevention manager from Florence, South Carolina. As it may
17 happen Mr. McKenzie had worked with Mr. Phillips before back
18 in Florence, they worked together not at Sears, at a auto
19 shop, he knew Mr. Phillips. As he's there training looking at
20 video just so happens Mr. Phillips is in that store and he
21 says, "I know who that is. That's Boris Phillips. We worked
22 together." After that Mr. Plumley contacts the officers, the
23 officer there. They come forward days later, not the same
24 day. They don't catch him. They don't get him red handed
25 with the stuff. They don't run out to the car and pull him

Opening by Defense

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1 out of the car, but what we will have you'll see the video,
2 you'll see Mr. Phillips clearly on the video and you'll have
3 an identification that that was, in fact, Boris Phillips.

4 Now, ladies and gentlemen, the victim's job in this case
5 is to report crimes. The police's job in this case is to make
6 arrests based on those crimes of who they think committed it.
7 My job in this case is to prosecute those people who I believe
8 are guilty of the crime that they're charged with, and I stand
9 before you and I submit to you at the end of the day when it's
10 your turn to do your duty, return a verdict, that the only
11 verdict that you'll be able to return is a verdict of guilty,
12 that this Defendant, Mr. Boris Phillips, did, in fact, enter
13 that store, take items and leave without paying for them.
14 Thank you.

15 THE COURT: Ms. Knowles.

16 MS. KNOWLES: Good morning, ladies and gentlemen. My
17 name is Melinda Knowles and I represent the accused in this
18 case, Mr. Boris Phillips. Mr. Phillips is 48 years old. He's
19 married. He has two children. He lives in Florence, South
20 Carolina, with his family. He's currently unemployed. He was
21 just released from jail just last month out on bond for this
22 charge; and so, he has not been able to secure a job since
23 being released from jail.

24 Now, I'm not going to stand up here, and I'm not going to
25 tell you that this is Mr. Phillips' first time in criminal

1 court because this charge alone, as the indictment states,
2 says otherwise. I address this issue up front because I
3 believe that it holds very little significance to this case.
4 Please do not let this fact alone make your decision in this
5 case. Decide the facts as they are presented that occurred on
6 August 5th, 2012, and please keep in mind who has the burden of
7 proof here. Mr. Phillips doesn't have to prove anything. He
8 is to be presumed innocent by each one of you. That
9 presumption will travel with him until the end of this trial
10 and is not removed until and if the State can prove its case.
11 The State must establish each and every element of this crime
12 with proof beyond a reasonable doubt. Now this is the highest
13 burden that we have in our judicial system and the State has
14 to meet that burden. I challenge you to not simply just
15 rubber stamp this indictment. Look at this case with the
16 closest scrutiny.

17 One final thought that I want to leave you with is what
18 something appears to be is not always what it is upon closer
19 inspection. I want to thank each and every one of you for
20 your service here today as we know that you're making
21 sacrifices to be here. So, thank you.

22 THE COURT: Mr. Holford, witness?

23 MR. HOLFORD: Thank you, Your Honor. The State calls
24 Officer Mike McIntyre.

25 THE COURT: Officer McIntyre, come around, please.

Mark McIntyre - Direct by State

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1 WHEREUPON, Mark Douglas McIntyre was called to the stand,
2 duly sworn by the clerk and testified as follows:

3 THE CLERK: Thank you. Please be seated. If you
4 would please state your full name and spell your last name.

5 MR. MCINTYRE: My name is Officer Mark Douglas McIntyre,
6 and that's spelled M-C-I-N-T-Y-R-E.

7 DIRECT EXAMINATION

8 BY MR. HOLFORD:

9 Q Officer McIntyre, will you please tell this jury a little
10 bit about yourself, about your background?

11 A I'm 44 years old. I've been in law enforcement for 17
12 years now. The last two years I've been it as a - employed as
13 a law enforcement officer with the City of Myrtle Beach Police
14 Department. Prior to that I'd worked for 15 years in Chapel
15 Hill and Durham, North Carolina.

16 Q So, you now work in Myrtle Beach Police Department?

17 A Yes, I now work for the City of Myrtle Beach Police
18 Department.

19 Q And how did you come to be involved in this case?

20 A I was at the Sears store on - for another matter, another
21 case I was working on and while I was there the - Mr. Plumley
22 advised me of this - he reported to me that this had happened
23 on a previous day.

24 Q And what date was that?

25 A That was on August 18th, 2012.

1 Q That you were at the store.

2 A That's the day I was at the store, yes, sir.

3 Q And Mr. Plumley advised you of a date previous. What
4 date was that?

5 A That was August 5th, 2012.

6 Q And what did he advise you of happened on August 5th,
7 2012?

8 A He told me on August 5th, 2012, a gentleman had came into
9 the store. He had selected the Craftsman hand tool set and an
10 assortment of tools and he had put them in a cart and pushed
11 them out of the store without paying for them. He told me
12 that they had all that captured on video and that subsequent
13 event happened and one of their loss prevention officers from
14 the Florence store actually saw the video and was able to
15 positively identify the person with the merchandise.

16 Q And based on all of this what did you do?

17 A Based on all that took the initial report. I obtained a
18 statement from Mr. Plumley. I obtained a copy of the CD that
19 has the surveillance video on it and I also made contact with
20 the witness from the Florence store and spoke to him about the
21 matter and obtained a written statement from that individual.

22 Q And what did you do with regards to Mr. Phillips?

23 A After I concluded the report and my follow-up
24 investigation I submitted, applied for a warrant for his
25 arrest for shoplifting.

Mark McIntyre - Direct by State

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1 Q And what happened after you applied for that warrant?

2 A The clerk issued the warrant and he was subsequently
3 arrested for the charge.

4 Q Now you talked about a video that you obtained.

5 MR. HOLFORD: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MR. HOLFORD:

8 Q I'm going to hand you what's marked as State's Exhibit
9 Number Two for identification purposes. Can you please
10 identify what this is?

11 A This is the Myrtle Beach Police Department property
12 report. Basically after I obtained the video from Mr. Plumley
13 I had to submit it into the property and evidence room at the
14 police department and this is the report showing where it was
15 submitted and the second page of this report it shows where I
16 took it out of the property room this morning. So, it's been
17 in continuous secured custody until this morning when we took
18 it out for court.

19 MS. KNOWLES: Your Honor, may I see that?

20 THE COURT: Yes.

21 MS. KNOWLES: I'm sorry.

22 Q So, all this shows is that you took, you took a video
23 from Mr. Plumley's store, the Sears, you put it into evidence?

24 A Yes, that's correct.

25 Q And it's been there until when?

1 A Until this morning when I checked it out about ---

2 Q You checked it out yourself?

3 A --- shortly after eight. Yes, sir.

4 Q And we can tell based on this?

5 A Yes, sir.

6 MR. HOLFORD: Your Honor, I ask that State's Exhibit Two
7 be entered into evidence.

8 MS. KNOWLES: No objection, Your Honor.

9 THE COURT: Without objection.

10 MR. HOLFORD: Thank you.

11 (State's Exhibit Number Two [Evidence Sheet] entered into
12 evidence and appropriately marked.)

13 BY MR. HOLFORD:

14 Q Now, that video that you placed into evidence you just
15 talked about that you took from the store what was that video?

16 A It was a video that contained the images from the August
17 5th, 2012, shoplifting as long as - as well as some other
18 video.

19 Q And can you identify State's Exhibit One?

20 A Yeah, this is the envelope that contains the CD that I
21 obtained from Sears and it's got my initials where I sealed it
22 on the day I put it into evidence.

23 Q And has this been in evidence the entire time?

24 A Yes, sir.

25 Q And will you open that?

Mark McIntyre - Direct by State

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1 A Yes.

2 Q This is the video you obtained from Mr. Plumley; right?

3 A Yes, yes, sir.

4 MR. HOLFORD: Your Honor, I ask that State's Exhibit One
5 be entered in evidence.

6 MS. KNOWLES: No objection.

7 THE COURT: Without objection.

8 (Whereupon, State's Exhibit Number One [Video] entered
9 into evidence and appropriately marked.)

10 BY MR. HOLFORD:

11 Q Thank you.

12 A Sure.

13 Q Now, after obtaining the evidence and obtaining an arrest
14 warrant did you have any other involvement in this case?

15 A No, sir, I didn't.

16 Q Other than your conversation - well, you had a
17 conversation prior with Mr. McKenzie.

18 A Yes, sir.

19 Q Prior to obtaining the arrest warrant?

20 A Yes, sir.

21 Q And he did positively identify Mr. Phillips.

22 A Yes, he did.

23 MR. HOLFORD: Your Honor, I have no further questions at
24 this time.

25 THE COURT: All right, Ms. Knowles.

1 CROSS EXAMINATION

2 BY MS. KNOWLES:

3 Q Officer McIntyre, you said that you responded to the
4 scene of an unrelated incident. Can you tell us a little bit
5 about that?

6 A Yes, ma'am, we have numerous shoplifting incidents at the
7 Sears store and as well as other stores in town. I had went
8 to the Sears store to pick up some statements from one of the
9 other cases that I had worked on and while I was there I
10 bumped into Mr. Plumley the manager and he told me about the
11 prior incident and then made a report about it.

12 Q Okay, and what date was this again?

13 A That was on August 18th.

14 Q And he reported that a crime had taken place when?

15 A August 5th.

16 Q So, we're talking about 13 days difference there?

17 A Yes.

18 Q Okay, now, you were responsible for drafting the
19 investigation report in this case; weren't you?

20 A Yes, ma'am.

21 Q And the complainant's name was Jason Plumley; is that
22 right?

23 A Yes, that's correct.

24 Q And you said that you had responded to an unrelated
25 incident which was another shoplifting that had occurred at

Mark McIntyre - Cross by Defense

41

1 Sears?

2 A Yes, ma'am.

3 Q And in your prior experience as an officer who
4 investigates these crimes is it normal for that length of time
5 to transpire before a crime is reported?

6 A Sometimes, I mean, if it's - the person is not
7 immediately in custody a lot of times they'll get all their
8 statements and disks and copies and everything together before
9 they call us to make a report because like ---

10 Q Before they even report it?

11 A Yeah, because like on the particular day I was there I
12 actually we had caught somebody in custody and then we had to
13 go back and pick up the evidence like the statements and
14 everything once they were completed. So, it's like they
15 compile all that and present it to us all at one time, we do
16 the whole thing at one time instead of - like if it was an in
17 progress arrest we would, you know, get there, arrest the
18 person and do what we needed to do on the scene and leave with
19 them so we get them to jail and then we will come back once
20 all the videos are copied because it takes time to make copies
21 of disks and this, that and the other, so.

22 Q And did you ask Mr. Plumley if there was video
23 surveillance of the parking lot?

24 A I don't, I don't remember asking him in particular if
25 they had video surveillance of the parking lot but I know that

1 they do have video surveillance of the parking lot.

2 Q They do?

3 A Yes.

4 Q So what investigation did you do in this case?

5 A I took the information that Mr. Plumley gave me. I
6 reviewed the disk to see exactly if it did show the Defendant
7 leaving with the merchandise after not paying for it. He told
8 me of what had - that Mr. McKenzie had told him about he knew
9 the person and stuff and I actually instead of just taking
10 that on face value I actually made contact with Mr. McKenzie
11 and talked to him about it and obtained a statement from him.

