

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
George C. James, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MICHAEL FULWILEY,

APPELLANT

APPELLATE CASE NO 2017-000774

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 10-12, 2016	1
PRE-TRIAL MOTION TO SUPPRESS STATEMENTS	2
PRE-TRIAL MOTION TO SUPPRESS VEHICLE SEARCH	15
COMBINED SUPPRESSION HEARINGS	
TESTIMONY	
MICHAEL LAWLER (IN CAMERA)	
Direct examination by Solicitor	31
Cross Examination by Defense Counsel	55
Redirect examination by Solicitor	64
Recross examination by Defense Counsel	72
ARGUMENTS OF COUNSELS	79
ADDITIONAL TESTIMONY	
MICHAEL LAWLER (IN CAMERA)	
Direct examination by Defense Counsel	89
Cross Examination by Solicitor	97
ARGUMENTS OF COUNSELS	106
COURT'S RULING	108
OPENING REMARKS BY THE COURT	122
OPENING STATEMENT BY SOLICITOR	130
OPENING STATEMENT BY DEFENSE COUNSEL	136
TRIAL TESTIMONY	
MICHAEL LAWLER	
Direct examination by Solicitor	140
Cross Examination by Defense Counsel	170
Redirect examination by Solicitor	183
Recross examination by Defense Counsel	185

JAMES STOUDEMIRE	
Direct examination by Solicitor	186
Cross Examination by Defense Counsel	201
Redirect examination by Solicitor	206
Recross examination by Defense Counsel	207
DANIEL WOOD	
Direct examination by Solicitor	208
Cross Examination by Defense Counsel	210
LYNN WILKERSON	
Direct examination by Solicitor	211
STATE RESTS	217
MOTION FOR DIRECTED VERDICT	218
RULING BY THE COURT	227
DEFENSE RESTS	232
CLOSING ARGUMENT BY SOLICITOR	233
CLOSING ARGUMENT BY DEFENSE COUNSEL	239
JURY CHARGE ON THE LAW	250
VERDICT	263
POLLING OF THE JURY	263
SENTENCING TRANSCRIPT DATED MARCH 15, 2017	276
SENTENCING	278
INDICTMENT	281
CERTIFICATE OF COUNSEL	283

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #1 (DVD) AND STATE'S EXHIBIT #6 (DVD)**

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State of South Carolina,)

Transcript of Record

6 vs.)

2016-GS-32-00670

7 Michael Fulwiley,)

8 Defendant.)

9
10 August 10-12, 2016

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable George James, Judge

15
16 A P P E A R A N C E S:

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18 Bradley P. Pogue, Assistant Solicitor
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19 Sally J. Henry, Esquire
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21
22
23 Stacy S. Johnson, RPR
Circuit Court Reporter
24
25

1 waste any time on that. That just happens sometimes in
2 the summer.

3 **MS. USRY:** Yes, sir.

4 **THE COURT:** Okay.

5 **MS. HENRY:** Thank you, Your Honor.

6 **THE COURT:** Thank you.

7 And if y'all have any pre-trial matters you want to
8 cover this afternoon, I'll be happy to do that.

9 **MS. HENRY:** We'll meet while the verdict's coming out
10 and discuss them.

11 **MS. USRY:** Yes.

12 **THE COURT:** Okay.

13 (Recess taken.)

14 (Whereupon, the proceedings were concluded for
15 August 10, 2016, at 3:27 PM.)

16 (The following proceedings were held on August 11,
17 2016, beginning at 9:44 AM.)

18 **BAILIFF:** All rise. Court is now in session.
19 Honorable George James presiding.

20 **THE COURT:** Have a seat. Thank you. Sorry I'm a
21 little late.

22 Okay. What would y'all like to cover before the jury
23 comes in?

24 **MS. USRY:** Your Honor, we have a couple of matters
25 that -- the motions that we have in general are -- the

1 defense, I think, has a suppression motion. We have a
2 Jackson v. Denno with regards to some statements on the
3 video that, I believe, Your Honor had a chance to review
4 yesterday in question.

5 **THE COURT:** Right.

6 **MS. USRY:** And --

7 **THE COURT:** Well, let me -- let me explain. I watched
8 it. It's hard to pinpoint on the video exactly where
9 everything is. I did the best I could with it.

10 **MS. USRY:** Yes, sir.

11 **THE COURT:** The first forty or fifty minutes was all
12 outside the car, so you can queue up the specific areas
13 that y'all had issues with and we can take it from there,
14 okay?

15 **MS. USRY:** Yes, sir.

16 I think the first thing that we could deal with
17 potentially is the in-car video, what we have -- what we
18 want to argue about redactions, and I can put it on the
19 record that we have done a number of redactions to the
20 video already through consent. We worked together to get
21 a number of statements out of the video.

22 **THE COURT:** All right.

23 **MS. USRY:** So if Your Honor wants me to, I can list
24 kind of what we did --

25 **THE COURT:** All right.

1 **MS. USRY:** -- for the purposes of the record.

2 **THE COURT:** Okay.

3 **MS. USRY:** And does Your Honor have the DVD that you
4 reviewed?

5 **THE COURT:** I've got it back in the office. I'll go
6 get it.

7 **MS. USRY:** I was gonna mark it as a Court's exhibit
8 and use it as our original.

9 **THE COURT:** Excuse me. I'll get it.

10 (Pause in proceedings.)

11 **BAILIFF:** Keep your seats, please. Court's in
12 session.

13 **THE COURT:** Here you go.

14 **MS. USRY:** Thank you, Your Honor.

15 For purposes of this hearing, should I mark it as a
16 Court's exhibit?

17 **THE COURT:** I would just mark it as Plaintiff's
18 whatever number for ID.

19 **MS. USRY:** State's Exhibit 1 for ID.

20 (State's Exhibit Number 1 was marked for
21 identification.)

22 **MS. USRY:** Your Honor, we've marked this as State's
23 Exhibit 1 for ID and this is the original in-car in its
24 entirety and it's not been redacted. We met yesterday
25 afternoon with defense counsel and we -- and I'm just

1 gonna put on the record in general so it's there. Minute
2 19:30 to 21 -- minute 21:03. That was the officer's
3 questioning of the driver of the vehicle, Butler, and
4 we're in agreement that that would be hearsay and not to
5 come in. Minute 29:48 to minute 38 -- or, excuse me,
6 30:28 we also redacted.

7 And, Your Honor, a number of this was at the request
8 of defense counsel. And those, again, we agreed should
9 come out based on some background in that particular
10 section.

11 **THE COURT:** Okay.

12 **MS. USRY:** Minute 34:53 to 34:55.

13 **THE COURT:** Two seconds?

14 **MS. USRY:** That was a short statement, Your Honor,
15 that we redacted in that particular --

16 **THE COURT:** 34:53 to 34:55?

17 **MS. USRY:** Yes, sir. That was one sentence.

18 **THE COURT:** All right.

19 **MS. USRY:** 35:54 to 35:57.

20 **THE COURT:** Again, that's -- just to be sure, that's
21 three seconds?

22 **MS. USRY:** Yes, sir. And that is a response made
23 in the background. At that point they've Mirandized
24 Mr. Fulwiley, the Defendant in this case, and the officers
25 are quickly speaking, the officer that Mirandized comes up

1 and says they don't want to talk and they respond that's
2 fine, so it was a very short statement there, so we took
3 that out.

4 **THE COURT:** Okay. Is his assertion of the right to
5 be silent specifically on the tape? I don't recall that
6 it was.

7 **MS. USRY:** It's not specifically on the tape. It's
8 the officers commenting on it.

9 **THE COURT:** All right.

10 **MS. USRY:** Minute 35:56 to 36:55.

11 **THE COURT:** All right. 35:56 to 36:55?

12 **MS. USRY:** Yes, sir.

13 **THE COURT:** So that would essentially put out 35:54
14 all the way to 36:55?

15 **MS. USRY:** Yes, Your Honor.

16 **THE COURT:** All right.

17 **MS. USRY:** And that is regarding the officer speaking
18 on the phone with CVS and then he relates what the CVS
19 lady on the phone told to him and that's hearsay.

20 **THE COURT:** Okay.

21 **MS. USRY:** 39:59 to 40:05.

22 **THE COURT:** All right.

23 **MS. USRY:** And, again, that is hearsay that we
24 redacted, Your Honor.

25 **THE COURT:** Okay.

1 **MS. USRY:** 40:25 to 49:25. That's a significant
2 amount that has to do with some background from another
3 officer on-scene talking to Mr. Butler, who is the driver
4 of the vehicle. And, one, you can't hear it that well,
5 but, two, it's after both parties have invoked their right
6 to remain silent and you can hear that in the background
7 and we redacted it completely.

8 **THE COURT:** All right. What's that again? That's
9 within what you just said, right? Within 40 minutes to
10 49 minutes?

11 **MS. USRY:** Yes, sir.

12 **THE COURT:** Okay.

13 **MS. USRY:** Now yesterday we further redacted two
14 other portions that I don't have the exact timeframe on
15 because we did a first redaction and when you redact the
16 time on the video stays the same so it kind of adjusts
17 itself so it doesn't -- when the video's going, you'll see
18 it jump, but the time on the bottom will still -- it
19 readjusts to just continue on, it's one continuous time.
20 So for me to cite the timeframe in relation to the original
21 video, it's not gonna be correct at that point.

22 **THE COURT:** About how long is it?

23 **MS. USRY:** Sir?

24 **THE COURT:** How long of a gap is it?

25 **MS. USRY:** The gaps that we did yesterday, I think,

1 were --

2 (Discussion between counsel.)

3 **MS. USRY:** There was another minute and another
4 thirty second gap that we did.

5 **THE COURT:** All right.

6 **MS. USRY:** One, in particular, was with regard,
7 again, to some background noise that we removed based on
8 the talks with Butler in the car and, again, another one
9 was a section where an officer picks up while there's
10 items on the hood of the car.

11 **THE COURT:** Right.

12 **MS. USRY:** And then the officer picks up a knife and
13 says this is how they would have cut the -- makes some
14 comments about using a straight blade to cut stuff off
15 of a shelf, it's speculation, and so we did remove that
16 as well.

17 **THE COURT:** All right. How about -- is that -- does
18 that complete what y'all have redacted?

19 **MS. USRY:** I also ended the video earlier and it ends
20 now where the Defendant Fulwiley leaves the scene. So
21 there's the video that Your Honor viewed and the original
22 video continues on because Butler's in the car and watches
23 the car get towed and then is ultimately taken to the
24 sheriff's department. We ended it where our defendant,
25 Fulwiley, leaves the scene and another car -- officer's

1 taking him home, so it ends early.

2 **THE COURT:** All right. How about all the -- a lot,
3 of it was mumbling, or at least I couldn't hear it very
4 well, conversations in the back of the car? Can you tell
5 who was talking when?

6 **MS. USRY:** Yes, sir, Your Honor. The officer that
7 was on-scene can testify that he recognized the voices
8 and can tell who was what and also based on what they're
9 saying he knows which party is indicating what.

10 **THE COURT:** Well, one of them kept saying -- I can't
11 remember what he was complaining to the other guy about,
12 something about a seatbelt.

13 **MS. USRY:** That is Mr. Butler complaining -- talking
14 to Mr. Fulwiley, but, yes, there's some conversation in
15 the back of the car.

16 **THE COURT:** That's what I assumed and some of this
17 -- you know, they weren't hollering at each other that I
18 can recall, but one of them was fussing at the other one.

19 **MS. USRY:** That is a source, I think, of what we have
20 some disagreement on, so that's part of our motion today.
21 We've agreed to the majority of it and they have -- they
22 want some of that redacted and we disagree with that, so
23 that's one part we'd like to argue.

24 **THE COURT:** Okay. So, Ms. Henry, all the -- at least
25 what Ms. Usry says is agreed upon, is she correct about

1 **MS. USRY:** We can.

2 **THE COURT:** Just take that sentence out so there
3 won't be any danger of that. I don't -- she said she
4 didn't know where that fell in the minute on the new
5 video because her numbers might not be the same.

6 **MS. USRY:** Yes, sir.

7 **THE COURT:** Just go ahead and take that out. That
8 would avoid any confusion. It doesn't add anything to
9 this case anyway.

10 **MS. USRY:** That's fine.

11 **THE COURT:** All right. Anything else?

12 **MS. GILREATH:** Your Honor, I believe that's -- I
13 believe that's all we've got.

14 **THE COURT:** And we have a Jackson versus Denno
15 hearing?

16 **MS. USRY:** Yes, sir, Your Honor. We brought the
17 jury in at ten, so I don't know --

18 **THE COURT:** I thought it was 10:30.

19 **MS. USRY:** I think that -- well, I think it was ten
20 because I thought we thought we'd start at 10:30 with them
21 and just to make sure they were all present and counted.

22 **THE COURT:** Well, do y'all want to pick the jury and
23 then do the Jackson versus Denno or how long is that gonna
24 take?

25 **MS. USRY:** Your Honor, I don't know. I think we

1 a third or subsequent. I'm just gonna read it as a
2 shoplifting, but I wanted Your Honor to be aware of that
3 so when you publish the indictment the first sentence does
4 say previously been convicted of at least two offenses.

5 **THE COURT:** I won't say that unless y'all want an
6 immediate mistrial and then I'll do it.

7 Okay. Anything else?

8 **MS. USRY:** Nothing from the State.

9 **MS. HENRY:** No, Your Honor. We have motions to be
10 heard when the jury is sworn.

11 **THE COURT:** Certainly. Okay. Everybody is aware of
12 Batson and all that. You can bring in the jury.

13 State versus Turner is still good law. Y'all might
14 want to read that when you get a chance.

15 Ms. Henry and Ms. Gilreath, you want the standard
16 cautionary instruction to the jury that they're not to
17 hold against him the fact that he's not here? Some
18 defense lawyers don't want me to mention it at all, but
19 I'll tell them that.

20 (Proceedings held at the bench; not reported.)

21 (Whereupon, the jury panel enter the courtroom at
22 10:41 AM.)

23 **THE COURT:** All right. Ladies and gentlemen, we were
24 waiting on one juror to arrive, but we're just gonna go
25 ahead. If he does -- he does come, just have him just

1 **THE COURT:** And the one sentence that she wanted
2 redacted, I will redact that. That will be in addition to
3 the other ones that y'all agreed would be redacted. The
4 phone conversation between Officer Lawler and the CVS
5 representative, that is the two to three-minute one that
6 I'm going to deny the motion on to exclude that as long as
7 Mr. Lawler -- my preference would be that Mr. Lawyer is
8 allowed to do that, too, and even though what he says on
9 the audio would be cumulative, I don't think it's gonna be
10 needlessly cumulative under Rule 403 as long as you are
11 sure that he's not repeating back what the CVS person is
12 telling him. I'm basing that ruling on your assurance
13 that that is not the case and that will be clarified.

14 **MS. USRY:** Over the course of lunch once we do this
15 other redaction I'm gonna listen to the tape again based
16 on all the redactions we've done and make sure that it
17 appears that way.

18 **THE COURT:** All right. Would you rather deal with
19 the Jackson versus Denno matter before we go to lunch or
20 do you want to come back at a quarter to twelve -- or,
21 excuse me, a quarter to one and do that? Why don't the
22 two sides talk about that and while you're doing that,
23 then I'll release the panel so they go can about their
24 business.

25 **MS. USRY:** Yes, sir.

1 **POTENTIAL JUROR:** I'm Juror Number 149 and I just
2 wanted to make sure that I wasn't to be counted as late.

3 **THE COURT:** No, you were --

4 **THE CLERK:** No, you're fine.

5 **THE COURT:** You were, but wrongly so. So Mr. Porcel,
6 thank you for being here. But I will tell you this. The
7 lawyers didn't know this, but you were last on this list
8 anyway, so I knew that we weren't gonna get to you anyway.
9 Some of you may not have had your names called at all
10 this week and it's amazing that sometimes if you're Juror
11 Number 25 you're summoned for every case and you might be
12 Juror Number 26 and your name is never called. That's
13 just the way it works.

14 So you are free to go. You're certainly welcome to
15 stay and watch if you want to. This is a public courtroom,
16 but you're released from your subpoena.

17 And if -- Mr. McCormick, he can come in. Just bring
18 him all the way up. Tell him not to be concerned.

19 Come on up, Mr. McCormick. I'm sorry to keep you
20 outside.

21 (Proceedings held at the bench; not reported.)

22 **THE COURT:** What would y'all like to do? Do some
23 things now?

24 **MS. USRY:** Your Honor, we can try to do some of the
25 motions and see how far we get and then if we need a break

1 to do the redactions, we can just --

2 **THE COURT:** All right. Could I see y'all up here off
3 the record real quick?

4 (Proceedings held at the bench; not reported.)

5 **THE COURT:** All right. The first issue.

6 **MS. USRY:** The State's prepared to go forward. Well,
7 the Jackson v. Denno and the suppression hearing are
8 pretty much gonna overlap a great deal because it's really
9 everything that's in the video that's been marked as
10 State's Exhibit 1 for ID and that's the extent of all the
11 statements that we're really gonna enter except for the
12 officer also will explain who's speaking and what's
13 happening.

14 So I don't know which of us you want to go first.
15 Sally does have her suppression hearing on the evidence
16 and she would probably want to proceed with that, but we
17 can call our officer for everything now.

18 **THE COURT:** However y'all would like to do it. I'm
19 certainly fine with however you want to present it.

20 **MS. HENRY:** Suppression.

21 **MS. USRY:** Sally's gonna go first.

22 **THE COURT:** Okay.

23 **MS. HENRY:** Thank you, Your Honor. And as Ms. Usry
24 said, I think there will be a good bit of overlap here.
25 My motion is to -- under the Fourth Amendment to suppress

1 any statements or evidence that were obtained as a result
2 of this illegal seizure.

3 And just to put a little background on the record
4 about the factual situation, this incident occurred on
5 June 7, 2014, and the Town of Lexington officer, Corporal,
6 at that time, Lawler, was in his patrol car observing
7 traffic when he saw the vehicle that contained Willie
8 Butler, as the driver, and Michael Fulwiley, as a
9 passenger, pass by. His incident report reflects that he
10 saw that Mr. Fulwiley did not have his seatbelt on and so
11 as a result of that the stop occurred.

12 Once the stop was made, it was at the Home Depot
13 parking lot, and as the officer approached, he approached
14 the passenger side. I'm sorry, he approached the driver's
15 side first and asked for identification, which was handed
16 to him by Mr. Fulwiley. Mr. Butler didn't have any, so he
17 had to give verbal information. Anyway --

18 **THE COURT:** Who had the several licenses or --

19 **MS. HENRY:** I think that was the identification for
20 the registration of the vehicle.

21 **THE COURT:** All right. So -- but Mr. Fulwiley gave
22 him identification?

23 **MS. HENRY:** Mr. Fulwiley had a South Carolina
24 identification card. He did not have a license.

25 **THE COURT:** Okay.

1 **MS. HENRY:** Okay. Once the -- that Corporal Lawler
2 had got the information and returned to his patrol car
3 both of them were seated in the vehicle. Again, Butler
4 driver, Fulwiley passenger, and there they sat while
5 Corporal Fulwiley {sic} ran the information on Mr. Butler.
6 He had to get some clarification because he had some
7 difficulty tracking him down based on his date of birth,
8 so he supplemented that with his social security back to
9 the car and in the course of that the two gentlemen were
10 waiting for Corporal Lawler to tell them what he was gonna
11 do, some period of time that equated to about twenty
12 minutes, twenty, twenty-two minutes, something like that,
13 had passed. During this time Mr. Fulwiley at some point
14 steps out of the car and lights up a cigarette. Corporal
15 Lawler sees that and instructs him to get back in the
16 vehicle, which he does.

17 **THE COURT:** All right.

18 **MS. HENRY:** Once Corporal Lawler has gotten the
19 information that he needs regarding Mr. Butler, that is
20 the DUS record and the warrant from Charleston, there's
21 some question about what that's about, but he returns to
22 the car, gets Mr. Butler out, places him at the rear of
23 the vehicle, and then also gets Mr. Fulwiley out of the
24 car on the other side. He tells Mr. Fulwiley they're
25 checking out Mr. Butler, his warrant, and that's what

1 they're doing during this time period.

2 At that point Corporal Lawler asks Mr. Fulwiley if
3 there's anything illegal on his person or in the vehicle
4 to which Mr. Fulwiley says no. Again, Corporal Lawler
5 tells Mr. Fulwiley the reason they stopped was because as
6 the car passed he saw him bending over in the passenger
7 seat and he did not have a seatbelt on.

8 **THE COURT:** And one of them said, I don't know who
9 it was, maybe it was Mr. Butler, said yeah, I told him he
10 needed to put his seatbelt on, something like that. I
11 think I remember that.

12 **MS. HENRY:** In the conversation the two of them
13 ultimately have in the back of the patrol car, I believe.

14 **THE COURT:** Okay.

15 **MS. HENRY:** Or it may have been then. I don't recall
16 that either. But, anyway, in the original video at the
17 twenty-two minute point Mr. Fulwiley asks Mr. Lawler if
18 he's under arrest -- Corporal Lawler, if he's under arrest.
19 Corporal Lawler replies he's finishing up paperwork and
20 trying to determine what's up with Butler. At this point
21 he doesn't ticket Mr. Fulwiley and he doesn't give him an
22 answer to his question if he's under arrest.

23 At that point Corporal Lawler handcuffs Mr. Butler
24 for investigative detention and puts him in the patrol
25 car in the backseat and then he starts to question

1 Mr. Fulwiley about who owns the stuff in the car. Okay.
2 There's some discussion there, Mr. Fulwiley says it's
3 Mr. Butler's, and then when the other officer who's in
4 the car approaches he says the both of them.

5 **THE COURT:** Ma'am?

6 **MS. HENRY:** He says both of them I meant. That's on
7 the video.

8 **THE COURT:** He says both of them what?

9 **MS. HENRY:** Own the items in the car.

10 **THE COURT:** I see.