12 Q But you just viewed what had already been submitted to
13 you; correct?

14 A Yes, that's correct.

15 Q So, you did not see the complete video. It was just
16 portions that they wanted you to see; right?

17 A I saw the video that was presented on that disk.

18 Q Okay, and you did not know my client prior to this date;
19 did you?

20 A No, ma'am.

21 Q So, you had no idea whenever you said you saw the
22 Defendant you did not know who that was.

23 A No, but I mean I was referring to him as ---

24 Q Yes, sir; and so, what information did you rely upon in
25 order to get a warrant in this case?

Mark McIntyre - Cross by Defense

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- 1 A The signed statements of Mr. Plumley and Mr. McKenzie and
2 what I did observe on the video.
- 3 Q Did you ever present them with a photo lineup of other
4 suspects?
- 5 A No, ma'am.
- 6 Q And was any of the stolen property recovered?
- 7 A No, ma'am, not to my knowledge.
- 8 Q And in your report it says that my client was identified
9 from a witness who was familiar with him because he had had
10 encounters with him; correct?
- 11 A Yes.
- 12 Q In a Florence store?
- 13 A Yes.
- 14 Q And so that was good enough for you that he had seen him?
- 15 A After I, after I talked to him it was because he told me
16 how he knew him, you know, it wasn't just like he ---
- 17 Q Why is that not in anyplace in your report?
- 18 A It's in his statement, the witness's statement.
- 19 Q Okay, did you ask if there had been an inventory done,
20 how they knew that items were stolen?
- 21 A No. From what I understand they saw him leaving the
22 store with items without paying.
- 23 Q Well, you said that you saw the video. So, was this a
24 clear ---
- 25 A I saw the video, but I didn't ask them if they did

1 inventory. That wasn't a question I asked because it didn't
2 seem to be a question of how any items were missing.

3 Q So it's your testimony that you knew that items were
4 taken based upon what is shown in this video, you knew without
5 a doubt?

6 A Well, it shows him on the video taking items out of the
7 store.

8 Q You can see that?

9 A Yeah, you can see that.

10 Q Okay, did you ask if there were any other cameras in
11 place inside, how many they had in order to get another angle
12 possibly?

13 A No, ma'am.

14 Q Okay, and they told you that they did not follow him;
15 correct?

16 A They did not what?

17 Q They did not follow him, they did not pursue him after he
18 allegedly had shoplifted, no one ---

19 A Yeah, they ---

20 Q --- followed him into the parking lot is my question.

21 A Yeah, they didn't mention anything about anybody
22 following him.

23 Q Okay, I think I'm finished. Let me just double-check;
24 okay?

25 MS. KNOWLES: No further questions for this witness.

Mark McIntyre - Redirect by State

45

1 Thank you.

2 THE COURT: All right, you may - any redirect?

3 MR. HOLFORD: Two brief questions, Your Honor.

4 THE COURT: All right, go ahead.

5 REDIRECT EXAMINATION

6 BY MR. HOLFORD:

7 Q Officer McIntyre, did you believe a photo lineup was
8 necessary in this case?

9 A I did not based on the fact that the witness told me he
10 knew the person. I mean it didn't seem to be a relevant
11 issue, I mean.

12 Q And based on the conversations you had and the video that
13 you did see was that enough to draw a warrant for shoplifting?

14 A Yes, absolutely.

15 Q Thank you.

16 MR. HOLFORD: No further questions.

17 THE COURT: Ms. Knowles, do you ---

18 MS. KNOWLES: He said he relied upon what someone had
19 told him and that they had made a statement, I believe. I
20 don't know that I have that statement.

21 A It's William McKenzie. I think there's a statement in
22 there.

23 THE COURT: Is that a statement or a question you're
24 asking the witness?

25 MS. KNOWLES: I'm asking him if there was a statement by

1 William McKenzie that was made.

2 A Got it.

3 THE COURT: He says he has one.

4 MS. KNOWLES: I mean, I would want ---

5 MR. HOLFORD: Your Honor, may we approach?

6 THE COURT: Certainly.

7 (Whereupon, a bench conference is held in the presence
8 but out of the hearing of the jury.)

9 MR. HOLFORD: Your Honor, there may be a matter outside
10 the presence of the jury.

11 THE COURT: All right, let's take the jury out.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right, what, what do we have?

15 MR. HOLFORD: Your Honor, there appears to be a
16 statement from a Mr. William McKenzie that was provided. I do
17 not have a copy of that statement in my case report and no
18 statement was, therefore, submitted to Defense.

19 THE COURT: Well, why do I know about this statement?
20 Mr. McKenzie is the person who said he recognized him? I mean
21 haven't we been talking about that?

22 MR. HOLFORD: Yes, Your Honor, there's been a statement
23 all along that Mr. McKenzie has made. I did not know of a
24 written statement provided to the police.

25 THE COURT: Well, provide it to counsel. Let's let

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1 counsel look at it and see if there's any surprise in it.

2 MR. HOLFORD: Can I have a copy?

3 THE COURT: Certainly.

4 MR. HOLFORD: I, I don't have a - it's never been
5 provided to the State.

6 THE COURT: Well, let's - all right, well, let's,
7 let's get it. Let's give it to her now and let's see if
8 there's anything in there that would ---

9 MR. HOLFORD: So, we weren't relying on this written
10 statement at any point because I never had it.

11 THE COURT: But you were relying upon Mr. McKenzie's
12 ---

13 MR. HOLFORD: Testimony.

14 THE COURT: --- oral statement that, in fact ---

15 MR. HOLFORD: Yes, Your Honor.

16 THE COURT: --- he recognized Mr. Phillips.

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: Okay, all right, well, let's see if
19 there's anything in there that's contrary to that to indicate
20 that that's not true or ---

21 MR. HOLFORD: Your Honor, apparently it goes into the
22 other charge. We're not introducing this statement.

23 THE COURT: We're not introducing it.

24 MR. HOLFORD: He's never made reference to that
25 statement. It's not going to be in evidence.

1 MS. KNOWLES: I'd like to question Mr. McKenzie on the
2 statement though.

3 MR. HOLFORD: Did you want to question him on the other
4 charge? That's prejudicial to your client and that's not what
5 the State's going to do.

6 THE COURT: Well, don't you plan on calling Mr.
7 McKenzie?

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: I mean, he's going to call him. You get a
10 chance to cross examine him. I'll let you put him orally
11 under subpoena right now just to make sure that he's here for
12 your case if you want to call him.

13 MS. KNOWLES: And I just want to make sure that we don't
14 get into the muddy waters of going into that other issue.

15 THE COURT: We're not going into that.

16 MS. KNOWLES: Okay.

17 THE COURT: We've already said we're not going into
18 it. That, that ---

19 MS. KNOWLES: It would get into all ---

20 THE COURT: --- statement is not being offered into
21 evidence.

22 MR. HOLFORD: No, Your Honor.

23 THE COURT: All he's testified to is that Mr. McKenzie
24 gave him a statement that he knew Mr. Phillips from previous
25 encounters or time with him or working with him or whatever it

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1 is. You got Mr. McKenzie here to testify, says he knows him
2 and that's all he's going to testify to and of course you can
3 cross examine him as to that. We can make a copy of it for
4 you.

5 MS. KNOWLES: That's the original?

6 MR. HOLFORD: If you want to make two of them.

7 THE COURT: Okay. Any further questions for this
8 witness, Ms. Knowles?

9 MS. KNOWLES: None.

10 THE COURT: All right, you may step down, sir.

11 All right, let's get our jury back in; okay?

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 MR. HOLFORD: Your Honor, the State calls Arthur Costa
15 to the stand.

16 THE COURT: All right.

17 WHEREUPON, Arthur D. Costa is called to the stand, duly
18 sworn by the clerk and testifies as follows:

19 THE CLERK: State your full name and spell your last
20 name.

21 MR. COSTA: Arthur, middle initial D, Costa, C-O-S-T-
22 A.

23 DIRECT EXAMINATION

24 BY MR. HOLFORD:

25 Q Mr. Costa, how are you this morning?

1 A Very good, thank you.

2 Q Will you please tell this jury a little bit about
3 yourself, where you're from, your education, a little
4 background?

5 A I'm 58 years old, originally from the Pittsburgh area. I
6 moved down here after retiring from the Penn Hills Police
7 Department which is a suburb of Pittsburgh, spent 27 years
8 there. I work full time down here now that I'm retired for
9 grounds and maintenance and I also do part-time loss
10 prevention at Sears.

11 Q And how long have you been doing loss prevention at
12 Sears?

13 A It'll be three years next month.

14 Q And were you doing loss prevention at Sears on August 5th,
15 2012?

16 A I was.

17 Q And tell the jury exactly your involvement in this case.

18 A I was on duty at Sears on my own at that point and was
19 watching the store by closed circuit TV when I saw the
20 Defendant in our tool department. He was pushing a shopping
21 cart with several items in it. I watched him pick up various
22 items putting them in the cart, also watched him photograph
23 different tools with his camera phone.

24 Q And based on this what did you do?

25 A Continued to watch him as he made his way through the

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1 department. He began to go to an area that was getting close
2 to an exit. I watched as best I could. I positioned my
3 cameras and went to the floor. By the time I got to the floor
4 he was gone. Checked the parking lot, he was already gone
5 from that area. So, I pulled the workers in the store.
6 People had seen him but couldn't tell me where he was at that
7 point. I went into the store to some other departments.
8 Nobody had seen him. I went back to my office, reviewed the
9 tapes, reviewed our computers and saw that he had left the
10 store and left the area.

11 Q Had he paid for any of these items?

12 A None of them.

13 Q How do you know that?

14 A He passed all points of sale. There are two registers in
15 the department and he never went near either one of them.

16 Q Now, you said you were the one that made these
17 recordings?

18 A Yes.

19 Q Have you reviewed the recordings before today?

20 A I have.

21 Q And are they true and accurate representation of what was
22 recorded on August 5th, 2012?

23 A They are.

24 Q Officer McIntyre has already testified and they've been
25 entered in evidence. I'd like to show them to you at this

1 point and then have you discuss what was happening as you were
2 recording.

3 A Okay.

4 THE COURT: All right, you want to publish?

5 MR. HOLFORD: Yes, Your Honor, may we publish exhibit,
6 State's, State's One?

7 THE COURT: State's One, do you request to publish it,
8 Ms. Knowles?

9 MS. KNOWLES: That's fine, Your Honor.

10 THE COURT: All right, thank you. Mr. Ropp, okay.
11 That's a little low. Can you all see it? Everyone? Okay.

12 MR. HOLFORD: Can everyone see that?

13 (Whereupon, State's Exhibit Number One played in open
14 court.)

15 BY MR. HOLFORD:

16 Q Now, can you kind of talk through this as we're seeing
17 it?

18 A Okay, this obviously was where I first began to film the
19 incident, watching the Defendant place items in the cart.
20 Here he is shown taking pictures of some other items with his
21 camera phone. You'll see another customer walk into the frame
22 shortly, had nothing to do with any of this.

23 Q Can you see the date stamp on that?

24 A Yes, it's August the 5th, 2012. The time is off though.
25 We, we can't - that time is set automatically. The - it's

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1 actually an hour slow. Now, this is where he walks around and
2 begins to go into the area I was speaking of, which is
3 actually in lawn and garden. This is as I'm switching,
4 switching cameras and I was kind of giving the benefit of the
5 doubt to see if he was going to walk towards the cash
6 register, which he didn't. Instead of making the left he made
7 a right and went towards that back wall.

8 Q Now, as we're looking at this where are the cash
9 registers?

10 A There's one directly in the center of the screen.
11 There's a gentleman with a white shirt on. That is one of the
12 registers and the other was completely over to the right near
13 the other exit, and if you watch closely towards, just to the
14 upper right-hand portion of the screen you should be able to
15 see Mr. Phillips coming right around the corner there and go
16 to the door. He'll turn around, open the door backwards and
17 pull the cart out through the door. At this point I'm already
18 on my way from the office, which is a little distance away. I
19 had to come through the warehouse to get to that point and
20 he's already outside.

21 Q The person we saw at the top of this screen you're saying
22 that was the same person that placed items in the cart, walked
23 around the store and left.

24 A Without paying for it, yes.

25 Q Now, were you also doing loss prevention at Sears on the

1 6th?

2 A I was.

3 Q Were you making the videos?

4 A Not on that day. I, I came in later on the shift, I -
5 after having worked my first job.

6 Q Mr. Costa, based on your experience in loss prevention
7 and law enforcement, what you observed that day what do you
8 believe that to be?

9 A What violation it was?

10 Q Yes, sir.

11 A Absolutely shoplifting.

12 Q And he never paid for those items?

13 A Never once, never came close.

14 MR. HOLFORD: No further questions, Your Honor.

15 THE COURT: All right, Ms. Knowles.

16 MS. KNOWLES: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. KNOWLES:

19 Q Were you the only ---

20 THE COURT: Ms. Knowles, are you going to need the ---

21 MS. KNOWLES: I don't think that I will.

22 THE COURT: Okay, let's take it up then, get the
23 lights back up.

24 BY MS. KNOWLES:

25 Q Mr. Costa, were you the only one working loss prevention

Arthur Costa - Cross by Defense

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1 on August 5th?

2 A At that point I was, yes.

3 Q So for the entire store it was just you?

4 A Yes.

5 Q And you made a statement to law enforcement regarding
6 this; correct?

7 A I wrote the report, yes.

8 Q You made a statement to officers, a written statement?

9 A Yes.

10 Q And in that statement you say later identified as Boris
11 Phillips. So, is it fair to say that you didn't know my
12 client who was in that video?

13 A I did not know his name at that time, no.

14 Q And you're responsible for turning over this evidence to
15 law enforcement; correct?

16 A Which evidence?

17 Q The video.

18 A The video, either I or my supervisor, yes.

19 Q And who's your supervisor?

20 A Jason Plumley.

21 Q And obviously this is only a portion of August 5th;
22 correct?

23 A Yes.

24 Q Just what you felt was important to show?

25 A Well, it's, it's basically my involvement with it from

1 the time that I saw him removing items and his activities and
2 his departure from the store.

3 Q And you said that you left your post and went after him?

4 A I did.

5 Q Why is that not on the video?

6 A My leaving?

7 Q Going after him, you said that you left your post and
8 went after him whenever you realized what had happened.

9 A That part would probably be on what we call Intellex
10 which is a hard drive on the computer, but I don't know why it
11 doesn't show me. I believe it shows me entering the lawn,
12 lawn and garden vicinity through the warehouse doors but it
13 stops there.

14 Q I didn't see that on what was shown to the jury. So, you
15 followed this person into the parking lot; is that correct?

16 A I went to the parking lot. The person was already gone.

17 Q In your statement do you recall alluding to the fact that
18 the view of the camera lens was obstructed at some point?

19 A I'm not recalling that right now.

20 Q Do you need to see your, your statement and ---

21 A If I could, yes.

22 Q Yes, just that portion there underlined what I'm
23 referring to.

24 A Okay, that would be referring to the wall in the back of
25 lawn and garden. The partial obstruction would be where there

1 are lateral shelving units, but you could see him as he
2 progressed through them there is a fixed camera back there and
3 I have reference to that, the position camera to record said
4 area.

5 Q But we don't have that viewpoint; do we?

6 A Yes, ma'am, it's on the video.

7 Q Okay, so, we have both angles?

8 A Uh-huh.

9 Q All right, so then there should be no obstructed view;
10 correct?

11 A From the directional camera that we have partially. As
12 I'm stating there were - there are shelving units going this
13 way. So, as he would progress this way, as he passed each
14 one, but from that fixed position it was constant and I did go
15 to that view and that is on the video.

16 Q Let me ask it this way.

17 A Okay.

18 Q Is there - what we've seen is fair to say there is some
19 time that passes where he's not in the camera's viewpoint.

20 A As I'm changing cameras, yes.

21 Q Okay, and to your knowledge is there surveillance outside
22 in the parking lot of this mall?

23 A Yes.

24 Q Did you retrieve that in order to hopefully see him
25 exiting the store?

1 A I looked at those camera angles and they weren't
2 positioned in such a way that I could see him.

3 Q But that was never turned over to law enforcement;
4 correct?

5 A He wasn't on the view.

6 Q There is no camera that is focused on the part of the
7 building where someone is exiting and entering?

8 A It's a movable camera and it wasn't in position to where
9 his exit was.

10 Q But as far as the cars in the parking lot there is a
11 camera that, that captures that; correct?

12 A Yes.

13 Q Okay, and you're saying that neither offered any
14 additional evidence?

15 A No, they weren't taking that particular view.

16 Q And were there other employees that were working that
17 particular day?

18 A Yes.

19 Q Okay, and do you sometimes utilize them if you're short
20 staffed and you see a crime being committed?

21 A Utilize them in what way?

22 Q To help you out, to follow the individual.

23 A No.

24 Q Okay, so, one - it's a one man show generally?

25 A At times it could be two or three. My supervisor came in

Arthur Costa - Cross by Defense

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1 shortly after the incident. I was scheduled earlier than he
2 was.

3 Q Okay, and this happened when? What was the date? Do you
4 recall?

5 A August the 5th.

6 Q Do you recall when this was reported?

7 A Not off the top of my head. I mean, I made my reports
8 that day. Are you talking when it was turned over to law
9 enforcement?

10 Q Do you - yes, when it was turned over, when the call was
11 made to law enforcement.

12 A I don't recall that date, no.

13 Q You didn't make the call?

14 A I did not.

15 Q Okay, do you generally not call the police whenever a
16 crime has been committed?

17 A I didn't have a name to give them at that point.

18 Q Do you recall when you made your written statement, when,
19 what date? If you don't I can show it to you.

20 A I really don't know. I would have to look at the report
21 for that one.

22 Q It says that up here.

23 A The date and time of the incident was August the 5th,
24 11:50 a.m.

25 Q And it also lists the date and time that that statement

1 was written. What date and time was that? It says date
2 written I believe.

3 A No, it just says date and time.

4 Q Date and time that the statement is written.

5 A That's ---

6 Q It was done on August 5th?

7 A Yes, that's when I wrote the report, when I wrote this
8 statement.

9 Q Do you have just blank letterhead from Myrtle Beach
10 Police Department?

11 A We do keep them on hand.

12 Q You do?

13 A Because we have to have them written ahead of time.

14 Q Okay, I think that may be it but let me just double-
15 check, okay? Mr. Costa, is there a camera at the door that
16 captures entry and exit?

17 A There is.

18 Q Okay, and was that camera functioning on this particular
19 day?

20 A Yes.

21 Q Did you submit that footage to law enforcement?

22 A That particular camera was not filmed on my tape. I had
23 two other cameras on the tape, actually one that was looking
24 at that door.

25 Q So, there does exist footage of entry and exit but we

Arthur Costa - Redirect by State

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1 just don't have it.

2 A The exit footage is on that, that tape that was - the DVD
3 that was played from that camera angle.

4 Q Okay.

5 MS. KNOWLES: No further questions.

6 MR. HOLFORD: One question, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HOLFORD:

9 Q Mr. Costa, is it necessary to see a different angle to
10 see the Defendant leave the store without paying for the
11 items?

12 A No.

13 THE COURT: You may step down.

14 A Thank you.

15 MR. HOLFORD: Thank you.

16 Your Honor, the State calls Jason Plumley to the stand.

17 Whereupon, Jason Plumley was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Please state your full name and spell your
20 last name.

21 MR. PLUMLEY: Jason S. Plumley, P-L-U-M-L-E-Y.

22 DIRECT EXAMINATION

23 BY MR. HOLFORD:

24 Q Mr. Plumley, how are you doing this morning?

25 A Good.

1 Q Can you tell the jury a little bit about yourself, about
2 your background, what you do?

3 A Yeah, I've been doing loss prevention in Myrtle Beach for
4 - going on my fourth year now. So, I'm three years solid and
5 I'm in my fourth year now, done some private sector security
6 before that and I was in emergency services before that in
7 upstate New York.

8 Q We've heard a lot about you today. You're the supervisor
9 at this Sears at Coastal Grand?

10 A That's correct.

11 Q And were you present on the 5th and 6th?

12 A On the 5th I came in after the incident had happened and
13 on the 6th I was present, yes.

14 Q Okay, what's your direct involvement to this case as it
15 relates to Mr. Phillips on August 5th?

16 A On August 5th would be just reviewing, you know, the video
17 with Art, Mr. Costa, and, you know, relaying information with
18 the police department.

19 Q And did you have other involvement with Mr. Phillips?

20 A On the following day, yes.

21 Q Now, have you had a chance to review the video from
22 August 5th?

23 A I have.

24 Q Is it a true and accurate representation of what took
25 place that day?

Jason Plumley - Direct by State

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1 A Absolutely.

2 Q And you just viewed it in this courtroom. So, I don't
3 need to show it again; do I?

4 A No, sir.

5 Q And what did you observe on that video?

6 A I observed him selecting merchandise, passing all points
7 of sale and exiting the building without paying for the
8 merchandise.

9 Q Now, on the, on the 6th you were actually in the store; is
10 that correct?

11 A That's correct.

12 Q And you were the one doing the filming?

13 A Yes.

14 Q Did you have a chance to video Mr. Phillips on the 6th?

15 A I did.

16 MR. HOLFORD: Your Honor, I'd ask to publish, it's still
17 State's One to the jury.

18 MS. KNOWLES: I just fail to see the relevancy in this
19 because the incident is August 5th.

20 THE COURT: Let's see, let's see what it is.

21 MR. HOLFORD: Thank you, Your Honor.

22 BY MR. HOLFORD:

23 Q Before I do this we've talked about a Mr. McKenzie
24 identifying Mr. Phillips. What did you show him?

25 A Mr. McKenzie was in the store on the 6th, and you know,

1 witnessed him first hand in the store and then also through
2 the video he had agreed.

3 (Whereupon, State's Exhibit Number One played in open
4 court.)

5 THE COURT: Mr. Holford, don't block the jurors.

6 MR. HOLFORD: Yes, Your Honor.

7 BY MR. HOLFORD:

8 Q Can you tell us what we're seeing in this video right
9 here?

10 A He was making a request to ---

11 MS. KNOWLES: Your Honor, I object to that.

12 THE COURT: Just tell us what you see, not what he was
13 doing.

14 Q What do you see?

15 THE COURT: Making a request, this witness couldn't
16 testify to that.

17 A I see Mr. Phillips at the cash rep.

18 Q Who's filming right now?

19 A I had started and then I believe Mr. McKenzie took over
20 because I was actually called out to the cash rep due to the
21 situation.

22 Q Who is that that just walked into the picture?

23 A That is me.

24 Q You had a chance to review the video from the 5th. Is
25 this the same person that was on that video the 5th?

Jason Plumley - Cross by Defense

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1 A Absolutely.

2 Q Now, you don't need to tell us what he's saying or what
3 you're saying, but did he come back and pay for the goods from
4 the 5th?

5 A No.

6 Q One more time, who's up there right now as you're down on
7 the floor? Who's up there filming?

8 A Mr. McKenzie was back in my office.

9 Q That person that you had contact with face to face on the
10 6th is that the same person that was in the store on the 5th?

11 A Yes.

12 MR. HOLFORD: Your Honor, I have no further questions.

13 THE COURT: Ms. Knowles.

14 CROSS EXAMINATION

15 BY MS. KNOWLES:

16 Q You just stated on direct examination that you relayed
17 information to the police department on August 5th; is that
18 right? Is that what I heard or did I mishear it?