11 **MS. HENRY:** Okay. Then Corporal Lawler explains to
12 Mr. Fulwiley that his friend is driving under suspension
13 and at that point Mr. Fulwiley, again, asks am I being
14 charged, Corporal Lawler does not respond to him, and
15 about thirty seconds later Mr. Fulwiley says am I under
16 arrest. The response he gets from Corporal Lawler does
17 not directly answer the question. He says the car is
18 going to be towed and are any of the items in the car
19 belonging to you. It's about twenty-five minutes into
20 the stop and at that point Corporal Lawler goes to the
21 passenger side, opens the passenger door and begins
22 retrieving items from it looks to be the floorboard of
23 the passenger seat because Corporal Lawler you can see
24 him on his knees in the doorway in the video.

25 Okay. He puts them on the hood of the patrol car,

1 asks if everything's from the flea market because
2 apparently there's been some conversation about where
3 they came from and then asks does he have receipts. He
4 asks Mr. Fulwiley if he has receipts. He says --
5 Mr. Fulwiley says no, I don't have receipts, you don't
6 get receipts from the flea market, and at this point the
7 second officer, and I don't recall what his name was
8 there, pats Mr. Fulwiley down at the back of the car. So
9 we have Mr. Lawler there, the other patrol officer and
10 Mr. Fulwiley. He pats him down and then some two or
11 three minutes later reads him his Miranda warnings and
12 detains him, puts him in the back of the patrol car with
13 Mr. Butler.

14 Okay. This is thirty-six minutes after the initial
15 stop for a seatbelt violation. Okay. Under the Fourth
16 Amendment, specifically I'm gonna quote U.S. versus
17 Mendenhall, 446 US 544, a seizure is defined in very
18 specific terms. There are seven points that have to be
19 fulfilled in order for a seizure to occur. First is the
20 number of police officers at the scene and here there were
21 two police officers. Whether they were in uniform is the
22 second factor. They were in uniform, both of them.
23 Whether they displayed their weapons. Both of them were
24 armed. Whether they --

25 **THE COURT:** Does Mendenhall talk about what displayed

1 means?

2 **MS. HENRY:** I don't know whether it means if they
3 actually un-holster their weapons or if they just mean it's
4 obvious that they were carrying them.

5 **THE COURT:** Okay.

6 **MS. HENRY:** But whether or not they touched the
7 Defendant or made any attempt to physically block or
8 restrain his movement, and I think that was fulfilled when
9 Mr. Fulwiley got out of the car to smoke a cigarette, he
10 was instructed to get back in the car, which he did. He
11 complied with that. Whether the language -- number five,
12 whether the language or tone of the voice indicates the
13 compliance with the request might be compelled and, again,
14 I'll point to that instance where he stepped out of the
15 car and was ordered back in by the officer. And whether
16 or not, number six, the officers informed the Defendant
17 they suspected him of illegal activity rather than
18 treating the encounter as routine in nature, and that's
19 sort of a fuzzy issue because there were questions asked
20 about the items they had in the car, where they came from,
21 the flea market. At that point it was just an initial
22 sort of inquiry, but I believe that Corporal Lawler had
23 something in mind there. But, finally, the final element
24 is whether or not the officer requested from the
25 Defendant some form of official identification and, if

1 so, he promptly returned it. He had Mr. Fulwiley's
2 identification. I don't think it's clear in the video
3 when he returned it, but what is clear is that
4 Mr. Fulwiley didn't feel free to leave.

5 Two armed police officers, one of whom instructed him
6 to remain in the vehicle after he took his identification
7 card and while he returned to his patrol car. Compliance
8 of Mr. Fulwiley with the officer's command to get back in
9 the car. And when the officer returned to the vehicle and
10 began questioning Mr. Fulwiley, he questioned him about
11 any illegal items on his person or in the car, which
12 Mr. Fulwiley denied. Anyway, that whole basis indicates
13 that he was seized.

14 Now overlying this is State v. Williams, which is a
15 South Carolina case.

16 **THE COURT:** The cite?

17 **MS. HENRY:** I'll have to give you the cite later,
18 but it's a South Carolina Supreme Court case which
19 indicates that any traffic stop should be for the purpose
20 of whatever the officer is charging you with and if it --
21 after that a particular charge is taken care of, then
22 the officer cannot continue to detain and question the
23 person about additional things that are just kind of on
24 his mind. In other words, that the person is free to go
25 or should be free to go. This is State v. Williams,

1 which is 351 SC 591. And, I'm sorry, it's a Court of
2 Appeals case, not a South Carolina Supreme Court.

3 I believe that at the point where Officer Lawler
4 took the identification card from Mr. Fulwiley and then
5 returned to his car, waited some twenty minutes to get
6 back out, never explaining to Mr. Fulwiley that he was
7 either gonna write him a ticket for this summons for this
8 seatbelt violation or what he was gonna do, he just left
9 him in limbo --

10 **THE COURT:** But he did find additional problems with
11 Mr. Butler because of his DUS status.

12 **MS. HENRY:** That is correct, but that is a completely
13 different matter.

14 **THE COURT:** But it extends the scenario.

15 **MS. HENRY:** It does.

16 **THE COURT:** It becomes more than a seatbelt ticket.

17 **MS. HENRY:** The point being that he had
18 Mr. Fulwiley's identification early on. He could have
19 simply given him a summons and let him go on his way.
20 Mr. Butler was the object of his inquiry, Corporal
21 Lawler's inquiry, and Mr. Fulwiley should have been
22 allowed to go at that point.

23 There was -- the statute that controls the seatbelt
24 usage indicates -- I beg the Court's indulgence. I'll
25 just read it again. This is 55 -- 56-5-6520, mandatory

1 use of seatbelt, but the provisions for the penalty is
2 what Mr. Fulwiley was ultimately summoned with at
3 56-5-6540. Section --

4 **THE COURT:** Wait a minute, 56-5-6520 is what?

5 **MS. HENRY:** That is the mandatory use of the seatbelt,
6 which sets out when it shall be used.

7 **THE COURT:** Okay.

8 **MS. HENRY:** 6540 has to do with the penalties and
9 the issues of citations and that sort of thing, but
10 specifically Section (D) under this statute states a
11 vehicle driver or occupant in a vehicle must not be
12 searched, nor may consent to search be requested by a law
13 enforcement officer solely because of a violation of this
14 article. And our position is with regard to Mr. Fulwiley
15 that was the sole reason for the stop having occurred was
16 because he did not have on a seatbelt. Anything beyond
17 that, as you say, kind of blends over to Mr. Butler, the
18 driver. Mr. Fulwiley should have been sent on his way.
19 We believe that this is an illegal detention and the basis
20 for finding that the seizure was illegal.

21 Under Delaware versus Prouse, Knight versus State
22 and State versus Brown, and this is just commonly
23 understood, an investigative stop regarding an automobile
24 the detention should be brief. It's not a reason to go
25 rumbling through all of the belongings or seeing what you

1 can find. The reason should be stated and the officer
2 should keep the detention brief, just long enough to carry
3 out the purpose of the stop.

4 **THE COURT:** Well, I don't think any of the case law
5 says brief. It says reasonable in length.

6 **MS. HENRY:** I'm sorry?

7 **THE COURT:** I think -- I don't know whether those
8 cases say brief. It says reasonable in length.

9 **MS. HENRY:** Reasonable in length. That's correct.

10 **THE COURT:** That doesn't necessarily mean brief
11 because some cases say thirty minutes isn't too long.

12 **MS. HENRY:** With regard to a seatbelt violation
13 though I think probably brief would be the word to
14 describe, but I do agree with the Court.

15 Well -- and let me back up again. Delaware versus
16 Prouse, 440 US 648, at 99, says when an officer stops a
17 vehicle for a traffic violation, he may briefly detain the
18 vehicle and its occupants while he examines the vehicle
19 registration and the driver's license, so brief has been
20 mentioned there.

21 **THE COURT:** Okay. But what if that inspection of
22 those records and calling in about those records revealed
23 that the driver is committing a crime by driving period,
24 DUS?

25 **MS. HENRY:** Obviously what the officer finds with

1 regard to, in this case Mr. Butler, can extend Mr. Butler's
2 detention there, but it should not have extended
3 Mr. Fulwiley's.

4 And, in fact, another point I'd like to make is being
5 at the initial stop when the officer came around to speak
6 to Mr. Fulwiley and Mr. Fulwiley was apologizing for not
7 having had on his seatbelt initially, the officer said
8 yes, I saw that you had it on. So at that point -- and
9 we will not know this until the officer testifies, but I
10 am assuming what he's going to say is that he saw
11 Mr. Fulwiley trying to put it on as he was driving by or
12 riding by. But the point being here Mr. Fulwiley had the
13 seatbelt on when he was finally stopped -- when Mr. Butler
14 was finally stopped at the Home Depot.

15 **THE COURT:** Does that make -- does that make not
16 having it on at first like he touched home and you can't
17 be tagged by the officer or --

18 **MS. HENRY:** Well, the statute is not clear on that
19 point. It just says the driver and every occupant of a
20 motor vehicle when it's being operated on the public
21 streets and highways of the state must wear a fastened
22 seatbelt which complies with all conditions of Federal
23 law for its use. It doesn't say you have to put it on
24 when you get in immediately or -- and I don't know if
25 there's any law on that.

1 **THE COURT:** Well, I think that's logical. Let's say
2 you go on a hundred mile trip and you've got a cop behind
3 you at the ninety-nine and a half miles and he pulls you
4 over the last -- and says you didn't have your seatbelt
5 on for the last hour and a half and you say I've got it
6 on now? I can't -- I mean, that's still ticketable, I
7 believe.

8 **MS. HENRY:** In that example one would wonder why the
9 officer hadn't stopped him before if he followed him for
10 ninety-nine and a half miles.

11 **THE COURT:** Well --

12 **MS. HENRY:** But this is splitting hairs I realize.

13 **THE COURT:** It is, but -- that's a ridiculous extreme
14 that I put out there. But, anyway, I think that if he saw
15 him without a seatbelt on and intended to pull him over,
16 I think that the fact that the occupant at some point put
17 it on doesn't prohibit the officer from stopping. But I
18 digress.

19 **MS. HENRY:** Well, that's the basis for our belief
20 that this really second seizure was unlawful with regard
21 to Mr. Fulwiley, setting Mr. Butler aside. Under Arizona
22 v. Gant, which is a United States Supreme Court case 129
23 Supreme Court 1710, the holding is that a police car -- a
24 police -- I'm sorry -- the police may not search a car for
25 evidence under the search incident to arrest exception

1 unless they have a reasonable basis, which is what the
2 Court referred to earlier, for believing that there's
3 evidence in the car, but evidence in the car that is
4 relevant to the crime for which the arrest has been made,
5 and that's a very important part of that holding. It has
6 to be relevant to the crime for which the arrest is made.
7 Here the crime, although it's not a criminal offense, was
8 a seatbelt violation. The items that were inside the
9 vehicle were completely irrelevant to whether or not
10 Mr. Fulwiley had his seatbelt on or not and Gant makes it
11 perfectly clear -- again, this is their language -- that
12 the police are not entitled to search for evidence not
13 relevant to the crime charged. The officer asked
14 Mr. Fulwiley -- he saw -- I saw you moving forward in the
15 vehicle. Mr. Fulwiley says his back was hurting him and
16 he was leaning forward to relieve some of that pressure,
17 I suppose. The officer ignored that explanation and
18 instead went directly to the passenger side, opened the
19 car door, got on his knees and started pulling things out.
20 I think that Gant addresses this type of search. Whenever
21 an individual is caught committing a traffic offense when
22 there is no basis for believing that evidence of the
23 offense might be found in the vehicle, the search creates
24 a serious and recurring threat to the privacy of countless
25 individuals. Indeed, the character of that threat

1 implicates a central concern which underlies the Fourth
2 Amendment. The concern about giving police officers
3 unbridled discretion to rummage at will among a person's
4 private effects. That's at 1720. The course under this
5 all is reasonableness and the Gant court found that the
6 reasonableness had to do with the relationship between the
7 reason for the stop must be connected to whatever search
8 goes on there afterwards.

9 And just -- I'm winding up here. Using the search
10 incident to arrest exception, and there are exceptions to
11 the automobile searches, I believe parallels the search
12 that would be instant to towing, which is the reason that
13 Corporal Lawler ultimately questions Mr. Fulwiley about
14 getting whatever belongs to him because the car is gonna
15 be towed. I think that was simply a pretext to rummage
16 through the car and to get what information he could
17 completely unrelated to the seatbelt. This was a stopping
18 for a failure to wear a seatbelt, which should have been
19 a simple stop. It extended almost an hour.

20 **THE COURT:** Well, it turned into something else, into
21 a DUS stop, so we've got -- that's got to be part of the
22 equation.

23 **MS. HENRY:** It did, but I think the two are closely
24 intertwined because the reason for extending the stop had
25 to do with the driver, it did not have anything to do with

1 Mr. Fulwiley, and it was a full hour before that summons
2 was given to him and he was allowed to go on his way.

3 Under Arizona v. Gant, under State v. Williams,
4 Delaware v. Prouse and the progeny of those cases, we
5 believe that this seizure amounted to a second illegal
6 seizure and that all of the items that were taken into
7 evidence and any statements that were made should be
8 suppressed.

9 **THE COURT:** Okay. All right. State's argument.

10 **MS. USRY:** Thank you, Your Honor. We believe that
11 the stop in its entirety was justified and we can -- do
12 you want to hear -- I know you've seen the video, so
13 you've seen a lot of what's happened during the stop.

14 **THE COURT:** Well, I think that the stop at least
15 from what I saw was justified for the seatbelt.

16 **MS. USRY:** Yes, sir.

17 **THE COURT:** The Defendant's minimization of the
18 seriousness of the offense itself aside, the law is you
19 must wear a seatbelt and you can be -- your car can be
20 pulled over if somebody doesn't have one on. I don't
21 think that's what she's arguing about. She's saying that
22 the overall stop in length was -- the length of the stop
23 was unreasonable because it was just a seatbelt, but as
24 I pointed out, and as she admitted, it did turn into
25 something else when Mr. Butler was shown to have been

1 driving under suspension, so let's just assume that as a
2 given right now.

3 **MS. USRY:** Yes, sir.

4 **THE COURT:** My biggest concern, quite frankly, is the
5 search of the vehicle under Arizona verses Gant.

6 **MS. USRY:** Yes, sir, Your Honor. I can call the
7 officer to the stand to talk about their policy per the
8 DUS for that -- for the driver of the vehicle and what
9 they would -- their office policy is to then inventory
10 the car once they --

11 **THE COURT:** Inventory it at the scene?

12 **MS. USRY:** Yes, sir.

13 **THE COURT:** You can call him if you'd like.

14 **MS. USRY:** Yes, sir, Your Honor.

15 **THE COURT:** All right.

16 **MS. USRY:** The State calls Detective Lawler to the
17 stand.

18 **THE CLERK:** Place your left hand and raise your right.

19 (Whereupon, Michael William Lawler, was duly sworn by
20 the Clerk of Court.)

21 **THE CLERK:** Once you're seated state your full name,
22 spelling your last, please.

23 **THE WITNESS:** Michael William Lawler, L-A-W-L-E-R.

24 MICHAEL WILLIAM LAWLER,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION (In-Camera)

2 BY MS. USRY:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. You were involved in this case, correct?

6 A. Correct, ma'am.

7 Q. And this was your in-car camera and mic that was
8 picking up sound on the video, State's 1 for ID; is that
9 correct?

10 A. Yes, ma'am, that was my stop, my camera.

11 Q. And we've already kind of -- I'm gonna kind of lead
12 you through this because we've agreed on the fact that
13 you pulled over the occupants originally for a seatbelt
14 violation regarding the passenger.

15 A. Yes.

16 Q. And once you did that, what did you do? Once you
17 pulled them over, you're there at the scene, what did
18 you --

19 A. Once I pulled them over, I -- you know, the original
20 approach to the driver's side, explained the reason for
21 the stop, identifying the occupants involved, the
22 vehicle's being stopped for the passenger not wearing a
23 seatbelt, the passenger gave information, he didn't have
24 identification on him, he provided the registration and
25 the insurance, which were in his -- he said the vehicle

1 belonged to his mother, so nothing I had had his name on
2 it. He did provide his information. I went back to my
3 vehicle and it did take an extended amount of time trying
4 to identify the driver and during that time I was trying
5 to bring him up on my in-car terminal.

6 Q. And why did it take an extended amount of time to
7 identify the driver?

8 A. I guess originally when he gave me his name I tried
9 running it through dispatch and I tried bringing him up
10 on my in-car terminal.

11 Q. Does it take longer because he did not have an ID?

12 A. Yes. He didn't have an ID, so trying to find him
13 -- I think dispatch eventually found him and provided a
14 number where I could look him up on the computer and
15 during all that time I was just, you know, trying to --
16 and with the tickets being on the computer as well I have
17 to flip-flop, you know, between screens to try to get his
18 name and the spelling back and forth -- or his information
19 off of one section of the computer and then switch back to
20 the ticket section to do the other section.

21 Q. When you say that, you say the tickets being on the
22 computer, are you talking about creating the tickets on
23 the computer?

24 A. Yes, ma'am. I have to -- I have to type in every
25 part of the ticket. It's not like a handwritten ticket

1 where I can just fill it out real quick and rip it off.
2 I have to type. And I think when I started it took me a
3 while to identify the driver first. That was my -- you
4 know, the passenger did provide his identification card,
5 so I already knew who he was and just trying to get the
6 identification of the driver because actually the
7 documentation that I got was -- the registration and
8 insurance had his mother's name on it, so I didn't have
9 anything identifying the driver at first, and one of my
10 biggest concerns is I was trying to identify the people in
11 the vehicle before I, you know --

12 Q. So the time period from the stop and when you're in
13 the car, there's one part where you also get back out of
14 the car to get more information from the driver?

15 A. Yes, ma'am. I think I asked him for his social
16 security number.

17 Q. And why did you do that?

18 A. Because that can confirm with dispatch that that is
19 the right person. I mean, I've been doing this a long
20 time and I've been given wrong names and dates of birth
21 change and when they couldn't find him at first -- when
22 you get the social security number, the last four always
23 ties to the person, so eventually they did find him and
24 confirmed who he was with the last four of his social.

25 Q. So during that time that you're in the car in the

1 video, you are attempting to identify the individuals in
2 the car?

3 A. Yes, ma'am.

4 Q. And you said you're also writing -- or attempting to
5 write up the ticket during that time period?

6 A. Yes, ma'am. Well, at the first a good portion of
7 that I have my DMV online, so I'm trying to run a name
8 and date of birth for the driver to see what I -- to find
9 him to see what I've got, to see who's in the car.

10 Q. What are you able to determine about the driver?

11 A. Like what we just talked about. I went back up to
12 the car, I got some more information and I came back.

13 Q. About his -- about if he has any record if at all?

14 A. I did find out that his license was suspended, so
15 his current license was suspended, he had priors, and
16 that's another reason for actually getting the correct
17 information and pulling it up on the car because I can
18 actually see what his priors are, how many he's got.
19 Because the policy for our town is if we arrest somebody
20 and they have like an insurance violation or they haven't
21 paid their taxes on their vehicle, yes, their license will
22 get suspended, but for that suspension code we don't take
23 people to jail for that. It's got to be a, you know, more
24 -- like it's got to be a more -- a violation that's more
25 on their hands, you know, like they have tickets that they

1 don't pay or they have a prior like a DUI or something
2 that happened and they're driving.

3 Q. So you're able to look all of this up on your computer
4 and through dispatch?

5 A. Yes, ma'am. Eventually once I got the number I was
6 able to pull him up.

7 Q. And that's what you're doing during this time?

8 A. Yes, ma'am.

9 Q. At some point are you able to determine if you have
10 charges on the driver?

11 A. Yes, ma'am. When they did come back with his
12 license information, they actually told me his license
13 was suspended and that he was wanted, that he had -- he
14 was -- I think it said Signal 5, which is terminology for
15 us so if the subject is nearby he doesn't know what
16 they're saying to us, so he doesn't know that I know that
17 he's wanted. So they're telling me he's wanted out of
18 Charleston and --

19 Q. What do you as a result of that information?

20 A. Okay. As of right then, I don't know -- I'm working
21 on the suspension, I believe, so I tell them what we call
22 send the hit. What that means is they've told me he's
23 wanted, so now I call -- I've confirmed it's him, I tell
24 Charleston -- or I tell them to send the hit. What that
25 means is that gives them -- it's a ten-minute hit. It

1 gives them ten minutes to call Charleston and they call
2 them and say hey, Lexington PD is out with your -- this
3 guy and they have what they call ten minutes to try to get
4 an answer back.

5 Q. So that extends the time that you're gonna keep that
6 car there longer?

7 A. Yes, ma'am.

8 Q. Do you wait for that to come back before you release
9 them?

10 A. Yes, ma'am. Well, while I'm waiting -- again, at that
11 point I think it took a little while, I did confirm he was
12 suspended for multiple reasons, and I believe at one point
13 we re-approach the car and I get Mr. Butler, the driver,
14 out of the vehicle.

15 Q. And you did that around nineteen minutes and thirty
16 seconds on the video. Does that sound appropriate?

17 A. That's about right, ma'am, I believe.

18 Q. And when you get him out of the car, what's the
19 purpose of your questions at that point to him?

20 A. At that point I'm just trying to find out if he
21 knows -- does he know he's suspended, does he know he's
22 wanted, what is he wanted for, you know, these types of
23 things. I waited for my backup officer to get there at
24 that point and at that point until Officer Kerwin arrives,
25 which is -- I think was the second time I was back in the

1 car, I was the only officer on-scene, and then when
2 Officer Kerwin arrived I think when he heard -- he heard
3 that the subject was Signal 5, so he heard that the guy
4 was wanted, he drove up to back me up. Because any time
5 there's a wanted suspect in the car they always send
6 another officer for backup just in case something goes
7 wrong.