19 A Not on August 5th.

20 Q Okay, when was a report actually filed?

21 A It was later on in that month. I honestly don't know the
22 exact date.

23 Q Do you recall it being around the 18th?

24 A It could have been, yeah. I can't say because I honestly
25 don't have that information.

1 Q But it wasn't that day?

2 A Correct, it was not that day.

3 Q And it wasn't after you saw allegedly my client come back
4 in. You didn't call the police then; did you?

5 A Not that day, no.

6 Q But you knew who he was because of the identification
7 that you claim Mr. McKenzie made.

8 A He made that on the 6th.

9 Q On the 6th, right, but cops were not called until the
10 18th.

11 A Correct or that time period.

12 Q If you knew who he was and you had seen him commit a
13 crime why did you not attempt to apprehend him?

14 A On the 6th?

15 Q Yes, sir.

16 A We don't go for that day, you know, we only apprehend at
17 that time period. So, you know, I'm not going to apprehend
18 him on the 6th for something he did on the 5th. I'm not the
19 police department. I'm a loss prevention associate. So, we
20 only work right in that time period when it's an active crime.

21 Q But you didn't even report the crime until a week and a
22 half later.

23 A Sure.

24 Q So, how could the police apprehend the person responsible
25 in a fast manner if you don't report it immediately?

1 A We build a case, you know, usually we work with multiple
2 groups like this or multiple people like this and we build a
3 case. You know, they don't usually come in just one time. He
4 developed a pattern on the 6th of being in our store. So, you
5 know, we do our own investigations and we may have, before we
6 report to the police we may have three incidents before or
7 that takes us to get license plate numbers, positive
8 identifications and things like that. So, we usually build a
9 complete case and hand that over to the police department.

10 Q But on, but on the 5th you had no idea who he was.

11 A Uh-huh.

12 Q On the 6th he comes in.

13 A Uh-huh.

14 Q You had just viewed the video; correct, of the 5th?

15 A From the 5th, correct.

16 Q Your testimony is that you watched him commit a crime;
17 correct?

18 A On the 5th.

19 Q 5th.

20 A Correct.

21 Q He comes back in on the 6th and you just let him walk out
22 of the door?

23 A Yes, I'm not going to stop him for a crime that he
24 committed on the 5th on the 6th, yes.

25 Q Okay, did anyone make any effort to follow him to see

1 maybe possibly what vehicle he would get into?

2 A No, I'm not going to put my associates out in a parking
3 lot or to follow somebody, absolutely not.

4 Q So, how certain that you - how certain were you that this
5 was, in fact, the person that you were told it was? How
6 certain could you be? You didn't know him.

7 A From ---

8 Q What did you rely upon, yes.

9 A The statement of Mr. McKenzie.

10 Q Okay, and Mr. McKenzie was not present on the 5th; was he?

11 A No.

12 Q To your knowledge were all the cameras in the facility,
13 excuse me, operating and functioning properly on this
14 particular day, on the 5th?

15 A I've never ran at a hundred percent. So, I can't say if
16 they all were, no.

17 Q Okay, and based upon the video that you saw on the 5th or
18 of the 5th incident was there a period in time in which the
19 camera was obstructed, you could not see the person on the
20 video the entire time?

21 A Based off what I saw, you know, I go back exactly what
22 Mr. Costa said with the aisles going down through there and
23 then camera, I'll even give you camera number, camera 35 is
24 where you see that switch to when he comes down across those
25 back aisles ---

Jason Plumley - Cross by Defense

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1 Q Uh-huh.

2 A --- and in the video, you know, you could still see
3 merchandise in that cart at that time on 35. So, that's past
4 the point of where you're talking about the obstructions, so,
5 yes.

6 Q Okay, and I could not see the actual exit. Is there a
7 camera that captures that?

8 A There would be, but again we're still on a very old
9 system. We can only record two cameras at a time.

10 Q Uh-huh.

11 A So, they're in front of us. So, if the video that you
12 saw was on one and, you know, whatever other camera - I wasn't
13 there. So, I can't tell you what camera was on the other
14 side.

15 Q Okay.

16 A But that's why we record two at a time like that.

17 Q So, it's your testimony that it's typical in your
18 position as a supervisor of loss prevention at Sears to wait
19 days to report an incident?

20 A It could be if you're trying to build a case or a pattern
21 absolutely.

22 Q But again, you had no idea if this person would come back
23 in on the very next day.

24 A The very first day we didn't have the information to make
25 a case. The second day he showed a pattern of being in my

1 store. So I was going to let him continue that pattern.

2 Q But never notified police until the 18th.

3 A Further information was gained, correct.

4 Q Right, and when - were you responsible for reporting
5 this?

6 A I believe I was there that day. The statements and
7 things were already done and reported, but you know, I was
8 there that day to turn over some video and out of the case
9 file to the officer that responded out.

10 Q Okay, so, what information - was it information that you
11 provided that the officer relied upon in drafting this
12 investigation report or ---

13 A The information that my associates had given to me is
14 what I transferred over to the officer, so.

15 Q Okay, and isn't it true that Officer McIntyre was
16 responding to an unrelated incident?

17 A A different event, a different shopping event, yes.

18 Q So you did not even call the police on this particular
19 day to report this crime; did you?

20 A No, ma'am.

21 MS. KNOWLES: No further questions, Your Honor.

22 THE COURT: Anything further, Mr. Holford?

23 MR. HOLFORD: No, Your Honor.

24 THE COURT: Mr. Plumley, you can step down. Thank
25 you.

William McKenzie - Direct by State

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1 MR. HOLFORD: Your Honor, the State calls William
2 McKenzie.

3 WHEREUPON, William McKenzie was called to the stand, duly
4 sworn by the clerk and testified as follows:

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

7 MR. MCKENZIE: William Christopher McKenzie, M-C-K-E-N-Z-
8 I-E.

9 DIRECT EXAMINATION

10 BY MR. HOLFORD:

11 Q Mr. McKenzie, will you please tell the jury a little bit
12 about yourself, what you do, what your background is?

13 A I was with Sears for eight years prior, helped out loss
14 prevention department there, had been in the automotive field,
15 six months ago I went back to Sears to take over the loss
16 prevention as the loss prevention lead there.

17 REPORTER: You need to speak into that microphone,
18 sir.

19 A Okay, I'm sorry.

20 Q Which Sears?

21 A In Florence, South Carolina.

22 Q Did you have a chance to be in the Myrtle Beach Coastal
23 Grand Sears?

24 A Yes, that's where I go for training.

25 Q Do you know the Defendant?

- 1 A Yes, I have met him.
- 2 Q Do you know who he - do you know his name?
- 3 A Yes, Boris Phillips.
- 4 Q And how do you know his name?
- 5 A When I was working at an automotive place he was had
- 6 worked there, was leaving. I can't remember exactly at the
- 7 time but I had met him a few times and he would frequent us.
- 8 He had friends there. So I met him several times there and
- 9 also had seen him in auto parts stores and stuff like that.
- 10 Q And you're sure that person right there is Boris
- 11 Phillips?
- 12 A Yes.
- 13 Q And you would recognize him?
- 14 A Yes.
- 15 Q From nothing to do with this case, just prior.
- 16 A Nothing, just I thought he was a nice guy actually. I
- 17 had talked to him a few times.
- 18 Q Now tell the jury a little bit about your involvement in
- 19 this case specifically, the August 5th incident.
- 20 A Basically they were showing me a video of what had gone
- 21 on where he had stuck the stuff in the cart and pushed it out
- 22 of the store and I instantly recognized him, I said this - his
- 23 name's Boris and we looked it up and it was Boris Phillips and
- 24 that was the gentleman that I knew.
- 25 Q So why were you in the store on the 6th?

William McKenzie - Direct by State

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1 A Getting training, Jason is my mentor, basically getting
2 certified with Sears. Him showing me how to do the different
3 paperwork that we have to do there, how to build a case, that
4 type stuff.

5 Q Were you in the - I don't know what you call it, if you
6 call it control room or the room where you record? Were you
7 in that room on the 6th?

8 A Yes, sir, I was.

9 Q And were you doing any of the recording?

10 A No, sir, I was watching it.

11 MR. HOLFORD: Your Honor, I'd like to publish, it's
12 Exhibit One, that same video.

13 THE COURT: All right, are you going to republish
14 exactly what we saw before?

15 MR. HOLFORD: Yes, Your Honor.

16 THE COURT: Okay, just do enough that the witness
17 feels comfortable with identifying him.

18 MR. HOLFORD: Yes, Your Honor.

19 (Whereupon, State's Exhibit Number One played in open
20 court.)

21 BY MR. HOLFORD:

22 Q Mr. McKenzie, were you in the store this day?

23 A Yes, sir.

24 Q Can you recognize that person on the video?

25 A That person is Boris Phillips.

1 Q And who did you tell?

2 A Mr. Plumley.

3 Q Without a doubt that person is Boris Phillips?

4 A That's, yes, yes, sir, without a doubt.

5 Q Now, did you have a chance to review the video from
6 August 5th?

7 A Yes, sir, I did get to look at that.

8 Q This is a video from August 5th. Now, you weren't present
9 on that day; were you?

10 A No, sir, I was not.

11 Q But you did have a chance to review it?

12 A Yes, sir, I did.

13 Q Can you identify that person on the video right there?

14 A Yes, sir, that is Boris Phillips.

15 Q Without a doubt?

16 A Without a doubt, sir.

17 Q Based on?

18 A My past meetings with him and stuff.

19 Q The person on this video on August 5th, 2012, in the Sears
20 store is Boris Phillips?

21 A Yes, sir.

22 Q Who is sitting in the courtroom as the Defendant?

23 A Yes, sir.

24 Q Just so we're clear, you were shown the video on the 5th,
25 you witnessed on the 6th and you told Mr. Plumley who that was

1 on the video?

2 A Yes, sir.

3 Q He didn't know who it was beforehand; did he?

4 A No, sir.

5 Q Mr. Costa didn't know who it was beforehand; did he?

6 A No, sir.

7 Q It was just because you identified him.

8 A Right, we're from the same area in Florence.

9 MR. HOLFORD: Your Honor, I have no further questions.

10 THE COURT: All right, Ms. Knowles.

11 CROSS EXAMINATION

12 BY MS. KNOWLES:

13 Q Mr. McKenzie, you said that you had worked with my client
14 previously?

15 A Yes, ma'am.

16 Q And how long ago was that?

17 A Thirteen years.

18 Q Thirteen years.

19 A Will be 13 years in July.

20 Q And where did you work together?

21 A Black's Tire Service.

22 Q And what did he do there?

23 A I think he was going out the door, I showed - was leaving
24 the day I showed up or whatever else. He actually, I think,
25 was some type of mechanic there, but he did frequent, was

1 friends with all the guys that worked at the shop.

2 Q So, did the two of you work together or was he a
3 customer?

4 A For a, for a short period of time I think we did work
5 together.

6 Q Well, you say short period of time, how, how long?

7 A A couple of days.

8 Q So, you were able to immediately identify my client on
9 this video from working with him for a couple of days 13 years
10 ago?

11 A Yes, ma'am, but he also would come in the store a lot.
12 He had friends that worked inside the store. So, he was in
13 and out of the, out of the, in and out of the tire store quite
14 a, quite frequently.

15 Q What was so distinct about him coming in and out of the
16 tire store that stood out in your mind for you to remember him
17 like that?

18 A Actually it was his name and that he was actually a nice
19 fellow to talk to.

20 Q Now, you said that you had been working at Sears for the
21 past eight years; correct?

22 A I worked there eight years and went back to Sears about
23 six or seven months ago. I worked there for eight years
24 before and then came back.

25 Q In the same capacity, in the same job?

1 A Before I was a sales manager but had a lot of involvement
2 with loss prevention and then they brought me back as the loss
3 prevention lead about six months ago, six or seven months ago.

4 Q So you've been the loss prevention manager at the Sears
5 in Florence for what'd you say eight months, six to eight
6 months?

7 A Six to seven months, I think I started June the 27th if
8 I'm not mistaken.

9 Q Now, on direct you said that when you saw this you looked
10 something up ---

11 A On ---

12 Q --- and thought you knew his name? I was a little bit
13 ---

14 A I knew his name, Boris, but I didn't know ---

15 Q Okay.

16 A --- yeah, I knew his name Boris.

17 Q Have you had any shoplifting incidents that occur in your
18 store?

19 A Yes, ma'am.

20 Q What's the common practice after something like that
21 happened? What do you do? What are the steps that you take
22 after a shoplifting incident occurs that you see in person?

23 A That I see in person?

24 Q Uh-huh.

25 A Actually go up to the person, tell them who I am,

1 describe them while I'm talking to them.

2 Q So, it is to approach them in some way?

3 A Right, as soon as they leave, as soon as they leave the
4 doors.

5 Q You don't let them - you try not to let them leave with
6 your merchandise; correct?

7 A Correct.

8 Q And when do you generally report that crime?

9 A Generally immediately.

10 Q Immediately.

11 A Uh-huh.

12 Q So, were you a bit shocked that Mr. Plumley didn't stop
13 Mr. Phillips on the 6th whenever you were video, video
14 capturing all of this while he was speaking with my client?

15 A I really didn't have an opinion on it to be honest with
16 you. I, I was still like in a training mode.

17 Q But you had seen ---

18 A Right.

19 Q --- the video ---

20 A Right.

21 Q --- that you relied upon to make an identification
22 already at this point in time; correct?

23 A Yeah, but it was not my judgment call whether he made the
24 stop or not.

25 Q Okay.

Heather Lewis - Direct by State

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1 A It was not my judgment call. He was the manager there.
2 Actually at that point I wasn't even certified to make a stop.

3 Q Okay, all right, I think that might be it. Let me just
4 double-check; okay? Just to be clear ---

5 A Uh-huh.

6 Q --- your identification was based upon your experience
7 with him working together 13 years ago for a couple of days?

8 A Yes, and seeing him in part, and seeing him in part
9 stores and stuff like that, yes, ma'am.

10 Q Okay, thank you very much.

11 MR. HOLFORD: No questions from the State, Your Honor.

12 THE COURT: All right, you may step down. Thank you.

13 MR. HOLFORD: Your Honor, the State calls Heather Lewis
14 to the stand. That's our final witness.

15 WHEREUPON, Heather Lewis was called to the stand, duly
16 sworn by the Court and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HOLFORD:

19 Q Good morning, Ms. Lewis, how are you today?

20 A I'm good. How are you?

21 Q Could you tell the jury where you work?

22 A I work for the Horry County Clerk of Court.

23 Q And do you have any specific involvement in this case?

24 A No.

25 Q I'm going to hand you what's been marked as State's

1 Exhibit Three for identification purposes. Can you identify
2 what this is?

3 A It is a sentencing sheet that shows a conviction for
4 Boris Alonzo Phillips.

5 Q And what is that conviction for?

6 A It's for shoplifting.

7 Q Can you tell us the date of conviction?

8 A The date is October 12th, 2009.

9 Q Now, how, how can you be so sure? I know this seems like
10 a simple question, but how can you be so sure that this is a
11 conviction for shoplifting?

12 A It's got a stamp on it, certified true copy, Clerk of
13 Court for Florence County. It's got a stamp and a seal.

14 Q And do you work with these types of documents in your day
15 to day business?

16 A I do..

17 MR. HOLFORD: Your Honor, I ask that State's Exhibit
18 Three be entered in evidence.

19 MS. KNOWLES: Let me see.

20 THE COURT: Let me look at it. Let me look at it,
21 please. Let's just mark it for identification, all right?

22 MR. HOLFORD: For identification, yes, sir, Your Honor.

23 THE COURT: All right, just for identification.

24 BY MR. HOLFORD:

25 Q Now I'm going to approach you with State's Exhibit Four

Heather Lewis - Cross by Defense

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1 for identification. Can you identify this document?

2 A Sure, it is a sentencing sheet on Boris, Boris Alonzo
3 Phillips for a charge of shop, shoplifting.

4 Q And what's the date on that?

5 A The date on this is December 11th, 2008.

6 Q Can you tell if that's a conviction?

7 A Yes, it shows that he pled guilty.

8 Q And how do you know ---

9 A That it's ---

10 Q --- how do you know what that is?

11 A There is a stamp on this one as well, true certified
12 copy, Clerk of Court for Florence County.

13 Q So, what I've just shown you and you've identified are
14 two certified convictions for shoplifting?

15 A Yes.

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

17 THE COURT: Ms. Knowles.

18 CROSS EXAMINATION

19 BY MS. KNOWLES:

20 Q You have no knowledge of - as to what happened on August
21 5th of 2012, do you ---

22 A No.

23 Q --- with regard to my client?

24 A No.

25 Q And you don't know what circumstances existed at the time

1 that these convictions occurred; do you?

2 A No, ma'am.

3 Q No further questions.

4 THE COURT: You may step down. Thank you.

5 MR. HOLFORD: Your Honor, at this time the State rests.

6 THE COURT: All right, let's send the jury out for
7 just a moment.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, Ms. Knowles, the State rests.

11 MS. KNOWLES: Your Honor, at this time I would make a
12 motion for a directed verdict for purposes of the Court's
13 record. I do not believe that the State has met its burden of
14 proof with proof beyond a reasonable doubt to establish each
15 and every element of the crime as charged with the evidence
16 that's been presented.

17 THE COURT: All right, certainly the evidence is such
18 that it should go to the jury and I'm going to do that. Ms.
19 Knowles, will your client testify?

20 MS. KNOWLES: Your Honor, you may want to inquire. I
21 don't believe so, but let me just double-check.

22 THE COURT: I'm going to.

23 (Ms. Knowles and Mr. Phillips confer.)

24 MS. KNOWLES: He does not wish to testify.

25 THE COURT: All right, let me explain his rights to

Questioning Re: Testifying

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1 him. Stand up if you would, Mr. Phillips, and be sworn.

2 (Whereupon, Defendant is sworn by clerk.)

3 THE COURT: Mr. Phillips, at this time I'm going to
4 explain to you certain of your rights. If you don't
5 understand anything I say please let me know and if you want
6 me to explain anything in a more detailed fashion let me know
7 that also. Do you understand?

8 MR. PHILLIPS: Yes, sir.

9 THE COURT: All right, we have reached the stage of
10 the trial where you may present your defense and you have the
11 right to claim the protections given to you by the Fifth
12 Amendment to the Constitution of the United States and this
13 amendment in part says no person shall be compelled in any
14 criminal case to be a witness against him. That means you do
15 not have to testify in your criminal case. You have the right
16 to but you do not have to. This means that you cannot be
17 required to testify in the case. You have the right to
18 testify on your own behalf; however, no one can make you
19 testify and this is a personal right. No one can waive this
20 right except you. If you decide to testify you will be
21 subject to the same rules that govern other witnesses and you
22 may be examined and cross examined on any relevant issue in
23 the case. In addition if you have any questions, excuse me,
24 in addition if you have any convictions involving dishonesty
25 or false statement or for crimes punishable by imprisonment

1 for more than one year and this Court determines that the
2 probative value of admitting this evidence outweighs its
3 prejudicial effect to you the Solicitor will be able to
4 introduce your record to attack your credibility or
5 believability. If you decide to testify this decision on your
6 part must be freely, voluntarily and intelligently made, with
7 knowledge of the protections given to you by the Fifth
8 Amendment and the consequences of your decision to testify.
9 If you decide not to testify I will instruct the jurors that
10 they cannot give that fact or the fact that you did not
11 testify any consideration whatsoever and that there's to be
12 absolutely no prejudice to you because you did not testify.
13 It is left entirely up to you whether or not to testify and
14 you may talk with your attorney, your family or friends or
15 anyone else but the final decision will be left entirely up to
16 you. Do you understand what I've explained to you?

17 MR. PHILLIPS: Yes, sir, Your Honor.

18 THE COURT: Do you have any questions about what I've
19 explained to you?

20 MR. PHILLIPS: No, sir.

21 THE COURT: Have you discussed this with your lawyer?

22 MR. PHILLIPS: Yes, sir.

23 THE COURT: Do you wish to talk with your lawyer
24 anymore at this time?

25 MR. PHILLIPS: No, sir.

Questioning Re: Testifying

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1 THE COURT: All right, now, tell me then do you wish
2 to testify?

3 MR. PHILLIPS: No, sir.

4 THE COURT: All right, sir, thank you very much. You
5 may be seated.

6 All right, will the Defense call any witnesses?

7 MS. KNOWLES: No, sir.

8 THE COURT: Does the Defense rest?

9 MS. KNOWLES: Yes.

10 THE COURT: All right, it's 12:45. What I'd like to
11 do is bring this jury back in. I'm going to let you do your
12 closing arguments. I want to order lunch for them and can you
13 do that, Heather, while they're out?

14 THE CLERK: Yes, sir.

15 THE COURT: Go ahead and order it right now.

16 THE CLERK: Okay.

17 THE COURT: Just go ahead and order lunch for them.

18 We'll continue with this break for another five or ten
19 minutes, we'll bring them back in and we'll let you argue and
20 then I'll charge. Okay?

21 MR. HOLFORD: Thank you, Your Honor.

22 Your Honor, can I make something clear for the record?

23 THE COURT: Yes.

24 MR. HOLFORD: On this video it's a video that has a
25 number of different files. The State played file BTS

1 underscore 02 underscore 1.VOB was of August 5th and BTS
2 underscore 03 underscore 1.VOB which was of the 6th.

3 THE COURT: All right.

4 MR. HOLFORD: Those were the only two videos played.

5 THE COURT: And we're not going to send the tape back
6 there. We'll bring them back out here ---

7 MR. HOLFORD: No.

8 THE COURT: --- if they want to see the tape.

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: All right, we're at ease for about 10
11 minutes.

12 OFF THE RECORD

13 (On the record. The following takes place outside the
14 presence of the jury.)

15 THE COURT: Mr. Holford, Ms. Knowles, please be
16 seated. As both of you know it's my custom and it has been my
17 custom to provide the jury with a transcript of my jury
18 charge. So, I have provided you with a copy of it. You might
19 want to take a second and look over it real quick. That's
20 what I will charge. I call your attention to page 12 where I
21 describe the offense. There are many things that can
22 constitute shoplifting but I only am going to charge took
23 possession of, carried away, transferred from one person to
24 another or from one area to another, so forth and so on. What
25 I have there that's what I'm going to charge. There's some

Questioning Re: Testifying

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1 other things that were in the charge that aren't relevant.

2 So, I'm not going to charge those.

3 MR. HOLFORD: Yes, Your Honor.

4 THE COURT: All right, you see any need for additions
5 or deletions from the charge, Mr. Holford?

6 MR. HOLFORD: The State has no objections, Your Honor.

7 THE COURT: Ms. Knowles?

8 MS. KNOWLES: Your Honor, I don't ---

9 THE COURT: Just give you a moment there.

10 MS. KNOWLES: No, sir, no other additions.

11 THE COURT: All right, and the verdict form will be
12 very simple in this particular case, simply ask whether or not
13 that as to the charge of shoplifting third or subsequent
14 offense, we, the jury unanimously find the Defendant guilty,
15 not guilty, circle one. That's all we're going to have; okay?