8 Q. When you get Butler out of the car, have you heard
9 back on your call to Charleston for confirmation?

10 A. No. No, ma'am.

11 Q. And after you get Butler out of the car, do you get
12 the passenger, Fulwiley, out of the car?

13 A. Well, I talked to him for a while and after I talked
14 to him for a while I do get Mr. Fulwiley out of the car.

15 Q. That first time you get Mr. Fulwiley out of the car,
16 what's the purposes of your questions at that point?

17 A. Well, I'm getting him out of the car because, first
18 of all, the -- he's suspended as well as the driver. The
19 car --

20 **THE COURT:** Mr. Fulwiley was suspended also?

21 **THE WITNESS:** Yes, sir. He had a --

22 **THE COURT:** Was he wanted?

23 **THE WITNESS:** He's not wanted. He just had -- all
24 he had was a suspended license.

25 BY MS. USRY:

1 Q. Which is important why?

2 A. Because in our policy as soon as I determined that
3 the -- Mr. Butler is gonna be arrested, the car can only
4 be legally transferred over per our policy to the owner
5 of the car or a spouse of the owner of the car, and with
6 this being the son of the owner of the car and his friend,
7 I can't give this car to anybody else. So at the point
8 when I have both of them out of the car, I'm still waiting
9 back to hear about Charleston and while I walked around to
10 the front of the car I did look through the window for a
11 couple of reasons. Because once I get everybody out of the
12 car, I clear the car to make -- of course, just looking
13 through it to make sure there's no like loot property. I
14 didn't go in the car. I was just looking through the
15 windows. I come back around to the back, I talk to the
16 individuals and at this point I hear back, Charleston is
17 confirming, and I told them that -- let them know that we
18 have our own charges and I'm letting them know -- now
19 Charleston's confirming the hit that they sent on Butler.
20 When they confirm that hit on Butler, I tell them to tell
21 them it's -- let them know we have our own charges and by
22 saying that that tells them that we're gonna be taking him
23 to jail and booking him on our charges so they don't have
24 to send somebody up to get him.

25 Q. Okay. And you indicate -- so when you get that

1 information back from Charleston, do you ultimately arrest
2 Mr. Butler?

3 A. Yes, ma'am.

4 Q. Okay. And as of -- during that -- after you arrest
5 Mr. Butler, do you direct more questions to Fulwiley?

6 A. Yes, ma'am.

7 Q. What are the purposes of those questions and what do
8 you ask him?

9 A. At this point I know right now Mr. Fulwiley is not
10 gonna be getting back in the car. He has -- he has no
11 ties to getting in the vehicle, he's not allowed to drive
12 it, and per our policy he can't, so --

13 Q. Do you have a copy of your policy?

14 A. I have a copy of our policy right here.

15 (State's Exhibit Number 2 was marked for
16 identification.)

17 BY MS. USRY:

18 Q. I've marked your policy State's for ID 2. Is that
19 your --

20 **MS. HENRY:** I've never seen it.

21 **MS. USRY:** (Handing.)

22 **MS. HENRY:** Thank you. I apologize, Your Honor. I
23 had not seen this. I didn't know this was coming in.
24 I've never seen this before actually.

25 (Discussion between counsel.)

1 **MS. HENRY:** The Solicitor said she will provide me
2 with a copy of it.

3 **MS. USRY:** I'll provide a copy to her today.

4 **THE COURT:** All right. The immediate question was
5 -- he said that he knows Mr. Fulwiley's not gonna be
6 getting back in the car because he couldn't drive it away
7 per their policy because he wasn't a family member or
8 whatever.

9 **MS. HENRY:** I was just -- I'd just never seen their
10 policy. I didn't know they had one.

11 **THE COURT:** Okay. She'll get you a copy of it.

12 **MS. HENRY:** Thank you.

13 BY MS. USRY:

14 Q. So what is your policy on -- with regard to once you
15 decided to arrest the driver of the vehicle?

16 A. The policy is that I -- we handcuffed Mr. Butler,
17 he was searched and Officer Kerwin, who was my backup
18 officer, he -- I had him put him in the backseat of my
19 vehicle. Once that's determined, I asked Mr. Fulwiley
20 what was in the vehicle that belonged to him. I asked
21 him if any of the items in the vehicle belonged to him.

22 Q. When you do that -- do you do that in all cases prior
23 to inventorying a car when you have multiple individuals
24 in a car?

25 A. Yes, ma'am. I mean, when I tow the car -- or when

1 we tow the car, we try to give, you know -- I mean, these
2 two aren't related, they don't have the same address, so
3 Mr. Fulwiley is gonna be free to go, so -- you know, once
4 I finish up with what I'm doing, he's not gonna be allowed
5 back into the car again. I asked him -- again, I did ask
6 him, you know, what in the vehicle was his. The items
7 that were under the seat that I observed through the front
8 windshield, I said are those his, and we had a discussion
9 about those.

10 **THE COURT:** What did he say?

11 **THE WITNESS:** At first he said they -- they -- I
12 think he said -- I don't remember exactly, but he did say
13 at one point they were Mr. Butler's and then he said that
14 they were both of theirs, and he did take -- he had a
15 hesitation, like he didn't really come out and say, and
16 then he said they were Mr. Butler's and then he did say
17 well, they're both of ours, that we were gonna sell them
18 or something like -- something along those lines, sir.

19 **MS. USRY:** And, Your Honor, I can -- I have some
20 notes from that if you want me to clarify.

21 **THE COURT:** You can question him.

22 **MS. USRY:** Okay.

23 BY MS. USRY:

24 Q. But you did watch the video. That's your memory from
25 the video?

1 A. Yes, ma'am.

2 Q. Okay. And it was somewhat -- there was a time when
3 he said they're both of ours; is that what you said?

4 A. Yes, ma'am. He did make a mention that they were
5 both of theirs.

6 Q. And there were times that he said they were
7 Mr. Butler's?

8 A. Yeah, he did say at one point they were -- yes, that
9 they were Mr. Butler's. I think he said they were
10 Mr. Butler's first and then he said well, they're both of
11 ours, we were selling them or something like that.

12 Q. And there was a series of questions about this. I
13 think it was -- I mean, it went back and forth a little
14 bit?

15 A. Uh-huh.

16 Q. Is that correct?

17 A. Yes, ma'am.

18 Q. And you're summarizing?

19 A. Yes, ma'am. I'm just summarizing that.

20 Q. Once he indicated that they were both of theirs, did
21 you let them go back in the car to get any property out of
22 the car?

23 A. No, ma'am. I don't ever let people go back into the
24 car. Once I know the vehicle's gonna be -- at this point
25 the vehicle's ours. The driver's in custody and the

1 vehicle's ours. At that portion in time --

2 Q. Did you --

3 A. Go ahead. Sorry.

4 Q. Do you do -- once you've made a determination to do
5 an inventory, do you do a sweep of the car?

6 A. I'm sorry, when I --

7 Q. Like a protective sweep of the car.

8 A. Well, yes, ma'am. What I -- what I did was -- after
9 he told me about the property being both of theirs and
10 whatnot, I went back into the vehicle. At this point
11 right where he said -- or where I could see where the
12 stuff was --

13 Q. What stuff?

14 A. The -- I could see BC's powders and medicine from the
15 front window into the -- underneath the front seat where
16 I had seen Mr. Fulwiley when he was bending down while I
17 was pulling them over. I could see that tucked underneath
18 the front seat. And due to the fact that that's where the
19 property was and where he was reaching, yes, what I do is
20 I go through the car, make sure that there's no weapons
21 in the car. I'm not saying that officers haven't told
22 people to go back in the car and get whatever they're
23 gonna take, but what I always try to do first is, yes,
24 the car is gonna get towed, it's in our possession as of
25 this point, there's gonna be an inventory on it.

1 I went underneath the front seat and I, again,
2 checked the property and, again, made sure there was no
3 weapons in the car. I think I ended up checking the
4 driver's side first where Mr. Butler was sitting and then
5 I came over to the passenger side after, and that's where
6 I located all of the items.

7 Q. Okay. I've kind of walked you through generally
8 what's happening and I skipped over the different things
9 that you saw that led to you making an arrest ultimately
10 or -- excuse me, detaining Mr. Fulwiley in the backseat
11 of your patrol car further. Let's go back and talk about
12 why you ultimately detained Mr. Fulwiley in the back of
13 your patrol car.

14 A. Okay.

15 Q. Tell me what led up to that, if you can.

16 A. Okay. Well, when I was inventorying the vehicle --
17 when I went back to take the items as part of our
18 procedures, I was -- you could tell that there was a lot
19 of money and a lot of stuff being -- that had been stuffed
20 underneath the seat.

21 Q. What money? Was there money in the car?

22 A. I mean, a lot of money's worth of products. Sorry.
23 Lots of money's worth of product.

24 Q. Okay.

25 A. I had taken the product -- sorry -- out of the

1 vehicle and put it on the hood of my car and at that point
2 what led me to understanding what was going on is the
3 difference in answers that I got from both Mr. Butler and
4 Mr. Fulwiley as I was talking to them, there were certain
5 questions I asked, how nervous they were, there was an
6 indication that something else was going on. I mean, I
7 know at one point -- this was cut out of the original
8 video, but I asked if there was anything illegal in the
9 car to Mr. Butler and he had told me no, there's nothing
10 stolen in the car and I never asked him if there was
11 anything stolen, I asked him if there was anything
12 illegal. So there was just a lot of nervousness, the
13 tensions, the difference in answers. One of them said
14 they were coming from flea market, one saying they were
15 gonna take the items to a flea market and they were gonna
16 open up a stand, you know, so their stories weren't making
17 sense and --

18 Q. What when you initially pulled the car over, if
19 anything, did you see?

20 A. Originally I was sitting in the low number blocks of
21 Columbia Ave. They drove by me heading east, which is --
22 I don't know if you want a landmark. It's right across
23 from Rush's on Columbia Ave. They were heading east from
24 like the Walgreen's direction, they passed me in plain
25 view, I followed the vehicle, I saw Mr. Fulwiley sitting

1 forward, like really sitting forward where his head was
2 almost like in front of the dashboard where like the
3 airbag would come out, and I could see the seatbelt
4 hanging straight down.

5 Q. And when you got behind him, what did you do?

6 A. When I got behind them, I -- the reason why I
7 actually took a little while -- time before I pulled them
8 over is when I got behind them I actually ran the tag to
9 make sure the tag came back clear and let -- you know,
10 called it in to basically let people -- let the other
11 officers know, you know, what I'm doing, conducting a
12 traffic stop, and just procedure stuff. We run the tag
13 before we pull the --

14 Q. Did you observe anything happening in the car?

15 A. Yeah, at that point I could see there was some
16 movement going on and I could see that Mr. Fulwiley was
17 still bending over and it looked like he was doing
18 something underneath the seat. And another thing that
19 caught my attention that something might have been going
20 on is when he got out of the car to light the cigarette,
21 which they talked about earlier --

22 Q. Yeah, let's pause for a second and let me just orient
23 to that.

24 A. Yes, ma'am.

25 Q. So you pulled them over and you say while you're

1 running the license tag they're both still in the car and
2 at some point during that time Mr. Fulwiley does stand up
3 out of the car?

4 A. Yes, ma'am.

5 Q. Okay. Now tell me what you're describing there.

6 A. As he stands up to get out of the car, what he does
7 is he steps out, stands and grabs a cigarette, but as he's
8 doing it he's fixing his pants. I can see him pulling the
9 strings on his sweatpants and, again, it's just more of a
10 concern.

11 Q. Why is that significant to you?

12 A. Because the way I saw him underneath the seat and now
13 that his pants are loose, it just shows that -- I mean,
14 I've been doing this a long time and, you know, people tend
15 to have things in their pants or whatever and the way he
16 was crouched down obviously he was crouched down way too
17 low to -- he was doing something underneath the seat of
18 that car.

19 Q. And the fixing of his pants was significant to you?

20 A. I mean, I was concerned at that point, you know, he
21 could have had a gun that he was stuffing underneath
22 there, but when he got out and pulled the strings on his
23 pants I obviously knew he was doing something under the
24 seat of that car.

25 **THE COURT:** Did you find anything in his pants when

1 he was patted down?

2 **THE WITNESS:** Sir, all I did was pat him down. I
3 didn't search him. I just patted him down and I didn't
4 find anything on him in his pants.

5 BY MS. USRY:

6 Q. So -- and I kind of -- I know we've jumped around a
7 little bit. In the first part we were going through
8 generally the traffic stop and the second set of questions
9 we talked about what you -- what led to up ultimately
10 arresting -- or, I guess, detaining. Did you arrest
11 Mr. Fulwiley that day for shoplifting?

12 A. No, ma'am, I did not.

13 Q. So you detained him in your car while you were
14 looking -- after you found items underneath the seat; is
15 that correct?

16 A. Yes, ma'am. I detained him while I investigated the
17 items that I found underneath the seat.

18 Q. What other steps once you saw the items under the car
19 did you take to investigate this case at the scene?

20 A. While I was -- when I went through and found all the
21 items, there were several items and they were all brand
22 new. There were a bunch of -- I think there were twelve
23 razors that were still in the hard plastic case and --

24 Q. Is that significant?

25 A. Yes, ma'am. I've done this --

1 Q. Why?

2 A. I've seen -- I've actually arrested people with the
3 same items before and as anybody knows if you buy a razor
4 when you go to a store you've either got to get the store
5 clerks or something to come over and remove them from
6 those metal box -- those boxes. They're either on some
7 type of hook system that they've got to remove the hook to
8 get it off to give it to you or you've got to take that
9 plastic case and they have some type of magnetic thing
10 that they put on the top and it unlocks it and then they
11 open it up.

12 Q. And the razors that you found were in a plastic case?

13 A. Yes, a hard plastic case that you wouldn't have been
14 able to -- like you or me wouldn't have been able to use
15 at home.

16 **THE COURT:** Where did you -- when did you notice that
17 the razors were still in the hard plastic cases? Before
18 or after they were taken out of the car?

19 **THE WITNESS:** After they were -- well, Your Honor,
20 they were in a bag and when I took the bag out of the car
21 they were in the bag that was in the car.

22 **MS. USRY:** I beg the Court's indulgence.

23 BY MS. USRY:

24 Q. So when you're continuing your -- what else are you
25 doing to investigate this case? You said you removed

1 items from the car once you saw there was something to be
2 investigated and per your inventorying the car?

3 A. Yes, ma'am.

4 Q. Okay. Tell me what else you're doing.

5 A. I found a receipt for CVS in the vehicle. The
6 vehicle, except for these items which had -- which some
7 were in CVS bags, some were in a big like hard -- almost
8 like a Christmas bag, I guess you'd call it, I found a --
9 there was a one and a half liter of Pepsi and a receipt
10 for that one and a half liter of Pepsi, the rest of the
11 car was pretty clean. So I took a look at the receipt
12 and saw that it had come from a CVS and I saw that one
13 of the -- being that these items could very well have
14 possibly and I thought definitely a drug store item, and
15 I've seen them before, I called the CVS that was listed on
16 the receipt.

17 Q. And what did you do when you called them?

18 A. When I called them, I asked if they -- if they had
19 anything -- or any items -- were they missing any items
20 and I gave them a rundown of what I had. I know at one
21 point she said that yes, there was a male in the store and
22 she gave a description to me over the phone and that when
23 he left the store he set off the sensors and she said they
24 were actually -- I think she said they were actually
25 watching their video because he had set off the sensors.

1 Q. Okay. Let's kind of walk through this a little bit.
2 So the CVS receipt, was that near the time of the stop or
3 two weeks before or was there a time on the receipt?

4 A. Yes, ma'am. It was 2:38 I believe was the exact time
5 and I stopped him at 3:10 in the afternoon, so 2:38 and
6 3:10.

7 Q. Were they coming from the direction that that CVS was
8 located at?

9 A. Actually, no, they were coming from like a different
10 direction, like they'd already went somewhere else after
11 that and now they were heading a different direction.

12 Q. So your location directly -- if I drove directly to
13 the CVS to where you ultimately first saw the Defendant in
14 the vehicle, how long would that have taken?

15 A. If you drove directly there, it would have taken
16 about ten minutes.

17 Q. But they're coming from an opposite direction back
18 toward the CVS?

19 A. Yes, they were actually -- they would have had to turn
20 around to come back the way where I saw them coming at me.

21 Q. So you have a receipt that was from thirty minutes
22 prior and you called that store?

23 A. I called that store. Yes, ma'am.

24 Q. And then when you called that store, you talked to a
25 lady?

1 A. I talked to a female clerk. Yes, ma'am.

2 Q. And do you give her the information that you found of
3 what was in the car?

4 A. Yes, ma'am.

5 Q. At that time when you're talking to her, is she
6 immediately able to identify the items as coming from the
7 store?

8 A. She said that they were missing some items, the
9 razors specifically, and she gave me a description to the
10 T of the pants, shirt, hat.

11 Q. At the time that you call for what they're missing,
12 do you talk to a manager later?

13 A. I do talk to -- I do have contact. I think later on
14 the manager called me back, but I did have contact with
15 the manager of the store.

16 Q. And so the lady that you talked to she gives a
17 description and y'all talk about a description of the
18 individual?

19 A. Yes, ma'am.

20 Q. And the information that you get, does it at all
21 match the subject that you have there with you?

22 A. Yes, ma'am. Everything she told me about him as to
23 everything he was wearing.

24 Q. And then you are able to talk about some of the items
25 that you have in your possession?

1 A. Yes.

2 Q. Does the CVS say they have them or not?

3 A. I specifically described items and between the two
4 conversations I had they came back and told me that, you
5 know, they were missing several items.

6 Q. At that point while you're out on the road with
7 everybody, were you able to a hundred percent say those
8 items came from that particular CVS?

9 A. No, ma'am. I couldn't tell you what -- I mean, I
10 couldn't say a hundred percent that they came from that
11 CVS. No, ma'am.

12 Q. Well, what did you ultimately decide to do with this
13 case?

14 A. At that point I left CVS and told them that if they
15 wanted to make a report -- I didn't even know where the
16 location of that CVS is, I'm not familiar with it, and
17 what that jurisdiction is.

18 Q. So it's outside your jurisdiction?

19 A. It's outside our jurisdiction. Yes, ma'am.

20 Q. Is it still within Lexington County?

21 A. I found out later it is. I found out it's right on
22 the line of Lexington County. So I -- once I found out
23 that, you know, that more than likely these items were from
24 their store, I decided I wasn't gonna arrest Mr. Fulwiley
25 based on what I had. At that point I went around, took

1 him out of the car, took the handcuffs off him, advised
2 him that he -- well, actually I went in the car real
3 quick, I told them what they were both gonna be charged
4 with, that he was gonna be allowed to go, I went around
5 and took him out of the car, took the handcuffs off him,
6 let him make a phone call to get a ride, and while he was
7 making his phone call I think he actually -- you know, he
8 asked his -- Mr. Butler if he could have the umbrella
9 because it was just starting to rain, and he said he
10 could, so we went in the car and got the umbrella for him
11 and once we got the umbrella for him I had one of my --
12 the officer that was there on-scene I had him drive
13 Mr. Fulwiley up to the S-Mart, which was probably about a
14 ten minute ride because his ride was coming from Augusta,
15 and that was the furthest end of our town limits so I
16 figured he could wait at the gas station there and that
17 was the end of his -- my contact with him.

18 Q. Okay.

19 MS. USRY: I think that's all the questions I have.

20 THE COURT: Cross-examination?

21 Did you cover the policy on inventory searches with
22 him or -- I thought you said you were gonna do that. Is
23 that in the policies?

24 MS. USRY: I made it a part of the State's ID, but I
25 didn't have him read out his policy.

1 **THE COURT:** All right. Go ahead. You can come to
2 that. Go ahead, Ms. Henry.

3 CROSS-EXAMINATION (In-Camera)

4 BY MS. HENRY:

5 Q. It's Detective Lawler now, right?

6 A. Yes, ma'am. I'm still a corporal, but I'm a
7 detective, yes, ma'am. It's just titles.

8 Q. You said at some point when you decided -- after you
9 got the information on Mr. Butler about the DUS it's your
10 policy to have the car towed --

11 A. It's our --

12 Q. -- if, in fact, there's nobody there that's not the
13 owner or the owner's spouse that could take it away?

14 A. Yes. Yes, ma'am.

15 Q. All right. The owner of this car was who?

16 A. I believe it was -- he said it was his mother. It is
17 a -- it looks like a Leegett Nadine Butler.

18 Q. And he did identify her as the owner of the car?

19 A. He said it was his mother. We didn't -- I don't
20 think we talked about her name.

21 Q. Did you attempt to contact the owner of the car?

22 A. No, ma'am. That's not our policy to do that.

23 Q. So your policy is you can't release it to anybody but
24 the owner or the spouse, but your policy is not to call
25 the owner?

1 A. No, ma'am. We don't call owners of the vehicle. The
2 reason is -- I think what you're getting at is --

3 Q. That doesn't make a lot of sense, does it?

4 A. Well, if we stop a car, and there's several times
5 I've had people in the car call and while we're doing our
6 business conducting our stop the owner will show up, but
7 what the Town says with the policy is that these are the
8 only people to release it to because once the car gets
9 stopped and the driver gets arrested the liability comes
10 back on us until we turn it over to the tow company. Once
11 we turn it over --

12 Q. So you don't make any effort to contact the owner.
13 That's the bottom line.

14 A. No, ma'am, we don't.

15 Q. If they happen to show up or whatever and give you
16 proof who they are or whatever, then you will release it?

17 A. Yes, ma'am.

18 Q. Okay. But if the owner had shown up, then
19 Mr. Fulwiley probably could have gotten in the car with
20 her and gone and the car could have gone as well?

21 A. At what point?

22 Q. I'm just saying if that had happened, the car would
23 have gone, it wouldn't have been towed, there wouldn't
24 have been any reason to itemize whatever was in the car to
25 try to give Mr. Fulwiley his stuff?