16 Any objection, Ms. Knowles? All right, let's bring in
17 the jury. Ms. Knowles, you will take last argument?

18 MS. KNOWLES: Yes, sir.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, ladies and gentlemen of the
22 jury, we have you all back in. We have concluded the State's
23 case and the Defense has informed me that they rest as well.
24 So, we're at the point in this case where you will hear
25 closing arguments and then I will charge you as to the law. I

1 don't anticipate the closing arguments will be lengthy in this
2 case. They may be but I don't anticipate that and my charge
3 is not as lengthy as it might be in some other cases. So,
4 what I want to do is go ahead and do that now. I have ordered
5 lunch for you and about the time that we are done I would
6 think that we'd probably have your lunch and we can let you
7 just go ahead and begin your deliberations rather than
8 breaking. It might enable you to finish up today or even a
9 little early, but we'll see, okay?

10 Mr. Holford.

11 MR. HOLFORD: Yes, Your Honor, may it please the Court?

12 THE COURT: All right, yes.

13 MR. HOLFORD: Good afternoon, finally, ladies and
14 gentlemen of the jury. I know this has been a short case. I
15 know my opening statement was short and I hope that my closing
16 statement will be short also. I don't want you to think that
17 that's because I don't think this case is important. I don't
18 want you to think that I take these charges lightly because I
19 don't. I think it is important. I think your time is
20 important, which is why I've tried to keep it as brief as
21 possible.

22 Also, I think it's a pretty simple case. What we have
23 the Defendant who walked into the store, put items in his
24 basket and walked out of the store without paying for them.
25 That's shoplifting and that's what I have to prove to you. It

Closing by State

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1 is my burden. We'll talk a lot about burden and the Defense
2 likes to talk about how it's my burden. I have a high burden,
3 beyond a reasonable doubt. You have to be firmly convinced
4 that this Defendant did what he's accused of. After you
5 watched the video you saw him. You can make a determination
6 for yourself whether that's actually the Defendant seen on the
7 video or not. It's a clear picture. If you're not sure you
8 can rely on the testimony of Mr. McKenzie. He says, "I knew
9 the guy. I've known him for years. We worked together in
10 Florence. He had a distinct name. I remember him." He
11 wasn't prompted. Mr. Costa didn't know him. Mr. Plumley
12 didn't know him. Mr. McKenzie was watching a video and said,
13 "I know who that is, Mr. Boris Phillips," the Defendant who
14 sits before you today, the same man who on August 5th, 2012,
15 entered Sears at Coastal Grand, put items into his basket and
16 passed all points of sale without paying for any of those
17 items.

18 The Defense is also going to try and muddy the waters and
19 talk about, "Why, why'd you wait so long? Why didn't you call
20 the police that day? Why didn't you report it immediately?"
21 First of all they didn't know who Boris Phillips was that day.
22 It is true that Mr. McKenzie on the 6th told them that he knew
23 who he was. I imagine at that point he had already left the
24 store. Why didn't they call the next day? I don't know.
25 Does it matter? The charge that he is facing is shoplifting.

1 It doesn't matter when they reported it. It doesn't matter
2 why they waited to report it. What matters is what you saw on
3 that video, whether that was the Defendant shoplifting.

4 Now, what I also have to prove to you since this is a
5 third or subsequent offense as an element of that are the
6 prior convictions. That's why we got into that. We don't get
7 into it to show that Mr. Phillips is a bad person. We don't
8 get into it to show that he's committed crimes in the past,
9 solely for the basis that he has two prior convictions for
10 shoplifting, which makes this offense that he is charged with
11 in the General Sessions Court shoplifting third or subsequent.

12 You heard from the Clerk of Court. She testified she
13 deals with these records all the time. There were certainly
14 sentence sheets. There were certainly convictions for
15 shoplifting and he has at least two of them, making this a
16 third or subsequent.

17 Ladies and gentlemen of the jury, I would submit to you
18 the only decision you have to make was that person on the
19 video Mr. Phillips and did he leave that store without paying
20 for the items and I believe that based on all the testimony
21 today, based on the videos you saw in the courtroom you'll
22 have to return a verdict of guilty. Thank you.

23 THE COURT: Ms. Knowles?

24 MS. KNOWLES: Ladies and gentlemen, looks can be
25 deceiving and I believe that we have all experienced a

Closing by Defense

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1 situation in our lives where this concept applies, where it
2 has required us to take a closer look at a situation because
3 we've maybe prejudged it in the wrong way.

4 Now, the State would have you to believe that their case
5 is flawless, for you women like a precious gem, flawless
6 diamond, for you men maybe like a fancy sports car and thus
7 without reasonable doubt, but I don't know about you, I'm not
8 quite sold on the sale and I'll tell you why. The flaws that
9 I have seen are this, the most obvious in this case is the
10 reporting of the crime. Thirteen days passed before police
11 were notified.

12 The fact that immediately after the crime occurred no
13 pursuit was taken by loss prevention to apprehend this person
14 makes me hesitate and should you. The identification of my
15 client was made by an individual who you heard testimony from,
16 Mr. McKenzie, who says he knew with absolute certainty who was
17 in that video. He knew because he had worked with him for a
18 couple of days 13 years prior. I'll let you make a
19 determination on how reliable an identification can be with
20 that length of time that passes.

21 Please do not allow the Solicitor to put his thumb on the
22 scales of justice by using my client's prior record to prove
23 his case here because the fact of the matter is that people
24 can change and I believe that my client has changed. The
25 convictions that the Solicitor is relying upon here occurred

1 in 2008 and 2009, so over two years ago. At that time Mr.
2 Phillips was a very different man. He was abusing drugs and
3 he was committing crimes in order to support a drug habit, but
4 today he's a very different man. He's not the same man that
5 he once was. His main concern and motivation now are his
6 family, his children. His wife's present with him here to
7 support him. His father is here present to support him.

8 The bottom line, ladies and gentlemen, is that if a crime
9 had occurred on August 5th the police would have immediately
10 been notified so that the perpetrator could quickly be
11 apprehended. Hours would not have passed. Days would not
12 have passed. Weeks would not have passed. If a crime had
13 been committed they knew who the person was which they did on
14 the 6th according to the testimony because to make a quick
15 apprehension you have to notify police, and if you know who's
16 responsible you pick up the phone and you call and that didn't
17 happen here. Reasonable doubt, if they were so certain who
18 was responsible and a crime had been committed they would have
19 picked up the phone before 13 days had passed.

20 Your decision today is very important and I believe that
21 you realize that and I have full confidence that you'll make
22 the right one and see the flaws that I've seen in this case
23 and return a verdict of not guilty and I ask that you do so.
24 Thank you very much.

25 THE COURT: Ladies and gentlemen of the jury, I have

Charge

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1 adopted a practice, I now - I've been doing it for years now
2 and that is the practice of providing the jury with a copy of
3 a transcript of my charge on the law. I don't know anyone
4 else who does it, but the Supreme Court has said that I can do
5 it and so I do it. The reason I do it is because the law is
6 sometimes complex and we mistakenly just assume that we can
7 bring you folks from the jobs that you are familiar with that
8 we certainly wouldn't know what to do if we were exposed to,
9 but we come bring you to the courthouse and we expect you to
10 understand everything that we say and do. So what I do is try
11 to make that a little easier on you by providing you with a
12 copy of the charge on the law and I'll do so in this case.
13 Please remember that you should take my charge as a whole.
14 You shouldn't focus in on one little phrase or one little
15 paragraph or one sentence, but you should look at it as a
16 whole document and consider the charge as a whole.

17 Let me remind you that during this trial you and I have
18 certain duties to perform and as the trial judge it's my
19 responsibility to preside over the trial of this case and I
20 also have the duty to rule on the admissibility of evidence
21 offered during the trial. You are to consider only the
22 competent evidence before you. If there was any testimony
23 ordered stricken from the record in this case during the trial
24 you must disregard that testimony. You are to consider only
25 the testimony that has been presented from this witness stand,

1 any exhibits which have been made a part of the record and any
2 stipulations or agreements of counsel. I have the additional
3 duty to charge you the law applicable to the case. As the
4 presiding judge I am the sole judge of the law in the case and
5 it is your duty as jurors to accept and apply the law as I now
6 state it to you. If you already have any idea as to what the
7 law is or what the law ought to be and it doesn't agree with
8 what I now tell you the law is you must abandon this idea
9 because you are sworn to accept the law and apply the law
10 exactly as I state it to you.

11 In every case tried in this court before a jury the jury
12 becomes the sole and exclusive judge of the facts in the case.
13 A trial judge cannot intimate, state, comment on or make any
14 statement to a trial jury about the facts in a case since you,
15 the jury, are the sole judge of the facts in the case. You
16 are not to infer from what I have said during the progress of
17 this trial in ruling upon the admissibility of evidence or
18 otherwise or anything that I say now during the course of this
19 instruction to you that I have any opinion about the facts in
20 the case. The law does not allow me to have an opinion about
21 the facts in the case. This is a matter solely for you the
22 jury to determine. As jurors it is your duty to determine the
23 effect, value, weight and truth of the evidence presented
24 during this trial.

25 The indictments charges the Defendant with - excuse me,

Charge

95

1 the indictments charging the Defendant in this case are not
2 evidence. I have explained that to you before. You are not
3 to consider the indictment as evidence. The indictment is
4 nothing more than the document which brings the case to the
5 court and informs the Defendant of the charges against him.

6 The Defendant has pled not guilty to the indictment and
7 that plea puts the burden on the State to prove the Defendant
8 guilty. A person charged with committing a criminal offense
9 in South Carolina is never required to prove himself innocent.
10 I charge you that it is - that this is an important rule of
11 law that the Defendant in a criminal trial, no matter what the
12 seriousness of the charge may be, will always be presumed to
13 be innocent of the crimes for which the indictments were
14 issued unless guilt has been proved by evidence satisfying you
15 of that guilt beyond a reasonable doubt. This presumption of
16 innocence does not end when you begin your deliberations, but
17 it accompanies the Defendant throughout the trial until you
18 reach a verdict of guilt based on the evidence satisfying you
19 of that guilt beyond a reasonable doubt. The presumption of
20 innocence is like a robe of righteousness placed about the
21 shoulders of the Defendant which remain with the Defendant
22 until it has been stripped from the Defendant by evidence
23 satisfying you of the Defendant's guilt again beyond a
24 reasonable doubt. The presumption of innocence is not mere
25 legal theory. It is not just a legal phrase. It is a

1 substantial right to which every Defendant is entitled unless
2 you the jury are satisfied from the evidence of his guilt
3 beyond a reasonable doubt.

4 The State has the burden of proving the Defendant as I
5 said guilty beyond a reasonable doubt. Some of you may have
6 served as jurors in a civil case where you were told that it's
7 only necessary to prove that a fact is more likely true than
8 not true, such as by the greater weight or preponderance of
9 the evidence. In criminal cases the State's proof must be
10 more powerful than that. It must be beyond a reasonable
11 doubt. Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the Defendant's guilt. There are very
13 few things in this world that we know with absolute certainty
14 and in criminal cases the law does not require proof that
15 overcomes every possible doubt. If based on your
16 consideration of the evidence you are firmly convinced that
17 the Defendant is guilty of the crimes charged you must find
18 the Defendant guilty. If on the other hand you think there is
19 a real possibility that the Defendant is not guilty you must
20 give the Defendant the benefit of the doubt and find him not
21 guilty. What is a reasonable doubt in the law? A reasonable
22 doubt is the kind of doubt which would cause a reasonable
23 person to hesitate to act.

24 There are two types of evidence which are generally
25 presented during a trial, direct evidence and circumstantial

Charge

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1 evidence. Direct evidence is the testimony of a person who
2 claims to have actual knowledge of a fact, such as an
3 eyewitness. It is evidence which immediately establishes the
4 main fact to be proved.

5 Circumstantial evidence is proof of a chain of facts and
6 circumstances indicating the existence of a fact. It is
7 evidence which immediately establishes collateral facts from
8 which the main fact may be inferred. Circumstantial evidence
9 is based on inference and not on personal knowledge or
10 observation. The law makes absolutely no distinction between
11 the weight or value to be given to either direct or
12 circumstantial evidence, nor is a greater degree of certainty
13 required of circumstantial evidence than of direct evidence.
14 You should weigh all of the evidence in the case. After
15 weighing all of the evidence if you are not convinced of the
16 guilt of the Defendant beyond a reasonable doubt you must find
17 the Defendant not guilty.

18 Necessarily you must determine the credibility of the
19 witnesses who have testified in this case. Credibility simply
20 means believability. It becomes your duty as jurors to
21 analyze and to evaluate the evidence and determine which
22 evidence convinces you of its truth. In determining the
23 believability of witnesses who have testified in this case you
24 may believe one witness over several or several over one. You
25 may believe a part of the testimony of a witness and reject

1 the remaining part of the testimony of that same witness. You
2 may believe the testimony of a witness in its entirety or
3 reject the testimony of a witness in its entirety. You may
4 consider whether any witness has exhibited to you any
5 interest, bias, prejudice or other motive in this case. You
6 may also consider the appearance and manner of a witness while
7 on the witness stand.

8 I instruct you and emphasize the fact that the Defendant
9 did not testify is not a fact to be considered by you in any
10 way in your deliberation and in your consideration of the
11 question of guilt or the innocence of the Defendant. It must
12 not be considered by you in any manner whatsoever. A
13 Defendant has a constitutional right to remain silent and the
14 assertion of this right must not be considered by you in your
15 deliberations. I repeat, under your oath you are to draw no
16 conclusion whatsoever from the fact that the Defendant in this
17 case did not testify. The fact that the Defendant did not
18 testify should not even be discussed in the jury room. The
19 burden of proof as I have stated to you is on the State. The
20 Defendant is not required to prove his innocence. The burden
21 of proof remains on the State to prove guilt beyond a
22 reasonable doubt.

23 Now, the Defendant is charged with shoplifting third or
24 subsequent offense. The State must prove beyond a reasonable
25 doubt that the Defendant, number one, took possession of,

Charge

99

1 carried away, transferred from one person to another or from
2 one area of the store to another or caused to be carried away
3 or transferred merchandise with the intent to deprive the
4 merchant of the possession, use or benefit of the merchandise
5 without paying the full retail value, and number two, that the
6 Defendant had been, has been convicted of two or more prior
7 property offenses. Full retail value means the merchant's
8 stated or advertised price for the merchandise. Merchandise
9 means any goods, chattels, foodstuffs or wares of any type and
10 description regardless of the value. Merchant means the owner
11 or operator of the store or any agent, employee, lessee,
12 consignee, officer, director, franchisee or independent
13 contractor of the owner or operator. Intent means willful,
14 intending the result which actually occurs, not accidentally
15 or involuntarily. Intent may be shown by acts and conduct of
16 the Defendant and other circumstances from which you may
17 naturally and reasonably infer intent. If the Defendant
18 willfully concealed un-purchased merchandise, goods or
19 merchandise on the premises outside the premises of the store,
20 on the Defendant's person, among the Defendant's belongings,
21 on the person of another person or among the belongings of
22 another person you may consider this as evidence that the
23 Defendant has concealed the merchandise with the intent to
24 convert it to his own use without paying the purchase price.
25 Conceal means to hide merchandise on the person or among the

1 belongings, belongings of a person so that although there may
2 be some notice of its presence it is not visible through
3 ordinary observation.

4 Property crimes are defined as offenses where another
5 person's property is stolen, damaged or otherwise harmed, such
6 as a breach of trust with fraudulent intent, burglary,
7 larceny, receiving or possessing stolen goods, arson,
8 shoplifting, forgery, safecracking, malicious injury to
9 animals or personal property and possession of a stolen
10 vehicle.

11 There are two possible verdicts that you may find for
12 each indictment or for the indictment in this case, guilty or
13 not guilty. There is no significance whatsoever in the order
14 in which I state the possible verdict. It is simply that one
15 must be stated first.

16 Ladies and gentlemen, your verdict must be a unanimous
17 one. Mr. Foreperson or Ms. Foreperson, when the jury agrees
18 on the verdict you will write the verdict on the verdict form
19 and sign your name as foreperson, then knock on the jury room
20 door and inform the bailiff that you have reached a verdict.
21 At that time we will receive you back into the courtroom.

22 Now, I ask that you return to your jury room, do not
23 begin deliberations until you're told by the clerk or bailiff
24 to do so. There's some matters which must be discussed before
25 - with the attorneys before you begin your deliberations.

Charge

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1 All right, Mr. Ropp, if you would take the jury into the
2 jury room.

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

5 THE COURT: All right, I noted during my, my charge
6 that there was a typo on page three where we discuss the
7 indictments. I was able to catch it. The one that my clerk
8 had prepared for me indicated that the charge was sexual
9 conduct, and when I read it I changed that to shoplifting.
10 So, I've made that substitution.

11 MS. KNOWLES: Yes, there are several.

12 THE COURT: Yeah, but we didn't do that.

13 MS. KNOWLES: Yeah, let's take all those out.

14 THE COURT: That, that's, that's not, that's not going
15 to the jury.

16 MS. KNOWLES: Okay.

17 THE COURT: The only one going to the jury will say
18 that he's charged with shoplifting and on the last page where
19 I spoke of the jury verdicts I said that you - I indicated
20 that there were - there was more than one indictment but I
21 caught that and straightened that up as well, and of course
22 there's only one indictment in this case.

23 MS. KNOWLES: You talking about page three?

24 THE COURT: No, page 15.

25 MS. KNOWLES: Page, page three also has a plural. It

Charge

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1 says indictments, not indictment, first thing.

2 THE COURT: Well, the one that I changed.

3 MS. KNOWLES: Okay.

4 THE COURT: I changed that page ---

5 MS. KNOWLES: All right.

6 THE COURT: --- completely. Okay, the page says the
7 indictments charged - well, it still says it's plural. I'll
8 just do it right here, make a little correction on it right
9 there, okay.

10 All right, any other changes?

11 MR. HOLFORD: None from the State, Your Honor.

12 MS. KNOWLES: None from the Defense, Your Honor.

13 THE COURT: All right, let's have this marked, the
14 charge as Court's Exhibit Number One, and let's - I have the
15 verdict form. Anybody want to see it? The verdict form says,
16 "As to the charge of shoplifting third or subsequent offense
17 we, the jury, unanimously find the Defendant," and it says
18 circle one, guilty or not guilty. Okay, all right, let's make
19 sure you got all your exhibits.

20 (Exhibits reviewed by counsel for State and counsel for
21 Defense and approved.)

22 THE COURT: Okay, so, you got everything? All right,
23 Roy, if you could tell them to begin their deliberations.
24 Okay.

25 (Alternate released.)

Verdict

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1 (Deliberations begin at 12:57 p.m.)

2 OFF THE RECORD

3 (On the record. The following takes place in the presence of
4 the jury. Verdict is reached at 1:14 p.m.)

5 THE COURT: All right, Madam Forelady, I understand
6 that you have a verdict; is that correct?

7 FOREPERSON: Yes, sir.

8 THE COURT: And was it unanimous?

9 FOREPERSON: Yes, sir.

10 THE COURT: All right, if you would, Madam Clerk. All
11 right, you may publish.

12 THE CLERK: Indictment number 2012-GS-26-4960, the
13 State of South Carolina versus Boris Alonzo Phillips, as to
14 the charge of shoplifting third or subsequent offense, we, the
15 jury unanimously find the Defendant guilty, dated February 6,
16 2013, signed by foreperson Ginger Dunn.

17 Ladies and gentlemen of the jury, if this is your verdict
18 so signify by raising your right hand.

19 (All jurors raise right hand.)

20 THE CLERK: Thank you.

21 THE COURT: Any request for polling?

22 MS. KNOWLES: Yes, Your Honor.

23 THE COURT: All right, let's do an individual polling.

24 THE CLERK: Okay, when I call your name if you will
25 please stand, I'm sorry, when I call your juror number.

Polling of Jury

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1 Juror Number 120.
2 Is this your verdict?
3 MR. GREEN: Yes.
4 THE CLERK: Is it still your verdict?
5 MR. GREEN: Yes.
6 THE CLERK: Thank you.
7 340, is this your verdict?
8 MS. WEST: Yes.
9 THE CLERK: Is it still your verdict?
10 MS. WEST: Yes.
11 THE CLERK: Thank you.
12 349, is this your verdict?
13 MR. WILSON: Yes.
14 THE CLERK: Is it still your verdict?
15 MR. WILSON: Yes.
16 THE CLERK: Thank you.
17 276, is this your verdict?
18 MS. ROBEY: Yes.
19 THE CLERK: Is it still your verdict?
20 MS. ROBEY: Yes.
21 THE CLERK: Thank you.
22 225, is this your verdict?
23 MR. MCINTYRE: Yes.
24 THE CLERK: Is it still your verdict?
25 MR. MCINTYRE: Yes.

Polling of Jury

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1 THE CLERK: Thank you.
2 142, is this your verdict?
3 MR. HEIN: Yes.
4 THE CLERK: Is it still your verdict?
5 MR. HEIN: Yes.
6 THE CLERK: Thank you.
7 83, is this your verdict?
8 MS. DUNN: Yes.
9 THE CLERK: Is it still your verdict?
10 MS. DUNN: Yes.
11 THE CLERK: Thank you.
12 6, is this your verdict?
13 MS. ANDREW: Yes.
14 THE CLERK: Is it still your verdict?
15 MS. ANDREW: Yes.
16 THE CLERK: Thank you. 231, is this your verdict?
17 MS. MILLER: Yes.
18 THE CLERK: Is it still your verdict?
19 MS. MILLER: Yes.
20 THE CLERK: Thank you.
21 338, is this your verdict?
22 MR. WEBER: Yes.
23 THE CLERK: Is it still your verdict?
24 MR. WEBER: Yes.
25 THE CLERK: Thank you.

1 151, is this your verdict?
2 MS. HOUSAND: Yes.
3 THE CLERK: Is it still your verdict?
4 MS. HOUSAND: Yes.
5 THE CLERK: Thank you.
6 300, is this your verdict?
7 MS. SKOVINSKI: Yes.
8 THE CLERK: Is it still your verdict?
9 MS. SKOVINSKI: Yes.
10 THE CLERK: Thank you. That's it.
11 THE COURT: All right, anything further, Ms. Knowles?
12 MS. KNOWLES: No, sir.
13 THE COURT: Any reason why we can't proceed with
14 sentencing?
15 MS. KNOWLES: No, sir.
16 THE COURT: All right, let me hear from the State.
17 MR. HOLFORD: Yes, Your Honor, would you like his prior
18 record?
19 THE COURT: Yes, I would.
20 MR. HOLFORD: Your Honor, starting in 1996 I have
21 convictions for DUS; 2000 CDV; 2001 petit larceny, bribing an
22 officer; 2004, petit larceny; 2004, shoplifting; 2005, petit
23 larceny and shoplifting; 2006, forgery 1000 to 5000; 2007,
24 grand larceny 1000 to 5000; 2008, shoplifting, two other
25 shopliftings, a shoplifting third or subsequent; simple

Sentencing

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1 assault and battery; 2009, shoplifting and shoplifting third
2 or subsequent; 2011, breach of trust less than 2000.