1 A. Well, I don't entertain any type of stuff like that
2 until the actual traffic stop is done and, you know,
3 whether people approach or not, I mean, that's -- like I
4 said, I don't entertain anything during a traffic stop.
5 Once the traffic stop is over, at that point I'll
6 entertain -- like if she showed up I would talk to her
7 at that point, but, I mean, I was still in the process
8 of doing, you know, everything I was doing, but I don't
9 entertain that during the middle of a stop.

10 Q. And the stop should have been over when you gave
11 Mr. Fulwiley his summons for the seatbelt offense? So far
12 as he was concerned, not Mr. Butler.

13 A. When I gave Mr. Fulwiley his ticket, the only reason
14 he didn't leave was because he got the umbrella out of the
15 car and then my officer drove --

16 Q. Right, I got that, but, I mean, you could have --
17 that stop for Mr. Fulwiley could have ended a whole lot
18 earlier, correct?

19 A. No, I believe it ended appropriate. He was a
20 passenger in the vehicle. The car --

21 Q. The reason the car was stopped, he was the passenger.
22 He should have been ticketed for the seatbelt violation.

23 A. Which he was. He was ticketed.

24 Q. An hour later.

25 A. Which like -- I mean, once I conducted the traffic

1 stop, I found more stuff that made me continue to keep
2 going.

3 Q. Okay. I was curious when you said that you went
4 around the car, looked through the window and saw BC
5 powders or something --

6 A. Uh-huh. Yes, ma'am.

7 Q. -- underneath the passenger seat.

8 A. Yes, ma'am.

9 Q. Okay. From your view from the outside, you could see
10 underneath the passenger seat; is that correct? Without
11 opening the door?

12 A. Yes, ma'am.

13 Q. Okay. You mentioned that you did not do a protective
14 sweep of the car, correct?

15 A. People call it different things. I mean, at the
16 point that everybody was out of the car and no one was
17 gonna be allowed to go back in it, whether you call it
18 an inventory, a protective sweep, again, I don't allow
19 anybody back into the car --

20 Q. I got that, but my understanding of a protective
21 sweep, the very word itself is meant to protect your
22 safety and the safety of other people around you; isn't
23 that correct? When you go into a home, a protective
24 sweep, that's the purpose of that?

25 A. Yeah, but I don't use the words "protective sweep"

1 for -- for like a vehicle. I mean, again, the reason I --
2 I mean, at one point, yes, I'm going back in the car to
3 make sure, A, there's no weapons, you know, B, there's
4 nothing illegal and, C, whatever property's in that car
5 has to remain in that car.

6 Q. Okay. With regard to the weapon issue, you said
7 when you saw Mr. Fulwiley step out of the car to smoke a
8 cigarette and he adjusted the drawstring on his pants?

9 A. Yes.

10 Q. Did that give you any reason to believe that he may
11 have had a weapon?

12 A. It heightened my alertness. I mean, it --

13 Q. But yet you did not conduct a pat-down on him until
14 -- actually you didn't conduct a pat-down, this other
15 officer did according to the video.

16 A. Yes, ma'am. I had him --

17 Q. But that doesn't even happen until twenty or
18 twenty-five minutes after the car's there, Willie's in the
19 backseat. Where's the concern about a gun if you don't
20 initially pat him down?

21 A. Well, that's why I was thinking something was
22 underneath the seat. He had his pants open, he was
23 underneath the seat and when he got out he was tying his
24 pants back up.

25 Q. Okay. Is it your normal practice when you stop

1 somebody for a seatbelt violation and you see bags in the
2 car through -- through the windshield or whatever else
3 that you ask the individuals do they have receipts for
4 what's in the bags?

5 A. Ma'am, usually most seatbelt tickets or seatbelt
6 stops don't amount to much more than just a seatbelt
7 violation.

8 Q. A simple seatbelt and they're on their way?

9 A. Yes, ma'am. I've given out --

10 Q. You don't get them out and pat them down, you don't
11 ask about items in the car?

12 A. No, ma'am. The only time I've ever done that is
13 when they let -- something bigger went on from there,
14 some probable cause reason to continue.

15 Q. They didn't give you any reason just at the beginning
16 of the stop to make you think you were in danger or that
17 some crime was afoot. They were polite, they responded to
18 you, your questions.

19 A. Ma'am, we --

20 Q. In fact, I think Mr. -- did not Mr. Fulwiley apologize
21 for not having his seatbelt on?

22 A. Yes, ma'am, but we don't -- I don't look at every
23 traffic stop that just because someone's polite that my
24 life might not be at risk. I mean, I'm always on edge
25 for every traffic stop whether --

1 Q. And I fully appreciate that.

2 A. -- male or female. I mean, I'm always on edge.

3 Q. I'm trying to get back to when you first observed
4 this car. You were parked in the bank parking lot; is that
5 correct?

6 A. I believe it was the bank parking lot, yes, ma'am.
7 That's one of the places I used to sit.

8 Q. And I guess that was your assignment for that
9 particular time, you were just to be there in case there
10 were any traffic violations?

11 A. No, ma'am. I was the assistant shift supervisor. I
12 was the corporal and was just -- in the afternoon just
13 waiting for calls to come out and while I was waiting for
14 calls I was either there doing paperwork or I was just in
15 the area holding it down waiting for the next thing to --

16 Q. Okay. So you just happened to notice --

17 **THE COURT:** Let him finish. The court reporter is
18 having trouble with that.

19 **MS. HENRY:** I'm sorry.

20 **THE WITNESS:** And so I was just sitting in -- I
21 picked an area that -- that during the day as calls get
22 busy and different sides of town get to where there's
23 nobody at, I'll go to that side of town and sit there and
24 wait for something to come out so someone's in that area.

25 BY MS. HENRY:

1 Q. Okay. But you were there waiting on calls and how
2 did this come to your attention? What brought it to your
3 attention a car going by with a passenger without a
4 seatbelt?

5 A. It just caught my attention just like you said. I
6 mean, I saw the car go by. The passenger -- what really
7 caught me was the passenger was leaning so far forward
8 that -- and you could see that the seatbelt was -- I don't
9 know if you've ever paid attention to a car going by, but
10 when the driver's head is almost at the dashboard where
11 you can just see the top round part of his head and the
12 seatbelt is hanging there, I know there's no way he's got
13 that seatbelt on. I mean, it's not -- it's just hanging,
14 so I was like --

15 Q. Seatbelts don't normally hang, do they? They retract
16 and are pretty much against the panel of the car.

17 A. Yeah, but you can see the silver thing. I mean --

18 Q. You could see inside and see the silver thing as the
19 passenger side is going past you?

20 A. Yes, ma'am. I've been an officer for almost ten
21 years and I was in traffic for over two and a half years
22 and one of my things was just --

23 Q. So you -- I'm sorry.

24 A. One of my things was I just stopped cars for two and
25 a half years and, you know, I could sit on the side of the

1 road and see a seatbelt or see the shiny silver part or,
2 you know, see kids not in car seats. I mean, that's what
3 we -- that's what we're trained to do.

4 Q. Okay. I'm just trying to get a picture in my mind
5 because that bank is on the corner of Main Street and
6 Columbia Avenue, 378?

7 A. Yes.

8 Q. And you're in the parking lot facing Columbia Avenue?

9 A. Backed in at an angle.

10 Q. Okay. But you're facing --

11 A. So if I was facing this direction, the cars were
12 coming at me this way.

13 Q. Right.

14 A. So my front window was facing -- I mean, it would be
15 Columbia Ave, but I was at an angle -- a little bit of an
16 angle towards Columbia Ave with West Main off to my left.

17 Q. Sort of to the west?

18 A. I was -- I was kind of looking, yeah, probably more
19 towards the north, but a little bit --

20 Q. And the car that Mr. Butler and Mr. Fulwiley were in
21 was coming through that intersection where the bank is
22 heading east on Columbia Avenue?

23 A. Yes, ma'am.

24 Q. So the passenger side -- if I could, you would be
25 looking at this --

1 A. Yes, ma'am.

2 Q. -- from this direction? How could you see inside and
3 see that silver thing? I just don't get it.

4 A. Well, you know, he's leaning all the way forward --

5 **THE COURT:** It's getting a little argumentative now.
6 I'll resolve the propriety of the stop.

7 **MS. HENRY:** I'll move on.

8 **THE COURT:** Okay. I apologize for cutting you off,
9 but --

10 **MS. HENRY:** No, no, it was deserved.

11 I beg the Court's indulgence.

12 **THE COURT:** Yes, ma'am.

13 **MS. HENRY:** I don't think I have any other questions
14 for you. Thank you.

15 **THE COURT:** Redirect?

16 **MS. USRY:** Your Honor, I don't -- I think the only
17 thing we want to clarify is that we did enter into --

18 REDIRECT EXAMINATION (In-Camera)

19 BY MS. USRY:

20 Q. You have your policy before you?

21 A. Yes, ma'am, I do.

22 Q. Can you read or publish for the Court the relevant
23 portion to your particular stop here with regard to your
24 policy?

25 **THE COURT:** Well, let's narrow it more about the

1 inventory search is what I was looking for.

2 **MS. USRY:** Yes, sir. Yes, sir. The relevant part
3 of the inventory search.

4 **THE COURT:** Or you can just tell me where it is and I
5 can find it.

6 **THE WITNESS:** It's the highlighted area.

7 **MS. USRY:** He actually marked it with -- it was a
8 clean copy and he marked it when he brought it up here to
9 us.

10 **THE COURT:** Is the inventory search highlighted in
11 here anywhere? I see when the driver of the vehicle is
12 taken into custody and the vehicle would be left
13 unattended and released to the registered owner that says
14 you're authorized to have it towed. Is there anything
15 that says upon the tow of -- inventory procedure, Roman
16 Numeral 4. Okay. That's Page 3 of 7. Alright. I can
17 read that.

18 Go ahead, Ms. Usry.

19 **MS. USRY:** Your Honor, I don't think I have any
20 further questions for this officer at this time.

21 **THE COURT:** You can step down. Thank you.

22 **THE WITNESS:** Thank you, sir.

23 (Witness excused.)

24 **THE COURT:** Alright. I know we haven't taken a break
25 since about a quarter till ten. I know we may have some

1 more to do. So can we take a recess right now?

2 **MS. USRY:** Yes, sir.

3 **MS. HENRY:** That's fine.

4 **THE COURT:** What else are you gonna want to do? What
5 else are you gonna want to do before we're prepared to go
6 forward with the jury? Jackson v. Denno?

7 **MS. USRY:** Yes, sir, Your Honor. And I think we
8 pretty much covered part of it. The statements we want
9 to enter is anything on the video. We don't have any
10 additional to the video. I think potentially what we
11 talked about through this officer's testimony here and
12 with the video that you've seen we might be able to do
13 that pretty straightforward.

14 **THE COURT:** All right. We'll take a just a brief
15 recess and I'll be back in, okay?

16 **MS. USRY:** Yes, sir.

17 (Recess taken.)

18 **THE COURT:** All right. Anything -- any other
19 evidence before I hear your argument on the search of
20 the passenger -- I mean, the -- yeah, the passenger
21 compartment?

22 **MS. USRY:** I do not have a further witness on that,
23 Your Honor.

24 **THE COURT:** All right. Well, what's the State's
25 position on the -- let's see. I don't think the stop was

1 unreasonably extended, so I'm not gonna grant any motions
2 on that. My question is under Arizona versus Gant, the
3 search of the passenger compartment, I believe you would
4 agree wouldn't have anything to do with whether or not
5 Mr. Fulwiley had or did not have on a seatbelt, so what
6 was the purpose of -- the propriety of searching the
7 passenger compartment without a warrant?

8 **MS. USRY:** Your Honor, they -- I think per their
9 policy they will inventory the vehicle and on the video
10 itself you see the tow coming up at the end of the vehicle
11 and towing the vehicle for at least a scene, so they did
12 inventory the vehicle prior to showing that it did happen
13 at the scene and I think it's proper at that point to
14 inventory the vehicle.

15 **THE COURT:** What does the policy say, if anything,
16 about when that search is gonna be done?

17 **MS. USRY:** The policy does not indicate an exact
18 as far as like where -- a location it needs to be done,
19 but it does I think indicate that it is done before the
20 towing.

21 **THE COURT:** So it says in the policy it's to be done
22 before the towing?

23 **MS. USRY:** I beg the Court's a brief indulgence.

24 (Pause in the proceedings.)

25 **MS. USRY:** So on Page 2 of 7 under 3D --

1 **THE COURT:** 2 of 7?

2 **MS. USRY:** Yes, sir, Page 2, a full inventory of the
3 contents of any vehicle towed will be made --

4 **THE COURT:** Slow down. Slow down.

5 **MS. USRY:** I'm sorry. 3D, a full inventory of the
6 contents of any vehicle towed will be made and annotated.
7 Both officer and -- on an inventory tow vehicle form.
8 Both officer and wrecker driver will sign the completed
9 form. They'll do that prior to towing.

10 **THE COURT:** Has that been done? Is there any
11 evidence of that?

12 **MS. USRY:** I did not present that with the officer
13 here. We do have the form. I think we do have the form
14 that was done at the scene.

15 **THE COURT:** All right. That's gonna need to be in
16 evidence, so you can recall the officer.

17 **MS. USRY:** Yes, sir. I'll briefly recall the
18 officer.

19 **THE COURT:** You're still under oath.

20 CONTINUED REDIRECT EXAMINATION (In-Camera)

21 BY MS. USRY:

22 Q. All right. Detective Lawler, as part of the search
23 that you performed in this particular instance, did you do
24 an inventory of the vehicle?

25 A. The inventory was completed, yes, ma'am.

1 Q. Was it done before the vehicle was towed?

2 A. Yes, ma'am.

3 Q. Did you complete a form in this case?

4 A. Actually it was -- the actual officer that assisted
5 me was Patrolman Kerwin. I have the form right here, the
6 actual copy that goes to the police department. It's a
7 Lexington Police Department Vehicle Tow Report. It was
8 completed on-scene and it was signed by Officer Kerwin and
9 the tow truck driver. Actually you can see on video him
10 signing his copy.

11 Q. Were you present for that?

12 A. I was present, yes, ma'am.

13 **THE COURT:** Was the property from CVS seized as part
14 of the inventory search or before that?

15 **MS. USRY:** It was seized prior to --

16 **THE COURT:** I'm asking -- I'm asking the officer.

17 **THE WITNESS:** Sir, it was seized during the inventory,
18 but it was -- it was seized during the inventory, but not
19 put on the inventory sheet because the tow truck driver is
20 responsible for everything on the sheet. So while it was
21 collected and dropped as evidence, I can't list it on the
22 sheet because the tow truck driver would have to be -- he's
23 ultimately responsible for the stuff listed on the sheet.

24 **THE COURT:** Such as what? What's on the sheet?

25 **THE WITNESS:** (Hanging.)

1 **THE COURT:** A leather case with books, a spare
2 tire, equipment, vacuum, car washcloths, bowling ball,
3 antifreeze, toilet paper and clothing, church books,
4 Pepsi, cell phone, glasses, cups, key ring, change,
5 vehicle book and papers. That's from the glove
6 compartment. So why were -- why were the other things
7 from the CVS not part of that inventory?

8 **THE WITNESS:** Because at the point -- they were
9 collected as part of evidence.

10 **THE COURT:** Evidence of what?

11 **THE WITNESS:** Of the additional contact that I made
12 with CVS. Evidence of the crime that happened at CVS.

13 **THE COURT:** All right. Go ahead, Ms. Usry.

14 BY MS. USRY:

15 Q. When you conduct an inventory of the vehicle, do you
16 conduct it before or after towing in general?

17 A. On every traffic stop that a vehicle got towed that
18 I've done has been done before the vehicle's left the
19 scene.

20 Q. Why is that?

21 A. Because what we're doing is we're completing the form
22 so when the tow truck driver comes to the scene he's
23 signing the form taking custody of everything that we list
24 from the vehicle and any damage that's listed to the
25 vehicle so that way if the -- when the owner of the vehicle

1 comes to get their car anything that was marked on the
2 sheet is listed and any damage that's marked was done prior
3 to it being turned over to the tow truck driver. So we
4 don't -- we had complaints in the past of stuff being
5 missing or damage being done. If it's not on the sheet,
6 then it's happened after we transferred it over.

7 Q. So before the car leaves the scene, I guess, for
8 liability purposes for the police department, is that a
9 good way to summarize it?

10 A. Yes, ma'am. And being I was a road supervisor for
11 five years I've always made my guys do the same thing. It
12 has to be done before the car leaves the scene.

13 Q. Okay. Is that done across the police department?

14 A. Yes, ma'am. Standard.

15 **THE COURT:** Mark that sheet for ID, please.

16 **MS. USRY:** Yes, sir.

17 **THE COURT REPORTER:** Number 3.

18 (State's Exhibit Number 3 was marked for
19 identification.)

20 BY MS. USRY:

21 Q. And, in general, when you conduct an inventory of a
22 vehicle and determine that some of the items collected
23 could be part of criminal activity, do you include it on
24 the inventory sheet for the tow company?

25 A. No, ma'am. Like we've taken several times like drugs

1 or different things out of cars before and anything that
2 doesn't go with the car doesn't get listed on the tow
3 sheet.

4 Q. What do you do with those items?

5 A. Those items will get seized and then dropped in as
6 evidence.

7 Q. And at this point, just for clarification purposes,
8 when you take that evidence, did you make an arrest at that
9 time?

10 A. No, ma'am. For the items that I located?

11 Q. Correct.

12 A. No, I did not. No, ma'am.

13 Q. Was that gonna be further investigated?

14 A. Yes, ma'am.

15 Q. Subsequent to this were they made available for
16 further investigation, those items that you collected?

17 A. Yes, they've been available and I think other agencies
18 have looked at it.

19 **MS. USRY:** Nothing further.

20 **THE COURT:** All right. Any questions, Ms. Henry, on
21 the inventory search?

22 **MS. HENRY:** Yes, Your Honor.

23 **RE CROSS EXAMINATION (In-Camera)**

24 **BY MS. HENRY:**

25 Q. This policy that Lexington County has that we have

1 a copy of it as Court's -- excuse me, State's Exhibit
2 Number 2, it only indicates that officers are authorized
3 to have a vehicle towed. It doesn't state in here -- and
4 I've had to do a quick reading -- that the vehicles must
5 be towed. Does it state that anywhere in here?

6 A. Ma'am, it says -- I'd have to read the whole thing
7 again, but, I mean, since I've been at the police
8 department any time I've stopped a vehicle where the driver
9 got arrested and it wasn't a spouse in the vehicle, the
10 vehicle's gotten towed, and that's been standard for the
11 nine plus years that I've been here.

12 Q. So you don't recall whether or not your policy is that
13 a vehicle must be towed?

14 A. Yes, ma'am. I've never been able to leave a car
15 on-scene. I've never been able to leave a car on-scene
16 before.

17 Q. But that's not part of the written policy for the
18 Town of Lexington Police Department; is that correct?

19 A. I mean, let me just briefly --

20 **THE COURT:** All right. He can look at the policy and
21 -- I can find it if it's in there, too, but if the witness
22 can find it, if it's in there, that's fine. Or I can as
23 well.

24 Are any of the jurors already here?

25 **BAILIFF:** There are some. Yes, sir.

1 **THE COURT:** What's he looking for, Ms. Henry?
2 Anything mandatory about towing?

3 **MS. HENRY:** Right.

4 **THE COURT:** Does that really matter?

5 **MS. HENRY:** Correct. Does it matter if it's
6 mandatory? He says it's their policy, their procedure
7 and he's following that. I think it does matter if it's
8 mandatory or not because he won't call the owner.

9 **THE COURT:** All right. Let me --

10 **THE WITNESS:** (Hanging.)

11 **THE COURT:** Officers are authorized to have a vehicle
12 towed when the driver of the vehicle is taken into custody
13 by the police department and the vehicle would be left
14 unattended unless released to the registered owner or the
15 spouse. So the policy says he's authorized to have it
16 towed.

17 **MS. HENRY:** Right.

18 **THE COURT:** And that's what he did.

19 **MS. HENRY:** Well, I have another question for the
20 officer.

21 **THE COURT:** Okay.

22 BY MS. HENRY:

23 Q. On this inventory sheet you did not actually conduct
24 the inventory yourself; is that correct?

25 A. I did not fill the paper out, but I conducted the

1 inventory as well.

2 Q. Is that indicated? I just -- let's see.

3 **THE COURT:** Would you go in there and tell the jurors
4 who are here that we're not going to start at 1:45, it's
5 going to be 2:30. And so any other jurors who come back
6 tell them they're welcome to stay, but if they want to
7 leave they just need to be back at 2:30, okay?

8 Is that all right, Ms. Usry?

9 **MS. USRY:** Yes, sir, Your Honor.

10 **THE COURT:** Ms. Henry, is that okay?

11 **MS. HENRY:** Yes, sir.

12 **THE COURT:** All right.

13 **MS. HENRY:** May I continue?

14 **THE COURT:** Yes, ma'am.

15 BY MS. HENRY:

16 Q. The signature at the bottom of this? That's an
17 Officer Kerwin, correct?

18 A. Yes, ma'am.

19 Q. So he filled out this form?

20 A. Yeah, that's his writing. Yes, ma'am.

21 Q. You did not fill out this form?

22 A. No, ma'am, he did.

23 Q. But you're saying that you actually conducted the
24 inventory?

25 A. We both were -- we both actually went through the

1 vehicle.

2 Q. Is there a reason you did not sign this?

3 A. Officer Kerwin signed it. It doesn't require multiple
4 signatures as long as one's on it.

5 **MS. HENRY:** Your Honor, I don't think I'm gonna object
6 to his testimony. I don't believe that -- he is not the
7 author of this inventory search, his name's not on it,
8 Officer Kerwin's is. I believe Officer Kerwin would be the
9 one who would have to testify to get this into evidence.

10 **THE COURT:** Well, the fact remains is the CVS bags
11 and the incriminating evidence is not on the form, so my
12 -- my interest mostly is the policy, okay? But you can
13 continue. I'll rule on that in just a minute.

14 BY MS. HENRY:

15 Q. Did you list on any form the items that you personally
16 took in? And I'm talking about the CVS bags and all this.

17 A. Every other item is listed in the report.

18 Q. Okay.

19 A. Every item that was taken from the car.

20 **THE COURT:** Not on the inventory?

21 **THE WITNESS:** Not on the inventory sheet, but it's in
22 the department form -- the department incident report.

23 BY MS. HENRY:

24 Q. And you turned that into where, the items?

25 A. Evidence.

1 Q. Into your evidence at the Town?

2 A. At the Town Police Department.

3 Q. Not the sheriff's department?

4 A. No, ma'am. I'm with the Town. We have our evidence
5 right across the street.

6 Q. But ultimately -- I believe in your earlier testimony
7 you said that you told the CVS -- either the manager or
8 whoever that if they wanted to pursue charges they need to
9 do it through the sheriff's department because it wasn't in
10 your jurisdiction.

11 A. Yes, ma'am, they have to call the agency that has
12 jurisdiction where the crime took place, which would be --
13 what I found out later was Lexington County, and I don't
14 have jurisdiction in that location.

15 Q. I understand. And at what point did you transfer the
16 evidence to the sheriff's department?

17 A. I never did. I took the evidence and I've been --
18 our evidence custodian has maintained it since. It still
19 was dropped under the original incident report number that
20 I had drew up for this case for this traffic stop.

21 Q. Okay.

22 **MS. HENRY:** I beg the Court's indulgence.

23 **THE COURT:** All right.

24 **BY MS. HENRY:**

25 Q. So that -- that evidence has all been in evidence

1 since 2014?

2 A. Yes, ma'am. They've been collected and that's when
3 they were dropped.

4 Q. Okay.

5 A. And I took them out today to bring them over here --
6 or I think last night for today.

7 Q. Officer, according to this inventory sheet, the -- I
8 mean, the tow truck sheet, that was conducted on June 7th,
9 which was the day of the stop, correct?

10 A. Yes, it was June 7, 2014.

11 Q. Do you know when -- at what point that inventory
12 search was done?

13 A. It's an inventory. It's when he --

14 Q. During the day?

15 A. When he actually filled out the paper? I don't know
16 what -- I mean, the search can begin as soon as the car --
17 the inventory can begin as soon as the car -- we realize
18 that there's no more contact with the car to be made. We
19 have officers go through at that point and we check for
20 weapons and any illegal things and then they go back and
21 they fill out the paperwork before the wrecker gets there.
22 This was filled out -- I don't believe -- I don't know the
23 exact time, but it was filled out -- you can see Officer
24 Kerwin on the video. I asked him at one point to go ahead
25 and start filling out the tow sheet. He is seen on video

1 filling it out and then it's when he signs he actually --
2 you can see when the tow truck driver arrives that the tow
3 truck driver is actually filling it out as well, I believe.
4 The tow truck driver signs as receiving. He doesn't fill
5 anything out, just his name.

6 Q. This was done after Mr. Fulwiley left?

7 A. After he left the scene. No, it was before he left
8 the scene because Officer Kerwin was the one who gave him
9 a ride and Officer Kerwin is the one that filled this out
10 and so it would have been right before he left.

11 **MS. HENRY:** I don't have any further questions, Your
12 Honor.

13 **THE COURT:** Anything else, Ms. Usry?

14 **MS. USRY:** No, sir, Your Honor.

15 **THE COURT:** All right. You can step down. You can
16 leave those exhibits with the court reporter, please.

17 (Witness excused.)

18 **THE COURT:** All right. Any additional argument,
19 Ms. Usry? The Defendant moves to exclude the evidence
20 of shoplifting from the CVS on the basis of Arizona
21 versus Gant's been violated and she also argues -- let's
22 see. I believe I'm correct in stating that the stop was
23 unreasonably extended.

24 I want to hear your -- your arguments on Gant. I'm
25 not going to -- I'm not gonna exclude anything on the fact

1 that the stop was unreasonably extended. Even though it's
2 couched by the defense in the terms of a simple seatbelt,
3 it did obviously progress to something else, albeit not
4 involving the Defendant.

5 **MS. USRY:** Yes, sir, Your Honor. We would distinguish
6 Gant in the sense that this is not a search incident to
7 arrest. This is a search -- first of all, the particular
8 -- Mr. Fulwiley was not arrested, so it wasn't a search
9 incident to his arrest.

10 **THE COURT:** Well, if it wasn't a search incident to
11 his arrest, you couldn't search him anyway. I'm talking
12 about -- that kind of covers yourself up with a problem
13 because -- well, I don't think the search incident to
14 arrest is the big issue. The issue is the CVS bags and
15 the contents have nothing to do with the seatbelt.

16 **MS. USRY:** Yes, sir.

17 **THE COURT:** And there are a lot of cases that talk
18 about inventory searches and it's kind of a first cousin,
19 if not a brother, to inevitable discovery issues. Just to
20 recite the integral part of what we're talking about here,
21 the Fourth Amendment protects the right of people to go on
22 about their business without being subject to undue search
23 and seizure, and that's essential to an orderly government.
24 The illustration being Nazi Germany; papers, please. We
25 don't do that here at least across the board. We do have

1 a situation -- well, I don't want to go -- I don't want to
2 pontificate. I want to hear what y'all have to say about
3 Arizona versus Gant, inventory search, inevitable discovery
4 and things of that nature.

5 **MS. USRY:** Yes, sir. Your Honor. We -- based on
6 the information that we have in this case, the officer
7 once he knew that the driver could not further take the
8 car per their office policy was -- called a tow truck and
9 then inventoried the vehicle and he testified he did that
10 for legal reasons. They do that in every case. They're
11 gonna go through the car and find what's in there and pull
12 it out prior to that. I think that testimony is clear and
13 I'm not gonna -- based on what he said on the stand and
14 we'll reiterate what he said.

15 My argument would further be that absolutely
16 inevitable discovery has come into play. No one is gonna
17 get the vehicle, they're not gonna call -- per this policy
18 they're not gonna call mom, they're gonna take and tow the
19 vehicle and no matter what at some point the vehicle is
20 going to be inventoried, but their policy is to do it
21 beforehand, that's what they've done every time, it's okay.

22 And, Your Honor, from the beginning of the stop they
23 had -- well, I'm gonna rest on -- I'm gonna focus on the
24 fact that they arrested the driver of the vehicle and then
25 inventoried the vehicle per that procedure. I think that

1 that's different from the Gant scenario.

2 **THE COURT:** Okay. I'll come back. And, Ms. Henry,
3 any comments you have on -- remaining on these issues?

4 **MS. HENRY:** I believe these are -- this inventory
5 search and the inevitable discovery fall in the same bag.
6 The fact of the matter is the officer took out -- searched
7 that car long before a tow truck was being called to do
8 an inventory on it. He was in without a warrant, he was
9 bringing out bags and bags of stuff because he had a hunch
10 perhaps that he was gonna follow through on, but that was
11 long before the -- I don't think that even applies. And
12 Gant is clear that they're not entitled to search for
13 evidence that is not relevant to the crime that's charged.

14 **THE COURT:** All right. Okay.

15 All right. My ruling is this. My limited research
16 -- as y'all have been arguing, I've been trying to pull
17 up cases. I've pulled up Arizona versus Gant. We have a
18 case in South Carolina called State versus Brown, a similar
19 situation to this. The Court of Appeals in its decision
20 reversed the trial -- well, it ruled that the search was
21 illegal based on Arizona versus Gant on the search. The
22 Supreme -- our Supreme Court reversed the Court of Appeals
23 and said yeah, that's exactly the rule now, but you can't
24 apply it to a case that was on appeal when Arizona versus
25 Gant came out because the law enforcement officer was

1 diligently following existing case law. But nonetheless
2 to me the reasoning of the Court of Appeals is sound as
3 applied to the instances we have now post Arizona versus
4 Gant and it says the exclusionary rule provides that
5 evidence obtained as a result of an illegal search must
6 be excluded. It goes on to say the inevitable discovery
7 doctrine is an exception to the inclusionary rule and,
8 states that if the prosecution can establish by a
9 preponderance of the evidence that the information
10 ultimately or inevitably would have been discovered by
11 lawful means, the information is admissible despite the
12 fact that it was illegally obtained, and it cites Nix
13 versus Williams. And also one of the beginning cases,
14 Wong Sun versus United States that goes back to everybody's
15 law school constitutional law classes. In the appellate
16 Court of Appeals' decision in State versus Brown they just
17 kind of said we're not even gonna talk about inevitable
18 discovery because there's no evidence presented at trial
19 in-camera dealing with that. It says police must follow
20 standard procedures to conduct an inventory search and no
21 such testimony was presented, thus we conclude the
22 inevitable discovery doctrine does not apply. I know that
23 case has been reversed, but the reasoning is still sound.

24 Here's what I think. I think that more than likely
25 the officer jumped the gun in pulling the CVS bags out, it

1 had nothing to do with a seatbelt violation, and that that
2 evidence was initially illegally seized. And I hate using
3 that term "illegally" for a law enforcement officer.
4 They're all doing the best they can. This officer is
5 obviously trained, very experienced. However, I believe
6 that the inventory policy says that when the driver of a
7 vehicle is taken into custody and the vehicle would be
8 left unattended, unless released to the registered owner
9 or spouse officers, are authorized to have it towed.

10 Page 2 talks about under Roman Numeral 3D officer
11 responsibilities. D, a full inventory of the contents of
12 any vehicle towed will be made and annotated on the
13 inventory tow vehicle form.

14 Page 3, Roman Numeral 4, talks about all compartments
15 and containers in the vehicle will be inventoried. These
16 plastic bags were containers within the vehicle. These CVS
17 items did not make the inventory list because they had
18 already been taken out. I do find that at least based on
19 the preponderance of the evidence that if they had been
20 left in there, not illegally seized, then they would have
21 been found in the inventory search.

22 I think that the Defendant has made as good an
23 argument as I have ever heard in a traffic case, and there
24 are a lot of them, about the impropriety of the seizure,
25 but my ruling is that the incriminating items would have

1 been inevitably discovered. I think you have done an
2 admirable job at least clarifying on the record what your
3 positions are, but that's my ruling.

4 Okay. So Jackson versus Denno and then we're gonna
5 stop for lunch.

6 **MS. USRY:** Yes, sir, Your Honor. The statements that
7 I mentioned are gonna be the same ones on the video.

8 **THE COURT:** Could you tell -- could you put on the
9 record the specific content of what statements you contend
10 are on there made by the Defendant?

11 **MS. USRY:** Yes, sir, Your Honor.

12 **THE COURT:** And that would be subject -- the ones
13 based on the interrogation. I've already ruled on the
14 backseat stuff.

15 **MS. USRY:** Yes, sir, Your Honor. I kind of broke it
16 down and so there are -- I don't have -- I'm just gonna
17 kind of generalize it first. The very first time you hear
18 the Defendant speak is gonna be when he's first pulled over
19 and the questions -- the officer just gets their license
20 and registration and gets their information. That's the
21 first comments you hear on there. The second time that the
22 officer speaks with Mr. -- the Defendant Fulwiley is when
23 he pulls him out of the car and asks him whose stuff is in
24 the car prior to inventorying the car and kind of asking
25 him questions along those lines. So that's really the two

1 -- the two points we're looking at. We're looking at when
2 he very first goes to the car and gets their information
3 and then when he pulls them both out of the car as part of
4 the traffic stop and he continues to ask the different
5 questions about what's going on and whose is what in the
6 car, so he asks those questions of the Defendant.

7 There's a third kind of point and I brought this up
8 to Ms. Henry yesterday. I think -- this is kind of all
9 blurring together, but I think at some point when they are
10 searching the car and it's when the trunk is open, so it's
11 after -- it's been a while, they've gone into the front of
12 the car and they've opened the trunk, and while they were
13 over by the trunk --

14 **THE COURT:** Is it after the two or three times he says
15 am I under arrest? It had to be.

16 **MS. USRY:** I think so, Your Honor.

17 **THE COURT:** Okay.

18 **MS. USRY:** I beg the Court's indulgence. I think it
19 is. Yes, because they've started the inventory, so he
20 asked those kind of questions kind of prior to the
21 inventory. That's part of that first -- that first set
22 of questions when they pull him out of the car when he asks
23 am I being arrested.

24 **THE COURT:** Okay.

25 **MS. USRY:** This is later and there's a statement that

1 is unsolicited in our opinion and it's -- it said the
2 Defendant makes an unsolicited statement and it's to the
3 officer. You can kind of hear some mumbling and you hear
4 the officer responds you were coming from the flea market,
5 kind of repeating what he's saying, and then he continues
6 the search. / He doesn't ask a question.

7 **THE COURT:** And the other guy -- one of them said
8 well, we're going to take this stuff to the flea market.

9 **MS. USRY:** Butler in his statement does make some
10 contradictory statements. We have removed those for
11 purposes of in front of the jury.

12 **THE COURT:** Right.

13 **MS. USRY:** But later -- this is also on the video,
14 the Defendant makes the statement, and I believe this is
15 actually after Miranda, quite frankly, which is why I
16 noted it, too. He's beside the car and you can see him
17 in the -- see Lawler looking in the trunk and he looks
18 up and says -- you can hear the Defendant say something
19 and he responds you were coming from the flea market and
20 then he continues his search. We would argue that's an
21 unsolicited response.

22 **THE COURT:** All right.

23 **MS. USRY:** I think I skipped over one where he asked
24 do you have a receipt for all of these when he's pulling
25 things out of the car and then the Defendant says they

1 don't give receipts at the flea market and that's kind of
2 separate from that first section.

3 **THE COURT:** Okay. What's the Defendant's position on
4 those statements?

5 **MS. GILREATH:** Judge, we would have a motion under
6 Jackson v. Denno. I'm not sure if it's necessary to lay
7 the foundation to have the officer come back up to cross
8 as to these. I know he's testified to a lot of it, but I
9 don't know --

10 **THE COURT:** And the recording is in evidence at this
11 stage at least for my consideration, but if you want to ask
12 him anything that's fine to lay any foundation or if the
13 State wants to call him back.

14 **MS. GILREATH:** I'm just trying to decide which is
15 going to be less complicated; trying to point to a
16 specific part of the video or just getting it out through
17 officer testimony.

18 **THE COURT:** I'll leave that up to you.

19 What's your overall position on why some, more or all
20 of these statements aren't admissible? What's your basic
21 position?

22 **MS. GILREATH:** Your Honor, our basic position would
23 be that these statements were not given freely and
24 voluntarily. Essentially at the time all these statements
25 were made Mr. Fulwiley was not free to leave evidenced by

1 the fact that he wasn't even allowed to set foot outside
2 of his car. He at some point was placed into the car, he
3 was detained there even further restricting his ability to
4 leave, and so -- and these things all play into the -- all
5 of the statements -- and that's what I was saying. I
6 didn't know if it would be best to try to go through the
7 video or get it out through officer testimony because
8 obviously there's different circumstances for different
9 statements based on what's happened so far.

10 **THE COURT:** Well, the custody, whether or not he is
11 free to leave, is an objective thing, but I have to hear
12 the actual circumstances of this case to determine whether
13 under those circumstances a reasonable person would think
14 they were free to go. So if you want to -- if somebody
15 wants to call the officer and ask him those questions,
16 that would be fine.

17 **MS. GILREATH:** That might be the best thing to do,
18 Your Honor. We'll call Officer Lawler to the stand.

19 **THE COURT:** All right. You're still under oath, sir.

20 MICHAEL WILLIAM LAWLER,
21 having been previously sworn, testified as follows:

22 DIRECT EXAMINATION (In-Camera)

23 BY MS. GILREATH:

24 Q. Detective Lawler, at the point -- you heard Ms. Usry
25 mention a few minutes ago the different statements that

1 she referenced that she would be intending to introduce at
2 trial, correct?

3 A. Yes, ma'am.

4 Q. And so the initial conversation where you make contact
5 with the driver of the vehicle and Mr. Fulwiley, at that
6 point were they free to leave? Could they have just driven
7 off at that point?

8 A. At the original approach?

9 Q. Correct.

10 A. No, they were not free to leave.

11 Q. Now at that point where you're speak with them in
12 there, you're in the window, you speak to them for a
13 moment, you go back to your vehicles, they're still in the
14 vehicle there, correct?

15 A. Yes, ma'am.

16 Q. The next time you make contact with Mr. Fulwiley is
17 when he steps outside the car to smoke a cigarette?

18 A. Yes, ma'am.

19 Q. And whenever he steps outside the car attempting to
20 smoke the cigarette, you actually instruct him to get back
21 into the vehicle?

22 A. Yes, ma'am.

23 Q. At any point did you tell him you're free to leave if
24 you'd like to?

25 A. No, he wasn't free. The traffic stop wasn't over

1 yet, he hadn't got his paperwork and he's not -- it's a
2 safety issue for him to get out of the car while I'm still
3 conducting the stop.

4 Q. So from the time they were -- so from the time they
5 were pulled over into the parking lot of the Home Depot
6 until the time that Mr. Fulwiley actually left when you
7 gave him the -- I guess the summons for the seatbelt
8 violation --

9 A. Yes.

10 Q. -- up until that point he was not free to leave at
11 any point?

12 A. No, ma'am, he had -- I'd have to give him his ID back
13 and he had to get his paperwork and I hadn't finished the
14 ticket yet.

15 Q. And there were actually other officers on-scene during
16 this time, correct?

17 A. Officer Kerwin arrived, I think, about twenty minutes
18 into it once they confirmed that I had a wanted suspect in
19 the vehicle and once I came across the items in the car, I
20 called Sergeant Stowe, he was running shift that day, just
21 to let him know what was going on and he ended up coming to
22 the scene.

23 Q. And are those also uniformed officers?

24 A. Yes, there were three of us at the end when Sergeant
25 Stowe got there. I think he got there five or ten minutes

1 before it was all over, but, yeah, he was uniformed, too.

2 Q. So they would be wearing badges?

3 A. Yes, ma'am.

4 Q. They'd have a gun on their hips?

5 A. Yes, ma'am.

6 Q. And the first officer -- which one was the first
7 officer that arrived?

8 A. After me was Kerwin, Officer Kerwin.

9 Q. And was that the one who was there whenever you
10 instructed Mr. Fulwiley to get back in the vehicle?

11 A. I'm not sure if he was there yet. I think I was
12 still on video by myself. He's the first one that shows
13 up besides me, but I think while I'm conducting -- trying
14 to get the information back on Mr. Butler I think that's
15 when he got out of the car. If Officer Kerwin was there,
16 I'm not sure. I'd have to double-check with the actual
17 video to see for sure.

18 Q. Do you recall having a conversation with Officer
19 Kerwin about whether or not -- I believe he had asked you
20 a question about whether if someone opened a car door,
21 whether that would be considered an accident or if he just
22 did a report?

23 A. If somebody opened a car door?

24 Q. In a parking lot. Do you remember that happening,
25 that conversation between yourself and Officer Kerwin?

1 A. I don't remember.

2 Q. Do you recall having a conversation with him about
3 the officer, and I believe you referred to it as Signal
4 3 -- I mean, about the driver being Signal 3 and about
5 Mr. Fulwiley being Signal 3?

6 A. Yes. Suspended, yeah.

7 Q. And do you remember this being at the point where
8 immediately after or right in that same timeframe where
9 you're in the vehicle and Mr. Fulwiley has exited the
10 vehicle and been told to get back into the car?

11 A. I believe it's after that he's being told to get back
12 in and that's when me and Officer Kerwin were talking.

13 Q. Okay. So from that point on there were -- there were
14 no less than two officers on-scene?

15 A. Yes. From that point on, yes, ma'am.

16 Q. And then at some point a third officer arrived?

17 A. Yes, ma'am. That was after the items were found in
18 the car.

19 Q. And then at some point you actually put Mr. Fulwiley
20 into the vehicle along with the driver?

21 A. Yes, ma'am, while we investigated the CVS items.

22 Q. And so obviously at that point he wasn't free to leave
23 either?

24 A. No, ma'am, he wasn't.

25 Q. And he was Mirandized at some point, correct?

1 A. Yes, ma'am, he was.

2 Q. And there was an indication to you guys, to the
3 officers that were there, that they didn't wish to make
4 any other statements to law enforcement?

5 A. I believe Officer Kerwin said something like that.

6 Q. So there actually were some further statements that
7 were made?

8 A. He -- officer Stowe or Sergeant Stowe showed up and
9 I think he asked them a couple questions after. Like, I
10 don't know what they were. It wasn't on anything that I
11 -- that when -- you know, that I heard or that I -- you
12 know, I don't know. I think you can hear him on video
13 asking them a couple of things, but while I was doing
14 something in the trunk or around the trunk he had made --
15 Mr. Fulwiley said something and I turned around and I said
16 you were coming from the flea market. He made a statement
17 to me and I just made a statement back to him. I don't
18 remember what he said, but I -- what I believe is that he
19 made the statement and I just repeated it back to him, you
20 were coming from the flea market, so whatever way it says.
21 But, yeah, he had -- that was one statement in there that,
22 you know, he had said something to me and I said something
23 back. I believe Sergeant Stowe once he got there he just,
24 you know, asked him a couple of things. Again, none of
25 that I believe was recorded or anything, but -- and I'm not

1 sure if there's any other -- what other issues or questions
2 were asked.

3 Q. And then at the point whenever you put him into the
4 back of the vehicle with the driver of the vehicle, you
5 were aware that what they were saying at that point was
6 being recorded?

7 A. Was I aware? Yes, ma'am, I was.

8 Q. So you were aware that he had already been given
9 Miranda, indicated he didn't wish to speak and you put
10 him in the back of the vehicle knowing it was still being
11 recorded?

12 **THE COURT:** We've already covered that.

13 **MS. GILREATH:** I'm getting somewhere with it, if I
14 may? I just want to establish, if that's all right, if
15 that was the case.

16 **THE COURT:** Sure.

17 **THE WITNESS:** Yes, ma'am. I mean, it's recorded.

18 BY MS. GILREATH:

19 Q. Was he told at any point after the initial Miranda
20 that other statements that he might make would either be
21 recorded or used against him aside from the statements he
22 made to you immediately after Miranda?