3 THE COURT: How many property offenses do you have
4 there?

5 MR. HOLFORD: Your Honor, I show 13 property offenses
6 for enhancement purposes.

7 THE COURT: All right, let me hear from you, Ms.
8 Knowles.

9 MS. KNOWLES: Your Honor, Mr. Phillips as I stated
10 earlier is 48. He's married, has two children, lives in
11 Florence with his family. I just would ask that Your Honor
12 not punish him for requesting this jury trial and exercising
13 his constitutional right. He does have a family he would like
14 to get back to. We just would ask that you take that into
15 consideration. The State's initial assessment in this case
16 was that they thought it was deserving of a two year offer. I
17 ask that you consider that as well. He has been incarcerated
18 106 days for this.

19 THE COURT: All right, Mr. Phillips, you want to tell
20 me anything?

21 MR. PHILLIPS: Your Honor, I truly am sorry for what has
22 happened. As she stated I have done time for this. I've had
23 drug problems in the past. I still have mental, I still have
24 problems, mental problems that I'm going to the doctor back
25 and forth. I wasn't in my right mind on that day and I wasn't

1 with my medication. I came down here to help someone.

2 THE COURT: How about this 13 other days?

3 MR. PHILLIPS: I wasn't ---

4 THE COURT: Other, other times you stole.

5 MR. PHILLIPS: I was, I was using drugs back then, Your
6 Honor, but since then I haven't used drugs. The past two
7 years I was working. I lost my job and my depression kicked
8 in again. Like I say, I came down here to help someone but in
9 the midst of that I had to try to find a way back home and I
10 wasn't in my right mind, Your Honor, and I ---

11 THE COURT: Tell me why you were, tell me why you were
12 taking photographs of merchandise in that Sears store.

13 MR. PHILLIPS: I was taking photographs because I needed.

14 THE COURT: You were taking orders is what you were
15 doing; weren't you?

16 MR. PHILLIPS: No, sir, I was not taking orders for
17 nobody.

18 THE COURT: All right, sir.

19 MR. PHILLIPS: And Your Honor, I don't, I don't do
20 anything for anybody else.

21 THE COURT: Well, why would you, you photograph
22 merchandise on the shelves if you weren't taking orders to
23 shoplift?

24 MR. PHILLIPS: I was, I was taking, I was looking at the
25 stuff that I needed.

Sentencing

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1 THE COURT: All right, sir.

2 MR. PHILLIPS: I wasn't taking orders for anybody.

3 THE COURT: Anything further?

4 MR. PHILLIPS: Your Honor, like my father and my wife is
5 here, and Your Honor, I been doing great.

6 MR. KNOWLES: I believe that they would like to address
7 the Court.

8 THE COURT: I'll be glad to hear from them.

9 MR. HENRY PHILLIPS: Judge, Your Honor ---

10 MS. KNOWLES: State your name for the record.

11 MR. HENRY PHILLIPS: --- I am Reverend Henry K. Phillips.
12 I've been in the ministry for 43 years. I've been pastoring
13 my present church now for 25 and I did not raise my children
14 to do things that they're doing. I'm 71 years old.

15 THE COURT: How many times have you had to get him out
16 of jail?

17 MR. HENRY PHILLIPS: Well, I've got him out several
18 times. I just can't count really direct to say direct how
19 many times and I have a heart condition now but I thank the
20 Lord that I'm here and I never been incarcerated. Now, he's a
21 good, a good, very good child, very good human and he does
22 mechanic work. He have four children and I pray and hope that
23 you have mercy on him where he can get back and go to work and
24 help support those children because I know I cannot do it and
25 his wife.

1 THE COURT: And you shouldn't have to.

2 MR. HENRY PHILLIPS: I'm trying to do my very best.

3 THE COURT: All right, sir.

4 MR. HENRY PHILLIPS: And just pray and hope that you
5 have mercy on him.

6 THE COURT: Thank you.

7 MS. PHILLIPS: My name is Lisa Phillips. I'm Boris
8 Phillips' wife. We've been married for four years. Like he
9 said together we have four children. I've worked for the
10 Department of Corrections for 12 years, food service
11 supervisor. I'm now retired. I had to come out on
12 disability. My husband got caught up on drugs and in the
13 midst of him doing the drugs is when all of this started.
14 He's been going back and forth to doctors and everything and
15 we found out that he has a mental imbalance going on. They
16 put him on medication for it to help him with that and they're
17 finding out a lot of things that he's been doing has a lot to
18 do with his mental state that he's been in with depression
19 from when he was in the military and everything that he went
20 through being shot and everything he went into a deep
21 depression and we're now - we've been going, like I said, back
22 and forth to get him some help. He's a good person. I've
23 never - this is the only problems that we have ever had in our
24 marriage. This is it. We've never had any other problems.
25 We've both gotten saved. We're both into the church now, and

Sentencing

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1 you know, that's pretty much all I can say is, you know, I'm
2 just going to have to try to explain to the kids, you know, I
3 have to - this is going to be very hard on me as a woman
4 trying to do it by myself. It's going to be very hard on me
5 to try to handle things at the house by myself because there's
6 things that I can't do.

7 THE COURT: Well, he doesn't work and you may be
8 better off without him.

9 MS. PHILLIPS: No, sir, he was working and then he got
10 laid off. He hasn't been out of work that long and he - in
11 the midst of him not working he was able to draw unemployment
12 to be able to help the household.

13 MS. KNOWLES: He just was released from jail out on bond
14 last month for this. So, he was in jail for the past ---

15 THE COURT: Well, he told me he hadn't worked in two
16 years.

17 MR. PHILLIPS: I been working for two years.

18 THE COURT: Okay.

19 MS. PHILLIPS: He said he was working for two years.

20 MR. PHILLIPS: As a matter of a fact I been working up
21 until, until July.

22 MS. PHILLIPS: July, yes, he came out of work in July.
23 He got laid off in July.

24 THE COURT: All right.

25 MS. KNOWLES: With regard to his medical diagnosis I

1 have his most recent medical report if Your Honor would like
2 to see it.

3 THE COURT: Let me see it.

4 It says here he has anxiety disorder.

5 MS. KNOWLES: I believe he was shot in 2002 and he
6 suffers from posttraumatic stress disorder. That is something
7 that they just learned recently.

8 THE COURT: That's not on here.

9 MS. KNOWLES: That ---

10 MR. HOLFORD: Your Honor, there's been - they have never
11 once raised any type of competency or mental health issues.

12 MS. KNOWLES: I don't think competency is a question. I
13 just want him to be aware of his current medical state.

14 THE COURT: All right, anything further?

15 MS. KNOWLES: Nothing.

16 MR. HOLFORD: Your Honor, just one more matter further
17 from the State, at this time he also has two other pending
18 shoplifting third or subsequent charges in our office.

19 THE COURT: What was the dates on those?

20 MR. HOLFORD: Well ---

21 THE COURT: So, he has two other pending?

22 MR. HOLFORD: That's right. One was from the other day.
23 He went into the Sears and another is from a Wal-Mart in
24 August as well.

25 THE COURT: The same Sears?

Sentencing

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1 MR. HOLFORD: Same Sears.

2 THE COURT: Anything further, Ms. Knowles?

3 MS. KNOWLES: Right, on August 6th he was also charged at
4 that same, the video that you saw.

5 THE COURT: All right.

6 MS. KNOWLES: Nothing further.

7 THE COURT: Mr. Phillips, you have an extensive record
8 of essentially stealing from people. You've shown absolutely
9 no acceptance of responsibility in this case. Now you tell me
10 you did it and you put the State to a trial to prove that you
11 did. I don't think you want any help and I don't think that
12 you're going to stop stealing. The sentence of the Court is
13 that you be confined for a period of seven years. Thank you,
14 sir.

15 MS. KNOWLES: Thank you, Your Honor.

16 MR. HOLFORD: Thank you, Your Honor. May I approach
17 with the sentence sheet?

18 THE COURT: Yes.

19 (Jury Discharged by Court.)

20 (Adjourned.)

21

22

23

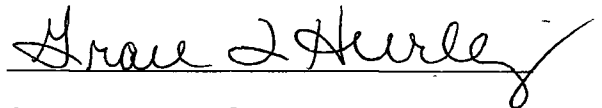
24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of The State versus Boris Alonzo Phillips, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 6, 2013.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

April 17, 2013.

DOCKET NO. 2012-GS-26-04960

The State of South Carolina
County of Horry

Joshua D. Hofford

12H04003

COURT OF GENERAL SESSIONS

DECEMBER, 2012 TERM

THE STATE

vs.

Boris Alonzo Phillips B/M
1511 Palomar Pkwy
Florence, SC 29506-6824

ATTORNEY: Knowles, Melinda

Indictment for

SHOPLIFTING

J. Gregory Hembree, Solicitor

ORIGINAL

WITNESSES

Mark Montyre Myrtle Beach Police Department

ARREST WARRANT NUMBER

M352449

CDR: 2877 16-13-0110(A)

DOA: 8/24/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

SHOPLIFTING

CDR: 2877 16-13-0110(B)(1)

That **Boris Alonzo Phillips** did, in Horry County, State of South Carolina, on or about August 5, 2012, 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 Sears, to wit: Craftsman Mechanics tool set and assorted Craftsman handtools, having a value of two thousand (\$2000) dollars or less, in violation of Section 16-13-110(B)(1), S.C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense, 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

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COUNTY OF
STATE

Horry

VS.

Boris Alonzo Phillips

AKA:

Race: BLACK

Sex: [REDACTED]

Age: 48

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Florence, SC 29506-6824

DL#: [REDACTED]

SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057) (0-10)

SENTENCE SHEET

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB80071

Holford, Joshua D.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on.☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 02/06/2020

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 183.90
☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Melanie Huggins Ward

SCCA/217 (03/2011)

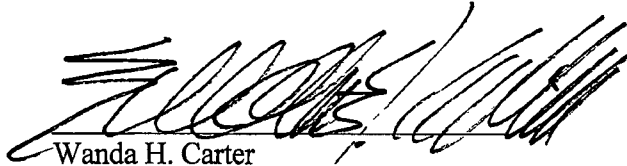
Presiding Judge

Judge Code: 2152Sentence Date: 2-6-13

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."

April 11th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

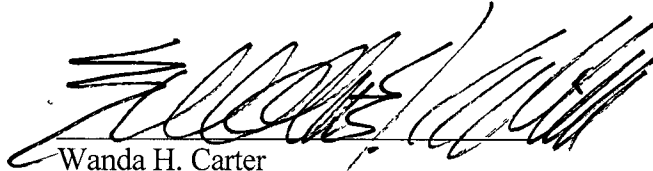
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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April 11th, 2014

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief 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 Horry County

Larry B. Hyman, Jr., Circuit Court Judge

ORIGINAL

RECEIVED

APR 11 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

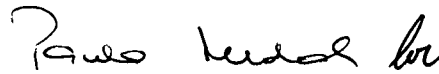
V.

BORIS PHILLIPS,

APPELLANT

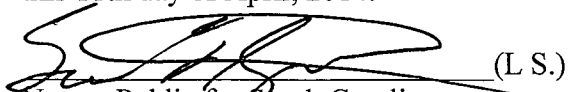
CERTIFICATE OF SERVICE

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 the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 11th day of April, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of April, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022