23 A. No, he was told his Miranda rights and after that he
24 wasn't told anything else I don't believe about recorded
25 or --

1 Q. Was he given Miranda by the other -- you mentioned
2 there was another officer who arrived on-scene. Was he
3 given Miranda again at that point?

4 A. No, ma'am, he was just given it once by Officer Kerwin
5 and actually can you hear him giving Miranda on my audio
6 device.

7 Q. And going back to when you first arrived, you pulled
8 in, they -- you're pulling them over, they're going into
9 that parking lot. You actually pull in behind the vehicle,
10 correct?

11 A. Yes, ma'am.

12 Q. So that they wouldn't be able to back out to leave?

13 A. Yes, ma'am. We pull in behind because that's the
14 safest place to be is behind them.

15 Q. But having pulled in behind them, they wouldn't be
16 able to back the car up?

17 A. No, they -- no, not when I was right behind them.

18 Q. At that point where you switch gears where you
19 realize there's some kind of issue with the driver's
20 drivers license and potentially some warrants, at any
21 point after that did you indicate to Mr. Fulwiley that he
22 would be free to leave?

23 A. No, ma'am, I didn't say anything to him as far as him
24 being free to leave.

25 **MS. GILREATH:** Your Honor, I think that's all the

1 questions I have.

2 **THE COURT:** Okay. Anything from the State?

3 **MS. USRY:** Yes, sir.

4 CROSS-EXAMINATION (In-Camera)

5 BY MS. USRY:

6 Q. So, Detective Lawler, when you initially talked to
7 the Defendant when you first went up to the car, what was
8 the purpose of that?

9 A. To identify and explain the reason for the stop.
10 Identify them and I tell them who I am and I explain the
11 reason for the stop and to gather their information.

12 Q. And later -- and so during the stop I think of we've
13 established that you originally pulled them over for a
14 seatbelt violation and you were running the driver's
15 information and it came back as DUS. Have you ever during
16 a traffic stop just let an occupant leave and walk away
17 from the car?

18 A. No, ma'am.

19 Q. Why not?

20 A. Once a traffic stop was over -- I once had like the
21 same situation where it was all done and I let -- at that
22 point I let four occupants leave, but it's a safety issue.

23 Q. It's a safety issue?

24 A. Because I still have the original defendant in the
25 vehicle -- I mean, the driver. He's in custody in the

1 backseat of my vehicle. If I were to let somebody just
2 walk off, I don't know if this is gonna turn around and
3 come back on me, if they're gonna call more people. That's
4 why we don't let people even use their phone until we let
5 them call for a ride because, I mean, you never know who
6 they're gonna call.

7 Q. And the nature of your questions originally after --
8 once you get them -- I'm fast-forwarding to when you get
9 them out of the vehicle.

10 A. Yes, ma'am.

11 Q. When you get them out of the vehicle, the nature of
12 your questions to Butler were of what kind? That's of the
13 driver. What kind of questions did you have?

14 A. I asked him about his license, I asked him -- I think
15 I asked him why he was -- what would the reason be that he
16 would be wanted out of Charleston and things along those
17 lines. I asked him -- I think I asked him, too, what was
18 his passenger, you know, pushing under the seat.

19 Q. The questions you're asking, are they related to try
20 and figure out more information about -- now you have this
21 DUS situation going on. Are you attempting to find out
22 more information about that?

23 A. Well, I'm always looking at the big picture. You
24 know, everything we do is -- I'm looking into, A, you know,
25 officer safety issues, two, you know, what was he pushing

1 under the seat because he might know, it might have been a
2 weapon or something like that. Just I've been doing this
3 for a long time and so, you know, the questions are kind
4 of just standard. We ask about what's -- you know, the
5 initial questions, I ask about what's going on with the
6 license, the wanted, and then, you know, some of the stuff
7 that we're concerned about, you know, what was your
8 passenger pushing under the seat.

9 Q. And you mentioned that was for various reasons, one
10 of which was officer safety during the traffic a stop?

11 A. Yes, ma'am.

12 Q. Okay. And then when you pull out the passenger, do
13 you explain -- or what do you say to him at first?

14 A. I don't remember what I -- what I said at first, but
15 I think I said -- I know at one point I said do you have
16 anything illegal on you or on your person or in the car or
17 something like that and he hesitated and then -- I don't
18 remember exactly what the word -- what his words were.

19 Q. You asked about something illegal and then did -- did
20 you ask him -- and it's on the video, so I'm just gonna
21 refresh your memory and move this along. It's on the video
22 that will be played in court. Did you ask him what he was
23 doing leaning over when he passed -- when you saw him
24 leaning over in the vehicle?

25 A. Yes, ma'am, I did ask him that.

1 Q. Okay. And what was his response?

2 A. I don't remember if that was the point he said it at,
3 but he said something about his back. I don't remember if
4 that was the actual point that he said it.

5 Q. He did. At that point he did respond his back was
6 hurting. It's on the video, yes. And then when you
7 finished talking to him, did you go back and talk to
8 Butler?

9 A. At that point I think I -- at that point when I
10 finished talking to him, it came back that Butler's hit
11 was confirmed and -- but at that point he was -- I went
12 around and I think I actually had Butler turn around, told
13 him he was being arrested. Well, actually I had him turn
14 around and he was handcuffed, but I think that's the point
15 I handcuffed and arrested Butler.

16 Q. Yes, that is the point where you turned around and
17 handcuffed Butler. So those first questions to Fulwiley
18 revolved around what -- was there anything illegal in the
19 car and what was he doing leaning over. They obviously --
20 well, tell me why you asked those questions. Why did you
21 ask those questions?

22 A. I've just been doing this for a long time and, you
23 know, most of the time when somebody is leaning forward
24 -- actually I'd have to say a lot of times every time
25 someone's leaning forward like that there's something

1 under the front seat that's not supposed to be there.
2 There's been times I haven't been able to do anything with
3 it and I could at least see from the front window that I
4 knew there was some type of -- you know, I could see at
5 least a few packs of BC powders from the front. That's
6 why I was asking that and my concern is that, you know, I
7 don't know if he was tucking something else in there, you
8 know. I mean, I've taken a lot of guns out of cars, so.

9 Q. And that was gonna be my question. The fact that
10 it's a car, is that significant to you, if at all, when
11 you ask those questions?

12 A. Yeah, I mean, you know, for being a car you can get
13 back in and the car's not gonna be there forever, you know.
14 The --

15 Q. And you said in your career you've found different
16 things under the seat?

17 A. Yeah, different things under the seat.

18 Q. And I'll move on from that. So you talked to
19 Mr. Fulwiley again and you asked another set of questions
20 about items in the car and who owns what items. At what
21 point and why do you ask those particular questions?

22 A. At that point, like I said, the vehicle was gonna get
23 towed. The vehicle was -- was done.

24 Q. Because like we just mentioned --

25 A. The driver was arrested.

1 Q. -- you had arrested Butler?

2 A. Yes.

3 Q. Okay.

4 A. He wasn't part of the vehicle, he had nothing do
5 with the vehicle, nothing to do with the family member
6 of the vehicle, so he -- he was going -- at that point,
7 anything in the vehicle belong to you, because what we do
8 is at that point we go back to the vehicle, we get out
9 whatever items that belonged to him and they get returned
10 to him. So he's -- again, at this point he's not under
11 arrest. He's waiting for his ticket and his ID to come
12 back to him and anything in that vehicle is gonna go back
13 to you and if he says yes, I've got X, Y, Z on the front
14 seat that's mine, if that's what it would have been, we
15 would have gone back got X, Y and Z and given it to him
16 and he would have been not allowed to go back to the
17 vehicle, but he'd have stayed there and got his -- once I
18 finished the ticket, printed it up, which, again, the
19 computer systems takes a while to print those tickets up.
20 Once I would have got his paperwork done, he would have
21 got his paperwork and his ticket and then we would have
22 moved him on from there like we -- like we did before.
23 But, you know, with it being a question of whose property
24 it was and all the hesitation and every time I asked
25 everybody had, you know, a different answer, where they

1 were coming from, where they were going, and everything
2 being brand new, I mean, it gave me the indication that
3 something else was going on.

4 Q. So once you got those hesitant answers back, what --
5 did that change your opinion of what you had?

6 A. Yeah, once -- once he said it was -- the stuff
7 belonged to Butler, then he says it's both of ours, and
8 at that point -- you know, I mean, it would have been easy
9 if he went back to the car and said okay, you know, it's
10 all brand new, but here's the receipt, now if we could
11 work out whose it is, it would have been -- okay, if it
12 was Butler's, it would have been on the inventory sheet
13 and it would have been in his car, and if it was Fulwiley's
14 it would have been -- if the stuff was definitely his, it
15 would have been turned over to him and he would have been
16 carrying it off when he left.

17 Q. So at this point when you make those questions and
18 there's some back and forth on answers, the only evidence
19 that you have of an additional crime -- and I think you
20 mentioned before and it was not part of this testimony,
21 but of your other testimony, is that you saw the Defendant
22 lean over at some point and lean over the seat; is that
23 correct?

24 A. Well, I --

25 Q. He leaned over enough to raise your suspicion about --

1 A. Yes, it raised my suspicion at the time it was going
2 on.

3 Q. And then you talked to Butler and got some answers
4 and then you talked to Fulwiley and got some additional
5 answers?

6 A. Yes, ma'am.

7 Q. And once you got those different answers, did that
8 change your opinion of what he had at the scene at that
9 point?

10 A. Yes, ma'am, with the nervousness and everything, the
11 statements that weren't lining up.

12 **THE COURT:** We're talking about Miranda. We're not
13 talking about that other stuff I've already heard.

14 **MS. USRY:** Yes, sir.

15 **THE COURT:** I think I've heard all I need to hear on
16 that.

17 **MS. USRY:** Yes, sir.

18 BY MS. USRY:

19 Q. Was he Mirandized -- once that happened and you
20 realized that, did you continue questioning him?

21 A. No, I -- I think the statements that only happened
22 after that were -- you know, I think a couple -- one
23 question I think I said that was actually -- I asked him,
24 I said, you don't have to answer this, but do you have a
25 receipt for these items. Because he already said he

1 didn't want to talk, but I was -- if he had a --

2 Q. Did you -- was he ultimately Mirandized?

3 A. Yes, he was Mirandized by Officer Kerwin.

4 **THE COURT:** Was the statement that they don't give
5 receipts at the flea market, was that made after he was
6 Mirandized? Do you know, sir?

7 **THE WITNESS:** I think it was before.

8 **MS. USRY:** Your Honor, I believe that was done before
9 he was Mirandized.

10 **THE COURT:** Okay. All right. You can continue.

11 **MS. USRY:** That statement was done before he was
12 Mirandized.

13 **THE COURT:** Well, anything that he said in response
14 to a question from the officer -- or an officer after he
15 was Mirandized and asserted his right to remain silent,
16 that's gonna be taken out if it hasn't been already.

17 **MS. USRY:** That's correct. He was subsequently
18 Mirandized for this final statement and we've taken out
19 all further statements after Miranda because he said he
20 didn't want to speak.

21 **THE COURT:** In response to interrogation?

22 **MS. USRY:** Yes, sir. Yes, sir. Except for what's
23 in the car. That -- this testimony covers the other
24 statements, I think.

25 **THE COURT:** All right. Okay. I got you. Any

1 additional questions?

2 **MS. USRY:** No, sir, Your Honor.

3 **THE COURT:** All right. Any redirect?

4 **MS. GILREATH:** I don't believe so, Your Honor.

5 **THE COURT:** All right. You can step down. Thank you,
6 sir.

7 **THE WITNESS:** Thank you, sir.

8 (Witness excused.)

9 **THE COURT:** Okay. Any additional argument from the
10 Defendant on the inadmissibility of whatever responses the
11 Defendant may have given to questions asked by either
12 officer?

13 **MS. GILREATH:** Your Honor, we would argue that given
14 the fact that from the time they were pulled over until
15 the time he was permitted to leave with his ticket, he was
16 clearly not free to leave by the officer's own admission.
17 There was at different -- at varying -- at different times
18 varying numbers of officers, sometimes two, sometimes
19 three. He wasn't allowed to get out of his car to smoke a
20 cigarette and when he tried to do that it's clear that he
21 didn't have -- he didn't have the option to leave there
22 even though at that point he wasn't -- he hadn't even been
23 the subject of whatever they were investigating because
24 they were looking into driving under suspension and a
25 potential warrant for the driver and so we would argue

1 that based on his inability to leave that the statements
2 that he made were not voluntary and should be excluded.

3 **THE COURT:** All right. State?

4 **MS. USRY:** Yes, sir, Your Honor. I believe that the
5 officer's questions obviously initially were directly
6 related to the traffic stop under State v. Rivera. I
7 believe his additional questions were permissible in that
8 even though they may be not directly related to the traffic
9 stop they were still tangentially related to what was going
10 on at the time and --

11 **THE COURT:** Okay.

12 **MS. USRY:** Sir?

13 **THE COURT:** I said okay. I thought -- I'm sorry. I
14 thought you were finished. You can continue.

15 **MS. USRY:** Yes, sir. And then along those same
16 lines, the officer -- I know he indicates he was not free
17 to leave, but per office policy -- not policy, but just
18 officer safety he would not have let him leave during the
19 traffic stop in general. The questions he made, I believe,
20 in the first set, and I am generalizing, with regard to
21 Mr. Fulwiley he initially explained why they're waiting
22 longer and asked if there's anything illegal in the car
23 and he's concerned about weapons and officer safety and
24 having a car on the side of the road with a man who's
25 leaned over a couple of times.

1 And, furthermore, the second set of questions
2 involving the inventory and who owns what, you know, he
3 does this prior to inventory. He asked him if anything
4 in the car is his and he's testified that he would let
5 him go back in the car -- his intent would have been to
6 let him go back into the car. The State obviously
7 acknowledges that some of these questions came from his
8 experiences and he's testified he's already had some red
9 flags, so he's also asking these questions with some red
10 flags in mind, but they're legitimate questions as a part
11 of this traffic stop and what he's doing initially.

12 **THE COURT:** Okay. Anything else, Ms. Gilreath?

13 **MS. GILREATH:** I don't believe so, Your Honor.

14 **THE COURT:** Okay. My ruling is this. Whether or
15 not the officer's questions were tangentially related to
16 the stop, I can only deal with whether or not -- I'm
17 determining whether or not the stop was unreasonably
18 extended, not to determine whether or not Miranda has been
19 triggered. But in any event, there are several cases that
20 address this. One of the most recent ones in South
21 Carolina is State versus Corley, a Court of Appeals,
22 383 SC 232. That's 2009. That was affirmed, as modified,
23 by the Supreme Court. The modification had nothing to do
24 with this ruling, so the Supreme Court affirmed, and what
25 Justice Kittredge called it, the Court of Appeals'

1 excellent opinion says the law is clear that the police
2 may in an investigative detention briefly detain and
3 question a person upon a reasonable suspicion short of
4 probable cause for arrest that the person is involved in
5 a criminal activity. It goes on to say -- or Corley goes
6 on to say that it is of no import that the detention was
7 accomplished through a traffic stop. It goes on to cite
8 U.S. Supreme Court case -- a U.S. Supreme Court case of
9 Berkemer versus the United States. I believe that's the
10 name of it. It says persons ordinarily -- or, excuse me,
11 temporarily detained pursuant to an ordinary traffic stop
12 are not in custody for the purposes of Miranda and only
13 if the motorist is detained, and that would equate to the
14 passenger, to a reasonable degree -- to a degree associated
15 with a formal arrest will he be entitled to Miranda
16 protections. It goes on to say even drawing weapons,
17 handcuffing a suspect, placing a suspect in a patrol car
18 for questioning or using or threatening to use of force
19 does not necessarily elevate a lawful stop into a custodial
20 arrest for Miranda purposes. Therefore, even though a
21 motorist in a routine traffic stop may be detained and is
22 not free to leave such a motorist is not in custody for
23 Miranda purposes.

24 This was a routine traffic stop. The questions asked
25 of the officer, whatever they may have been, did not rise

1 to the level and the situation involved did not rise to the
2 level to a degree associated with a formal arrest. The
3 rules, therefore, are a little bit different. Mr. Fulwiley
4 was obviously not free to leave, but Miranda is nonetheless
5 not triggered based on my review of the circumstances.

6 Okay. Anything else?

7 **MS. USRY:** Nothing further from the State, Your Honor.

8 **THE COURT:** All right. I'll put my ruling -- I
9 short-circuited both sides on the unreasonable extension
10 of the stop. I believe everybody made their points, but I
11 didn't put a detailed ruling on the record. I'll do that
12 right before we begin.

13 All right. I think everything's pretty clear. So
14 are we ready to go otherwise other than the fact that
15 we've only got twenty minutes for lunch? We'll go ahead
16 and stretch it out a little bit. I've been keeping the
17 jury waiting all week. We might as well keep doing that.

18 **MS. USRY:** And I just have to make sure that our
19 redactions -- he went ahead and started the redactions.
20 I've just got to go check on that. So hopefully --

21 **THE COURT:** And it's nobody's fault, but nothing ever
22 goes according to plan.

23 All right. Thank you. Be back -- I'm gonna plan on
24 starting about a quarter till three to take a little bit
25 of pressure off of you, and I apologize.

1 Okay. Thank you.

2 (Whereupon, a luncheon recess was taken.)

3 (Whereupon, the jury returns to the courtroom at
4 2:52 PM.)

5 **THE COURT:** All right. Ladies and gentlemen, thank
6 you for your patience. You can take some small comfort,
7 if you take any comfort in it at all, that we broke for
8 lunch for twenty minutes. It's just sometimes court
9 schedules and things run together where it's a little bit
10 herky-jerky in the eyes of outsiders, but I will tell you
11 that we've not been wasting your time with any of the
12 business involving this case or any other case. The case
13 that we're going to start for which you have selected would
14 go into tomorrow anyway and some circumstances that are
15 unavoidable have arisen and we're not gonna be able to
16 start today. What I'm gonna do is explain all of that to
17 you in detail when the case is over, but for now anyway
18 all of it is pretty much irrelevant to what the overall
19 case is about and the trial of the case is about, but the
20 circumstances are unavoidable.

21 So if you would please bear with me one more time
22 and be back in your jury room tomorrow morning at 9:30.
23 Obviously if I had known this this morning -- and it's not
24 the lawyers' fault. If I had known this this morning, I
25 would have told you to come back tomorrow anyway. But,

1 again, I'll explain it all to you in detail at the end and
2 I'm sure you'll understand it. Don't hold this against
3 anybody other than me. It's not the State's fault, it's
4 not the Defendant's fault. It's not anybody's fault.
5 Just circumstances pop up on occasion that result in these
6 delays.

7 So in the meantime, of course, you cannot discuss
8 the case, but be back in your jury -- and don't do any
9 research, blogging, posting, tweeting, whatever you
10 might do in cyberspace, don't do any of that. No
11 communications with anyone else and don't talk about it
12 amongst yourselves. No research and so forth and we'll
13 see you tomorrow morning at 9:30 tomorrow, okay?

14 Thank you. You're free to go.

15 (Whereupon, the jury is excused for the day at
16 2:56 PM.)

17 **THE COURT:** Okay. Anything before we stop for the
18 day? Would you like for us to remain behind for a while
19 just in case anything else pops out? I'm gonna be here
20 for a while anyway. I'll be here at least until four.

21 **MS. USRY:** Yes, sir, Your Honor. I don't think so.
22 I just want to make sure that defense counsel gets a copy
23 of the video so that they can review it and, two, so we
24 have another set of eyes on top of mine looking at it.

25 **THE COURT:** Well, I'll tell you what. Can you stay

1 for another hour?

2 **THE COURT REPORTER:** Sure.

3 **THE COURT:** Okay. We'll stay just in case something
4 comes up because I don't want to get in here at 9:30
5 tomorrow and all of a sudden we have another ten or
6 twenty minutes to spend on something.

7 As far as my ruling on the first part of the
8 Defendant's motion or what I took to be the first part
9 of the Defendant's motion under the theory that the stop
10 was unreasonably extended, I respectfully disagree with
11 the defense and I think all of the circumstances indicate
12 that the stop was never unreasonably extended. As a
13 matter of fact, the initial purpose of the stop really
14 never ended until well, well into the video. As
15 Mr. Lawler stated, it took an extended time to identify
16 the driver and pull up his information on the computer
17 and then he had to get the ticket off the computer. He
18 related that Mr. Fulwiley was under suspension, but he
19 was not wanted. That didn't have anything to do with the
20 extension of the stop. He knew that the -- or, excuse me,
21 the car is going to be towed at some point because the
22 exceptions weren't there for the vehicle to be driven away
23 by anybody and that obviously was going to take some time.
24 The officer also testified about different answers to the
25 same questions given by the two occupants of the vehicle.

1 One said that they were coming from the flea-market, the
2 other one said they were going to take the items that were
3 in the car to the flea market. He asked Mr. Butler if
4 there was anything illegal in the car and Mr. Butler said
5 well, there was nothing stolen and he said that wasn't
6 responsive to his question.

7 I think all in all that stop obviously was based on
8 probable cause and any otherwise lengthy detention was all
9 part of the traffic stop itself and even if the purpose of
10 the stop had ended, I don't think it was unreasonably
11 extended based on all of the circumstances.

12 All right. I think that takes care of that ruling.
13 Certainly if y'all have any closing comments on that, I'll
14 certainly let you protect the record as far as you need to
15 tomorrow, okay?

16 **MS. HENRY:** Thank you, Your Honor.

17 (Recess taken.)

18 (State's Exhibit Number 4 was marked for
19 identification.)

20 (Whereupon, the proceedings were concluded for
21 August 11, 2016, at 4:02 PM.)

22 (Whereupon, the following proceedings were held on
23 August 12, 2016, beginning at 9:33 AM.)

24 **THE COURT:** All right. I think we're missing two
25 jurors, but is everybody ready to go otherwise?

1 **MS. USRY:** Yes, sir, Your Honor.

2 **THE COURT:** Do you have everything lined up with the
3 video?

4 **MS. USRY:** I believe so, Your Honor. I gave defense
5 counsel -- about 6:00 last night in the parking lot we
6 gave her the DVD finally and I think she's had a chance to
7 review it.

8 **MS. HENRY:** That's correct, Your Honor. We did.

9 **THE COURT:** Okay. Anything from the defense before
10 we begin?

11 **MS. HENRY:** Your Honor, there's come to my attention
12 that they're going to introduce some photographs into
13 evidence and there is one that we strongly object to.

14 **THE COURT:** Okay.

15 **MS. HENRY:** I don't know if you want to handle that
16 now.

17 **THE COURT:** All right. We've got a couple of minutes.
18 Which one? Has it been marked?

19 **MS. USRY:** No, sir, and I'll do that right now.

20 (State's Exhibit Number 5 was marked for
21 identification.)

22 **THE COURT:** Which one is it?

23 **MS. USRY:** I'm showing you State's 5 for ID.

24 **THE COURT:** All right. What's your objection to this?

25 **MS. HENRY:** My objection, Your Honor, is that the

1 photographs contains the box cutter.

2 **THE COURT:** Contains the what?

3 **MS. HENRY:** The box cutter along with the medications
4 and pictures of the razors in State's Exhibit 5, I believe.
5 We object to that particular photograph because in our
6 earlier motion on the video the box cutter was eliminated.
7 It's not in the video, it's not part of what is alleged
8 to have been taken from CVS, it has really no relevance
9 and I think it might influence the jury on an improper
10 basis to consider whether or not this assisted in the
11 shoplifting and it's really -- it serves no purpose. It
12 doesn't substantiate any facts, it's immaterial, so we
13 would object to the inclusion of this photograph with that
14 in there.

15 **THE COURT:** Well, how about the car keys and the
16 beeper? I mean, what is it about the box cutter as
17 opposed to the car keys or the -- I guess that's a beeper
18 on the upper right-hand -- what's the difference?

19 **MS. HENRY:** Because of the implication that this was
20 an implement that was used to cut things from the rack.

21 **THE COURT:** Is the State gonna argue that?

22 **MS. USRY:** No, sir, Your Honor. The State --

23 **THE COURT:** I wouldn't have even known what that was.
24 The ones I see are always black or gray handles. I've
25 never seen one that's a pretty color. But in any event,

1 what's the State's response?

2 **MS. USRY:** The purpose for entering the photograph
3 is just when -- and we're gonna do it through Detective
4 Lawler. It's just gonna be everything that he removed
5 from the car. Is this everything that you removed from
6 the car.

7 **THE COURT:** What is alleged to have been shoplifted
8 from CVS though?

9 **MS. USRY:** We have -- it's those specific items that
10 we will also bring out into evidence specifically and I
11 can tell Your Honor --

12 **THE COURT:** Well, the indictment says razors and/or
13 allergy medications.

14 **MS. USRY:** Yes, sir, Your Honor. And the specific
15 items that we plan to enter into evidence that the clerk
16 ID'd from CVS were twelve razors, three boxes of Zyrtec,
17 one Allegra, one Claritin and one Nasacort spray.

18 **THE COURT:** Well, how about all of this other stuff?
19 Do you allege it was shoplifted from somewhere else?

20 **MS. USRY:** No, sir. I just -- he's pulling it all
21 out of the car and I was just gonna do it to describe
22 everything he pulled out. I wasn't really gonna focus on
23 that. I was gonna say is this everything you removed for
24 the car. It's on the video that he's pulling all this
25 stuff out. I was just really doing it for clarification

1 for the jury to see exactly what's pulled out of the car
2 and then I was really gonna focus on as part of his
3 testimony ultimately entering these items. Those are the
4 items I'm gonna pull out and ID and enter.

5 **THE COURT:** Well, aside from the box cutter, which
6 I'm frankly not concerned about, you've got all this other
7 stuff that you're not alleging that has been shoplifted
8 from CVS. Is that not confusing? Because you've got --
9 you said three packs of Zyrtec?

10 **MS. USRY:** Yes, sir.

11 **THE COURT:** You've got like nine on here and you've
12 got all the BC powders -- Aleve, Prilosec, Claritin, BC
13 powders, Bayer, Hi Testosterone, Libido Max, Tylenol and
14 even -- I don't know what those -- Dr. Scholl's gel pads.
15 I think that's -- I'm gonna exclude Number 5.

16 **MS. USRY:** That's fine, Your Honor. Yes, sir.

17 **THE COURT:** All right. I'll hand this back to the
18 court reporter, at least it's marked for I'd purposes, and
19 I'll exclude that.

20 Anything else?

21 **MS. HENRY:** Along those lines, Your Honor, any mention
22 of Wal-Mart here because I think that was initially what
23 was suggested on video, the Wal-Mart bag. Any mention of
24 that we would move to exclude that as well.

25 **THE COURT:** Well, is it on the video?

1 **MS. HENRY:** When he brings the bag out of the car, he
2 says a Wal-Mart bag.

3 **THE COURT:** Well, what's the State's position on that?

4 **MS. USRY:** Your Honor, we were -- we were not gonna
5 talk about anything else. We're focussed on the items that
6 were taken from CVS.

7 **THE COURT:** Okay.

8 **MS. USRY:** As part of the investigation in this case
9 they did call a Wal-Mart to see if the items were -- the
10 additional items were from there. Wal-Mart was not able
11 to say -- they were able to say they -- we sell those
12 items, we cannot for sure say -- charges were not brought.

13 **THE COURT:** There's not gonna be any mention of
14 Wal-Mart by any witness?

15 **MS. USRY:** We're not gonna talk about it. The only
16 reason that we would ever talk about it is if defense
17 counsel opens the door to there's all these other items
18 in the car. I mean, there's ways the door could be opened,
19 but we were not intending to ever talk about that.

20 **THE COURT:** Just don't mention anything about it.

21 **MS. USRY:** No, sir.

22 **THE COURT:** Not unless you get my permission if you
23 think that door's been opened, okay?

24 **MS. USRY:** Yes, sir.

25 **MS. HENRY:** Thank you, Your Honor.

1 **THE COURT:** All right. Anything else?

2 **MS. USRY:** No, Your Honor. I guess the only thing I
3 would bring up is the DVD when I enter it into evidence,
4 the in-car video, I guess I'm requesting maybe at that
5 point for you to describe to the jury that it has been
6 redacted by an agreement of both partes and the Court or
7 something to that extent because it's gonna jump a little
8 bit and I don't want them to think when I have the officer
9 testify has this been altered or changed in any way since
10 he viewed it for the predicate questions.

11 **THE COURT:** At the most, and I think y'all can take
12 care of this in your openings without me commenting on it,
13 it's been redacted for clarity and to -- and for brevity
14 purposes. I'm not gonna tell them I've excluded some
15 things --

16 **MS. USRY:** That's fine.

17 **THE COURT:** -- or that y'all have agreed to exclude
18 some things for evidentiary reasons. I'll let y'all tell
19 them in opening statements that, you know, you may see this
20 jump around. That's because in the process of presenting
21 this case to you necessarily we cut out or we deleted some
22 things that don't have anything to do with the case and it
23 just makes it more streamlined, so don't be wondering about
24 that.

25 **MS. USRY:** That sounds fine..

1 **THE COURT:** And if you want me to do that at the time
2 you introduce it, I'll certainly be happy to. So what's
3 the defense say?

4 **MS. HENRY:** You can handle that in your opening.

5 **MS. USRY:** Okay. We'll handle it that way. Yes, sir,
6 Your Honor.

7 **THE COURT:** All right. If there's any confusion,
8 we'll resolve that at the time it comes up.

9 **MS. USRY:** Yes, sir.

10 **THE COURT:** All right. Anything else? Anything else
11 from the defense?

12 **MS. HENRY:** I don't think so.

13 **THE COURT:** State?

14 **MS. USRY:** (Shakes head.)

15 **MS. HENRY:** Your Honor, I beg your pardon, but when
16 this video is introduced, do you want us to make a record
17 as to the parts that were excluded or not mention it at
18 all?

19 **THE COURT:** I think y'all have already done that,
20 haven't you? We're not gonna do it now because we're
21 already running late and if y'all have got that where you
22 can stipulate to it off the record later on, that's fine,
23 but I'm not gonna extend this any longer. I just can't.
24 I promised the jury several times that we would start and
25 we never started. So as long as both sides are satisfied

1 that the video has been redacted in accordance with your
2 agreement and my ruling we're gonna go ahead and move
3 forward, okay?

4 **MS. HENRY:** That's fine, Your Honor.

5 **MS. USRY:** Yes, sir, Your Honor.

6 **THE COURT:** If either sides sees it going into
7 something that has been redacted by agreement or order,
8 stand up and we'll stop it immediately, okay?

9 **MS. USRY:** Yes, sir.

10 **THE COURT:** All right. You can bring in the jury.
11 (Whereupon, the jury enter the courtroom at 9:39 AM.)

12 **THE COURT:** Okay. We're ready to move forward, ladies
13 and gentlemen. The first order of business is going to be
14 the clerk swearing you in. Ms. Frick.

15 **THE CLERK:** Please stand and raise your right hand.
16 Please respond by I do or I affirm.

17 (Whereupon, the jury was duly sworn by the Clerk of
18 Court.)

19 **THE COURT:** All right. Ladies and gentlemen, you
20 have been sworn in as jurors in this case. I'm gonna
21 talk to you for just a few minutes about what your
22 responsibilities are, what my responsibilities are, and
23 in general how this case might proceed. How many of you
24 have actually sat on a trial jury before? One has. That's
25 relatively unusual in this day and age, but I want to let

1 you know that under our system of justice a jury that is
2 seated is considered to be the sole finder of the facts
3 in the case. The evidence that I'm going to talk to you
4 about in just a minute is going to come to you in different
5 ways, but it's your responsibility to evaluate that
6 evidence and reach a verdict and at the end of this case
7 your verdict is going to have to be unanimous. That means
8 all of you are going to have to agree. It's not going to
9 be a majority vote. It must be absolutely unanimous.

10 In this particular case, the Defendant, Mr. Fulwiley,
11 is charged with the offense of shoplifting. As I'd
12 mentioned to you yesterday, he is not present. That is
13 something that under the law, which you've sworn to follow
14 just now, you cannot take into account in any way
15 whatsoever. The fact that he's present or not present is
16 not a factor for you to consider in any way at all. And
17 I'll instruct you very specifically on that at the end of
18 the case.

19 What is your primary responsibility? Your primary
20 responsibility is basically twofold. Pay attention and
21 use your common sense. That ought to make you relax a
22 little bit because we hope we do that every day when we
23 conduct our ordinary affairs; that we pay attention to
24 what we are doing and we use our common sense. There is
25 no book out there for how to be a juror or Jurors for

1 Dummies. There's no book like that out there. Your
2 responsibility is to pay attention and use your common
3 sense.

4 I am not permitted under the law to tell you what
5 I think about the case from a factual standpoint because
6 I have no role in that regard. When you retire to
7 deliberate, I'm not going to go back there with you and
8 discuss what I think you should do. I'm not going to
9 give you any secret instructions that I pass through the
10 door that tell you anything other than to use your common
11 sense and pay attention. What you have sworn to do is to
12 try this case and to render a verdict according to the
13 evidence and the law. The only way that you can do what
14 you have sworn to do is to pay attention and use your
15 common sense.

16 The evidence that I've mentioned to you is going to
17 come to you in different ways. In any given trial it
18 comes to you by way of witness testimony. That is when a
19 witness is sworn, sits in that chair and the lawyers ask
20 questions and the witness answers those. That's testimony
21 obviously. Another way evidence comes in is by way of an
22 exhibit. Those are typically things that you can see or
23 touch. If there is an exhibit that is introduced for your
24 consideration, it will either have a sticker on it or a
25 tag on it, which is attached by string. In any given case,

1 that might be an automobile tire, it might be the whole
2 car, it might be a gear mechanism, it could be a weapon,
3 it could be a shoe, it could be a piece of paper, it could
4 be a photograph, but when the evidence is introduced by
5 way of an exhibit we refer repeatedly to numbers. You
6 may hear it referred to for identification purposes or
7 for ID purposes. That is just a legal signal that if it's
8 for ID only it's not in evidence. Sometimes exhibits that
9 are marked for ID are for rule purposes or presentation
10 purposes, you don't ever actually see it, it's just
11 referred to for ID, shown to the witness and it's referred
12 to during testimony. So we've got those two ways that
13 evidence comes in.

14 Another way evidence comes in is by way of a
15 stipulation. That is when the two sides agree that a fact
16 or a set of facts is true. If a stipulation is reached by
17 the parties, either I or one of them will read it to you
18 or the legal word for that is publish it to you. So we've
19 got those ways evidence comes in.

20 If the evidence comes in, you can consider in
21 accordance with your oath to follow the law. If I tell
22 you to disregard something that you've just seen or heard,
23 under your oath you have to disregard what I tell you to
24 disregard. And what I would do is I would say ladies and
25 gentlemen, please disregard that last question, that last

1 answer or that piece of paper that may have been shown to
2 you even fleetingly you've got to disregard it.

3 Now going back to witness testimony. Since you've
4 got to use your common sense and pay attention, you have
5 to evaluate the believability of the witnesses who testify.
6 You do that every day when you listen to someone talk.
7 You're doing it formally now. You use your common sense
8 in determining who you believe and what you believe.
9 Under your common sense and under the law you can believe
10 every word that a person says, you can disbelieve every
11 word or you can believe parts and disbelieve the rest.
12 You can take into account things such as the witness's
13 demeanor when they testify. In other words, how did the
14 witness appear, hesitant or straightforward, when the
15 witness was answering questions. You can take into account
16 whether or not you think that witness may have a bias or a
17 prejudice for one outcome or another. You can take that
18 into account when determining believability. You can take
19 into account whether you think that witness's testimony has
20 been strengthened or weakened by other evidence that's in
21 the record. You can take into account whether or not the
22 witness may have said something different or the same on
23 prior occasions and in your mind you can take into account
24 does it make sense that that witness knows what he or she
25 claims to know. So that's not an all inclusive list. You

1 can use anything else you think is appropriate in using
2 your common sense in evaluating believability. One you
3 thing you don't do, you don't automatically -- unless you
4 think that is what the evidence proves to you, you don't
5 have to believe many witnesses over one, you don't have to
6 believe one over many. Obviously in your common sense you
7 don't count up in your mind and say well, twelve people
8 said this, eight people said the opposite, twelve's more
9 than eight, I've got to go with the twelve. That's not
10 what you do and I think you probably realize that. Again,
11 you use your common sense.

12 Now one of the areas where I come in as the judge of
13 the law is if one of the lawyers makes an objection and in
14 most trials there are objections. I think in thirty-one
15 years I have had one trial where there's been no objection
16 and that's hundreds of trials. If a lawyer makes an
17 objection, that is a signal to me under the rules of
18 evidence, which are in this book, or the rules of
19 procedure, which are in this book, that they have a point
20 of law they want me to rule on. A lawyer would stand up
21 and say objection. They may say hearsay, they may say
22 relevance, they may say something else or they may say,
23 you know, leading or whatever. That is a signal to me
24 that I have to make a ruling. In many instances I won't
25 know what they're talking about because I don't know the

1 flow that they're gauging in their preparation of the case,
2 so I may send you out of the courtroom and rule in your
3 absence or I may have them come up here and explain it to
4 me privately and then later on we'll put it on the record.
5 Don't keep score on how I rule. Well, the judge ruled for
6 this side more than the other, he must want that side to
7 win. That's not how it works.

8 In many instances lawyers have good faith differences
9 of opinion as to whether or not a question is appropriate,
10 whether or not an answer is admissible, whether or not
11 exhibits are admissible and I have to rule on that. If a
12 lawyer objects, that does not mean that lawyer is trying
13 to hide something from you that you shouldn't see or hear.
14 By the same token, if a lawyer asks a question or is
15 seeking to introduce evidence that is objected to, that
16 does not mean that that lawyer's trying to slip something
17 in you ought not see or hear. The rules are short in
18 those books, the interpretations are what makes the book
19 so thick, and that's one of the areas where I come in.

20 All right. The case itself is gonna be tried in
21 stages. In a moment, the State is going to stand up
22 through counsel and give an opening statement. That is
23 the State's opportunity to explain to you what the State
24 believes the evidence will or will not show. After that,
25 the Defendant may, the Defendant doesn't have to, give an

1 opening statement. The reason the Defendant does not
2 have to I'll explain in more detail in a second. The
3 Defendant doesn't have to prove or disprove anything, so
4 the Defendant doesn't have to give an opening statement.
5 The Defendant can waive it totally or the Defendant can
6 wait until the State rests totally with its case in chief.

7 After opening statement or statements, the State will
8 begin presenting its case in chief. And how does the
9 State do that? By calling witnesses and offering exhibits.
10 After the State rests, the Defendant, if the Defendant
11 chooses, may also call witnesses, but the Defendant does
12 not have to because the Defendant doesn't have to prove or
13 disprove anything.

14 After the evidence is in, the lawyers will give a
15 closing argument and then I'll give you a charge on the
16 law and it will not be until then that you can deliberate
17 this case. For example, if we take a break in an hour,
18 you can't go back into your jury room and talk about what
19 you've just seen and heard because you have sworn an oath
20 to follow the law and the law is you can't begin making up
21 your mind or discussing the case at all until I tell you
22 that you can.

23 Now the charge in this case, as I mentioned, is
24 shoplifting. The State has to prove the elements of those
25 crimes -- that crime charged beyond a reasonable doubt.

1 As I'll tell you in more detail, a reasonable doubt is
2 the kind of doubt that would make a sincere and reasonable
3 person hesitate to act and proof beyond a reasonable doubt
4 is proof that leaves you firmly convinced of a defendant's
5 guilt. Short of that the State will not have met its
6 burden of proof. The Defendant has entered a plea of not
7 guilty. He is presumed innocent of this crime and he does
8 not have to prove or disprove anything. If you ever hear
9 during the course of the trial me refer to a burden of
10 proof, that is proof beyond a reasonable doubt and that
11 is the burden of the State only. The Defendant, as I
12 mentioned, has no burden.

13 All right. Is there any objection to those remarks
14 from the State?

15 **MS. USRY:** No, sir, Your Honor.

16 **THE COURT:** Any from the defense?

17 **MS. HENRY:** No, Your Honor.

18 **THE COURT:** All right. Opening statement?

19 **MR. POGUE:** May it please the Court? Video might
20 show me on it, but it won't show -- it won't show me
21 stealing that stuff. That's a statement that the
22 Defendant in this case, Michael Fulwiley, makes to his
23 friend in the back of a police car on June 7, 2014.
24 Officer Lawler's car. Rewind to earlier that day. A
25 little after 2:00 PM in the afternoon Michael Fulwiley

1 walks into a CVS store somewhere off of Bush River Road
2 here in Lexington County. He walks in and as he's walking
3 in the closed captioning video in the store kind of catches
4 him adjusting his sweatpants as he's walking in. About
5 -- over twenty minutes later Mr. Fulwiley approaches the
6 register there at the CVS, which is also captured on video,
7 and he puts the Pepsi that he plans to check out and he
8 ultimately buys, and you can also, again, see him kind of
9 adjusting his sweatpants. At that point, the lady in front
10 of him completes her checkout. He takes his Pepsi to the
11 register. He's smart enough to buy the Pepsi, spends a
12 dollar on that. He gets his receipt. At 2:38 is the
13 timestamp on the receipt.

14 At that point Mr. Fulwiley does not leave the CVS.
15 What he does is he walks to the magazine rack or the
16 newspaper stand that's in front of the register and sits
17 and waits there for the lady who's checking out behind
18 him. He waits for a few minutes. At that point he sees
19 that she has checked out. After she gets done checking
20 out, the lady does not immediately leave the store.
21 Mr. Fulwiley then picks up his stuff, walks over, looks at
22 another display that's also on the video. At that point
23 he finally decides that he needs to leave. Well, when
24 Mr. Fulwiley leaves, it appears from the video that
25 everybody seems to look towards the entrance, okay?

1 About thirty minutes after this incident Officer
2 Lawler with the Lexington Police Department pulls over the
3 car that Michael Fulwiley is riding in for a seatbelt
4 violation. A very simple seatbelt violation. Now
5 Mr. Fulwiley wasn't driving the car, he was the front seat
6 passenger. He was not wearing his seatbelt. Officer
7 Lawler pulled him over and very kindly told him that they
8 were just stopping him for a seatbelt violation and asked
9 him -- ask to have the drivers license of the driver.

10 Over the course of events that take place on the --
11 during the traffic stop, that is also caught on video.
12 And I feel the need to let the jury know that there are
13 parts of the dash cam video that have been removed that
14 are not relevant to the case just to streamline the process
15 for you all so you don't have to watch the entire video
16 and parts that are not relevant, okay? Also on this video
17 you will see -- towards the end of the video you will see
18 that Mr. Fulwiley is eventually taken out of the car and
19 the reason why that is is because the driver was found to
20 be under suspension and he was placed under arrest for
21 that.

22 So at that point the driver was put into the rear of
23 Mr. Lawler's car and Mr. Fulwiley was taken out of the
24 car because the car must be towed at that point. When he
25 does an inventory of the car, Mr. Fulwiley -- excuse me,

1 Officer Lawler, what he does is at that point is he starts
2 to inventory the items in the car and he notices a very
3 unusual amount of not -- nonprescription drugs that are
4 taken from the front seat passenger portion of the vehicle
5 and also in the rear seat of the car there was another bag
6 full of boxes of razors with security boxes that are still
7 on it that if you were to walk through a security exit it
8 would set off the alarm. One of these boxes actually has
9 a CVS hologram still on it. The razor blades are still
10 inside the boxes, the box is still sealed, and I believe
11 there are twelve of those he has. At this point Officer
12 Lawler is suspicious that these items might have been
13 stolen, shoplifted.

14 At that point he calls the CVS, speaks with the
15 manager eventually of the CVS who does indicate to Officer
16 Lawler that those particular items -- some of those items
17 that he recovered from the car were items that they were
18 -- that were inexplicably missing from inventory from the
19 store that Mr. Fulwiley bought only a Pepsi from about
20 thirty minutes before that, okay?

21 So the Defendant is charged with shoplifting. Not
22 the crime of the century, but we prepare for this case
23 just as we prepare for any other case that we may have,
24 okay? What is shoplifting? In South Carolina shoplifting
25 requires for us, the State, to prove that. We must show

1 to you, the jury, two elements, okay? The first is we
2 must show that the Defendant took possession or carried
3 away an item of merchandise from a store or a retail
4 establishment, okay? And the second item is, and this
5 makes sense if you've ever had an item that you forgot and
6 you left it underneath the cart and you walked out of the
7 store and you didn't realize that you had forgotten to
8 check it out and you come back into the store and say oh,
9 I forgot to check out this item, let me pay for this as
10 well. The second doesn't just require a taking away from
11 the store. It also requires a mental element as well that
12 you intended to take away, remove this item without the --
13 without paying full retail price for it. So the second
14 element of -- besides the taking away is that you must
15 intentionally deprive the store or the retail establishment
16 or merchant of the item without paying full retail price.
17 So the law, the statute, also says that you, the jury, are
18 permitted to infer that if somebody intentionally conceals
19 items either under their shirt, under their hat, in their
20 baggy sweatpants, that if they do that you're allowed to
21 infer that they intended to deprive the store of those
22 particular items. And we must prove both of these elements
23 to you beyond a reasonable doubt.

24 Well, you heard the judge speak earlier. Reasonable
25 doubt. What does that even mean? Reasonable doubt is, as

1 the judge told you, doubt that leaves you firmly convinced
2 of the Defendant's guilt, okay? It doesn't mean that we
3 have to overcome every possible doubt. Any doubt must be
4 reasonable. There are very few things that we know in this
5 world with absolute certainty. The only thing -- well, one
6 of the few things that I know with absolutely certainty is
7 that \$10 a day or \$15 a day or whatever they pay you all to
8 be here today is not nearly enough money to sit up here and
9 listen to me talk forever, which is why I'm gonna sit down
10 here. But reasonable doubt is not -- again, it is not a
11 burden that overcomes any possible scenario. That any
12 doubt must be reasonable.

13 And one of the last things I'm gonna leave you with,
14 and the judge also mentioned this, we selected you for this
15 jury because you were people who struck us as people who
16 possess good old-fashioned common sense. They strip you
17 of a lot of things within reason in this courthouse. They
18 don't let you have your cell phone, they don't let you have
19 this, they don't let you have that. They let you keep your
20 common sense and when you go back in your jury room that's
21 gonna be your greatest asset. When you view all of the
22 evidence that you're gonna see, and you'll see two separate
23 videos, you'll see physical evidence that was taken from
24 the scene, when you view all the evidence and you hear all
25 the statements, the statements that the Defendant makes on

1 video, when you go back into that jury room use your common
2 sense. That's all that we ask. Use your common sense and
3 render a verdict in this case that Michael Fulwiley, the
4 Defendant, is guilty of shoplifting. The word verdict even
5 means to speak the truth in Latin. Let your verdict speak
6 the truth.

7 Folks, I appreciate your time and attention and if
8 you'd listen to anything the defense has.

9 **THE COURT:** All right.

10 **MS. HENRY:** Thank you, Your Honor. May it please the
11 Court?

12 **THE COURT:** Yes, ma'am.

13 **MS. HENRY:** Good morning, ladies and gentlemen of
14 the jury. I'm Sally Henry and Jael Gilreath sitting there
15 at the table is my co-counsel and we represent Michael
16 Fulwiley. They've accused him of shoplifting.

17 I know that each of you probably had to either drive
18 or get into a car or some type of vehicle to get here
19 today and when you got in you probably fastened your
20 seatbelt just as a matter of routine, common sense. You
21 probably wouldn't think of doing anything else. But
22 there are occasions, and I'm guessing that this has
23 probably happened to some of you at some point, that you
24 forget, you're distracted, your child's crying in the
25 backseat, you just got a telephone call, some emergency

1 or something, and you forget momentarily to fasten your ,
2 seatbelt. Only a few moments later the light dawns and
3 your seatbelt bell rings in your car and you realize you
4 don't have your seatbelt on, so you fasten it.

5 Well, that's what happened with Mr. Fulwiley here.
6 He was in a car with his friend, Willie Butler, midday
7 June 7th, two years ago, 2014, and they had been coming
8 and going to the flea market. They were planning on
9 starting up a little business. The flea market sells all
10 kinds of stuff and if you've ever been to one you see that
11 there are many, many dealers around and they have tables
12 of items that they sell. Normally you don't get a receipt
13 from anybody. You just purchase and take what you can
14 get.

15 So Mr. Fulwiley and Mr. Butler are in their car on
16 Columbia Avenue up here on 378 and they have the
17 misfortune, as I can say, of passing by the very keen eye
18 of Corporal Lawler here who was seated in his vehicle at
19 the Wells Fargo bank facing the roadway and as the car
20 drove by he noticed that Mr. Fulwiley, the passenger, he
21 didn't know his name at the time, didn't have his seatbelt
22 on. So he pulls out in his patrol car and follows the car
23 about a mile and a half down and pulls them over in the
24 parking lot of the Home Depot. And you'll see this as
25 well on the video. And at that point when he gets out and

1 approaches the driver, he indicates that the reason he's
2 pulled them over is because the passenger didn't have his
3 seatbelt on. Well, by that time Mr. Fulwiley has adjusted
4 his seatbelt and it is fastened and the officer makes note
5 of that, that he sees it's fastened.

6 Now how does this simple seatbelt violation turn into
7 a shoplifting charge? That is what the State has the
8 burden of proving to you; that Mr. Fulwiley shoplifted or
9 took items from the CVS at some point and secured them and
10 did not pay for them and those items that they intend to
11 put into evidence were in the possession of Mr. Fulwiley
12 and he did not have legal possession of them.

13 Mr. Fulwiley and his friend had been to the flea
14 market and had collected -- and, of course, they don't
15 have receipts for them, and I'm sure that there are items
16 your car may have, my car, that I don't have receipts for.
17 Nonetheless, the officer took it upon himself to start
18 searching the car.

19 The State has told you and the judge has told you to
20 use your common sense and I would certainly underscore
21 that, too. If you think it's possible that Mr. Fulwiley
22 had been to the CVS, had walked out with twelve packs
23 of razors, boxes of drugs, medications, under his --
24 concealed in his clothing, and you'll have the opportunity
25 to look at that video, without things falling out all

1 over the place, without him looking like Santa Claus,
2 then perhaps you will find him guilty. But use your
3 common sense and pay attention, pay close attention, to
4 the video, particularly the one at the CVS. Watch his
5 actions. Determine for yourself if you think that he has
6 committed this crime because the State has proven beyond
7 a reasonable doubt every element of this offense.

8 It's their burden and your job is to make sure that
9 you believe that they have proven every element of this
10 beyond a reasonable doubt. Not that there's some
11 suspicion or it could have happened. It has to be beyond
12 a reasonable doubt. We think if you view the evidence
13 that the State will present to you at the end of this you
14 will find Mr. Fulwiley not guilty. Thank you.

15 **THE COURT:** Thank you, ma'am. First witness for the
16 State?

17 **MS. USRY:** Thank you, Your Honor. The State calls
18 Detective Lawler.

19 **THE COURT:** Come up please, sir, and be sworn.

20 (Whereupon, Michael William Lawler was duly sworn by
21 the Clerk of Court.)

22 **THE CLERK:** Have a seat, sir. Once you seated state
23 your full name, spelling your last, please, on the record.

24 **THE WITNESS:** Michael William Lawler, L-A-W-L-E-R.

25 MICHAEL WILLIAM LAWLER,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. USRY:

4 Q. Thank you, Detective Lawler. Where do you work?

5 A. Yes, ma'am. I work for the Lexington Police
6 Department.

7 Q. How long have you been employed there?

8 A. I've been with the Lexington Police Department
9 probably between nine and ten years.

10 Q. In what roles have you been employed with the
11 Lexington Police Department? And that's the town, correct?

12 A. That's the town, yes, ma'am. Basically the city is
13 what we're known as. We're known as the city police.

14 Q. In what roles have you been employed there?

15 A. Currently right now I'm a corporal. I'm in the
16 detective division. At the time of this incident I was a
17 patrol supervisor. I was a corporal on the road in the
18 patrol division and I've been just a regular patrolman and
19 I've been in the traffic division as well.

20 Q. So you've spent a lot of time on the road during that
21 time with Lexington town?

22 A. Yes, ma'am. My first nine years were all on the road.

23 Q. Do you have previous law enforcement experience prior
24 to working with the town?

25 A. I have Federal. I had some Coast Guard time in my

1 time before law enforcement. I was a firefighter.

2 Q. And were you working on June 7th of 2014?

3 A. Yes, ma'am, I was.

4 Q. In what capacity were you working that day?

5 A. I was an assistant shift supervisor for the patrol
6 division.

7 Q. Were you on the road that day?

8 A. Yes, ma'am, I was on the road.

9 Q. Do you have an assigned vehicle?

10 A. Yes, ma'am, I have an assigned patrol vehicle.

11 Q. And what area were you working?

12 A. On that time of the day, which was 15:10 or 3:10 in
13 the afternoon, I was in the -- what we call the west
14 division. The west side of town.

15 Q. Can you kind of give me some landmarks where that
16 would be?

17 A. The west side of town would be the area over off of
18 West Main Street, Columbia Ave, the K-Mart, Walgreens,
19 Rush's, that side.

20 Q. Very near the courthouse; is that correct?

21 A. Yeah, I would say just maybe a quarter of mile more
22 toward the west of here is where the district starts.

23 Q. And did you have an opportunity to view the vehicle
24 that the Defendant was travelling in that day?

25 A. Yes, ma'am, I did.

1 Q. Now when you had the opportunity to view that vehicle,
2 where were you -- what were you doing?

3 A. I was -- in that time of the afternoon what I do as a
4 supervisor, the areas that are running short, like if our
5 other officers are on a call, what I do is I move to the
6 areas of town that aren't covered. So I at that time -- at
7 that time of the day I was over in the west division. I
8 was covering that side of town waiting -- just waiting to
9 see what was gonna come up yet next.

10 Q. And so when you -- what brought the Defendant's
11 vehicle to your attention?

12 A. I was backed in or facing Columbia Ave looking at
13 the intersection of like Walgreens and Rush's, I was in
14 the bank parking lot, I was backed in so I could see the
15 whole intersection, and during the day I'm probably doing
16 paperwork or just, you know, watching traffic. Again,
17 just waiting for the next call to come out.

18 Q. What bank parking lot?

19 A. I believe it's the Wells Fargo. It used to be Bank
20 of America. I think they've switched several times, but
21 it's right on the corner of Columbia Ave, West Main and
22 Old Chapin Road.

23 Q. And you indicated you were sitting in your car and
24 tell me again. I kind of interrupted you.

25 A. Yes, ma'am. I was -- I was just -- what caught my

1 eye is I saw -- they were in a silver Ford Taurus and they
2 were travelling eastbound, which means they were coming
3 from the West Main Street side travelling down towards like
4 they were going to the middle school and as --

5 Q. So they were coming from what direction? What -- give
6 me an idea of what was behind them.

7 A. They were going from the K-Mart, that direction, from
8 K-Mart heading towards the high school -- I mean, the
9 middle school.

10 Q. Is that the direction of Batesburg-Leesville?

11 A. No, they were going eastbound. They were heading
12 towards like I-20.

13 Q. I'm talking about the direction they were coming from.
14 I'm sorry.

15 A. Yes, ma'am, they were coming from like the Gilbert
16 area, that direction.

17 Q. Okay. And tell me, again, what brought the vehicle
18 to your attention.

19 A. When the vehicle went by, the front seat passenger
20 was leaning all the way forward in his -- in his seat and
21 as he was leaning all the way forward I could obviously
22 tell he didn't have his seatbelt on. Not just because he
23 was leaning all the way forward, but you could see the
24 strap on his seat going down the side with the -- with the
25 buckle on it.

1 Q. Did you have any obstruction between you and their
2 car at that time?

3 A. No, ma'am. My vehicle is right up against the -- up
4 against Columbia Ave and as I was looking out the window he
5 was in the passenger seat, so his seat was facing directly
6 at me and there was no cars in between me and his -- his
7 vehicle and my view. It was just me looking right at them.

8 Q. And upon observing the seatbelt being off, what did
9 you do?

10 A. At that point I put my vehicle in drive and I pulled
11 up behind. It took me a couple of seconds to catch up to
12 the vehicle, but I got -- ended up getting behind the
13 vehicle.

14 Q. And what happened next?

15 A. Just standard policy. I got behind the vehicle, I
16 called dispatch and ran the tag just as a precaution, what
17 we do on every traffic stop. We always run the tag on the
18 vehicle just so dispatch and our other officers know what
19 type of vehicle we're getting out with in case something
20 happens, if something goes bad. So I ran the tag and while
21 I was waiting for it to come back I was just following the
22 vehicle just waiting to make the traffic stop.

23 Q. How long of a time did that take?

24 A. It was just a minute, couple of minutes at tops. I
25 think we had enough time just to make it down to North Lake

1 and then took the left on North Lake and as soon as we
2 came around on Sunset Boulevard is when I activated my
3 lights. I think it was somewhere by Herndon Chevrolet
4 just to give you a landmark, which is, you know, right
5 there in the town of Lexington.

6 Q. And I'm going to show you State's -- what's been
7 marked as State's 4.

8 A. Yes, ma'am.

9 Q. Do you recognize that area?

10 A. Yes, ma'am.

11 Q. Does part of this area include where you were located
12 on June 7th of 2014?

13 A. Yes, ma'am, it's on the map right there.

14 **MS. USRY:** Your Honor, the State moves State's 4 into
15 evidence.

16 **MS. HENRY:** No objection.

17 **THE COURT:** That's in.

18 (State's Exhibit Number 4, a map, was admitted into
19 evidence.)

20 **MS. USRY:** Permission to have the witness step down
21 from the witness stand, Your Honor?

22 **THE COURT:** That's fine. Let him stand on the other
23 side of you so his voice is pointed to the court reporter.

24 **MS. USRY:** Yes, sir.

25 (Whereupon, the witness steps down from the witness

1 stand.)

2 BY MS. USRY:

3 Q. Okay. Detective Lawler, just to further explain what
4 you're talking about and so we can explain it on paper, can
5 you point to me where you were located in general on this
6 map?

7 A. Yes, ma'am. I was right here.

8 Q. So that's the intersection of Highway 1 and West Main
9 Street is what you pointed to?

10 A. Yes.

11 Q. Can you star that location for me?

12 A. (Witness complies.)

13 Q. And you indicated that -- the vehicle that the
14 Defendant was travelling in, what area of this map were
15 they coming from?

16 A. They were coming from right where it says West Main
17 Street, so they were -- they had come this way at me.

18 Q. Okay. So they were going more towards Columbia, that
19 direction, is that correct, what you're describing?

20 A. Yes, ma'am.

21 Q. Can you do an arrow just the way -- the direction that
22 vehicle was travelling for me?

23 A. (Witness complies.)

24 Q. Would you --

25 A. Do you want me to make it a little bit bigger?

1 Q. Yes, just a little bit bigger. I'm sorry. I'm
2 shaking the board on you.

3 A. (Witness complies.)

4 Q. And then is the area that you pulled the Defendant
5 over also located on this map?

6 A. Yes, ma'am, it is.

7 Q. And what -- can you mark that area for me, please?

8 A. I actually put an H-D on top of it for the Home Depot
9 parking lot.

10 Q. Is that where you ultimately pulled the vehicle over?

11 A. That's where they came to a final stop. They came to
12 a final stop in the parking lot of Home Depot.

13 Q. Okay. Thank you. You can return to your seat.

14 A. Thank you, ma'am.

15 (Whereupon, the witness returns to the witness stand.)

16 BY MS. USRY:

17 Q. So during the time that you were behind the
18 Defendant's vehicle, what, if anything, did you observe?

19 A. Like I said, when I first saw them go by he was
20 leaning forward in the vehicle and as I continued to drive
21 behind him, even up until the point where I activated my
22 blue lights, there were still motions going on down below
23 the dashboard, there were movements going on.

24 Q. From the driver's seat or the passenger's seat?

25 A. Passenger seat.

1 Q. And do you have an in-car camera in your vehicle?

2 A. Yes, ma'am. I have a -- it's mounted on the dash --
3 I mean, on the window, a camera system that records.

4 Q. And so on the date of June 7th of 2014, did you have
5 that in-car camera?

6 A. Yes, ma'am, I did.

7 Q. And was it working that day?

8 A. Yes, ma'am, it was working.

9 Q. And tell me about when exactly does the in-car camera
10 turn on and start recording in your vehicle.

11 A. Yes, ma'am. The camera has a lot of like safety
12 features. It's real officer friendly. When we turn our
13 lights on -- the camera actually records all the time, but
14 when it actually gets burned to a hard drive is when we
15 turn our emergency equipment on. When our -- either our
16 siren comes on or we turn our blue lights on what happens
17 is the camera system starts, it turns -- it puts that onto
18 the disk that's in the hard drive, but it actually goes
19 back thirty seconds. So as soon as I turn my lights on,
20 it will pull the video for thirty seconds before that and
21 put that on that disk as well. So when that gets burned
22 to the disk, the thirty seconds before the lights even come
23 on will be in addition to the event itself.

24 Q. That thirty seconds prior, does it also have sound for
25 that previous thirty seconds?

1 A. No, ma'am, that's just gonna be the actual -- the
2 actual -- what was rolling without audio, just video.

3 Q. And then after that thirty seconds, does it pick up
4 audio?

5 A. Yes, ma'am. At that point the audio kicks in.

6 Q. And how does it pick up audio?

7 A. There's an actual mic box. There's an actual audio
8 recorder in the car and there's a mic box that I have on
9 my belt at the time.

10 Q. So it can pick up from both locations?

11 A. Yes, ma'am, it does.

12 Q. And in this case, were you able to ultimately pull the
13 recording from the traffic stop that occurred involving the
14 Defendant?

15 A. Yes, ma'am, I did pull the DVD after the stop was over
16 and I did drop it into evidence.

17 (State's Exhibit Number 6 was marked for
18 identification.)

19 BY MS. USRY:

20 Q. And I'm gonna show you what's been marked as State's
21 Exhibit 5 and -- correction. I'm showing you what's been
22 marked as State's Exhibit 6.

23 A. Okay, ma'am.

24 Q. Do you recognize that item?

25 A. Yes, ma'am. It's a video that's been -- I mean, a

1 DVD that's been marked State's versus Fulwiley in-car video
2 with my initials on it.

3 Q. Have you had an opportunity to view that video?

4 A. Yes, ma'am, I did view the video.

5 Q. And does that video depict the in-car video that
6 occurred on June 7th of 2014?

7 A. Yes, ma'am, it does.

8 Q. Thank you. Has it been -- other than what's been
9 removed for clarity, does it -- has it been changed in any
10 way?

11 A. No, ma'am.

12 Q. Does it accurately reflect what happened during the
13 traffic stop on June 7th of 2014?

14 A. Yes, ma'am, it does.

15 **MS. USRY:** Your Honor, at this point the State moves
16 State's Exhibit 6 into evidence.

17 **THE COURT:** All right.

18 **MS. HENRY:** Your Honor, we would renew our motions
19 and objections made prior to.

20 **THE COURT:** You can play it. Those are respectfully
21 overruled.

22 **MS. USRY:** Thank you, Your Honor.

23 (State's Exhibit Number 6, an In-Car Video DVD, was
24 admitted into evidence.)

25 **THE COURT:** Just to give us an idea, the entire length

1 is?

2 **MS. USRY:** I think at this point, Your Honor, it's
3 about forty to forty-five minutes, I believe.

4 **THE COURT:** Is everybody on the jury okay? Does
5 anybody need to take a break? While it's being played, if
6 somebody does need to take a break just raise your hand,
7 okay, and we'll pause it.

8 BY MS. USRY:

9 Q. And while we're queuing up the video, Detective
10 Lawler, and just to give an idea of what's happening on
11 the video, when you pulled the vehicle over in the Home
12 Depot parking lot, tell me what you did.

13 A. When I pulled the vehicle over, I got out of my
14 vehicle after I finished making sure -- I let dispatch know
15 where we were. I got out of my car and I approached the
16 driver's side of that vehicle and when I approached the
17 driver's side, I just explained the reason for the stop
18 and, you know, who I was and then I asked the driver for
19 his license, registration and insurance, and I asked the
20 passenger for his license.

21 Q. Is that normal procedure?

22 A. That's standard proceed, yes, ma'am.

23 Q. Were you able to identify the occupants of the car?

24 A. The passenger, which would be Mr. Fulwiley, he handed
25 me an ID, so I was able to identify him. The driver, his

1 name was Mr. Butler. At the time he didn't have any
2 identification on him, so all he did was give me his -- he
3 gave me a name and his date of birth.

4 Q. And were you able to locate -- or what did you do with
5 that information?

6 A. He also provided the registration and the insurance
7 to the vehicle, but none of the -- the car wasn't in his
8 name, it was -- I believe he said it was his mother's, so
9 when he provided the paperwork I didn't have anything with
10 his name on it so I took the information that he gave me
11 and I went back to my vehicle and tried to see if I could
12 locate his information.

13 Q. Were you able to do that?

14 A. Eventually I was able to locate it. It took a little
15 while. I actually had to go back up and ask him a few
16 questions because, I mean, Willie Butler is a common name
17 and it just -- with the information I was given dispatch
18 was having trouble trying to find him in the system.

19 Q. So did that take -- due to that, having to go back and
20 get more information, did that take more time?

21 A. Yes, ma'am, it -- it took a lot longer than it
22 normally would take.

23 Q. And as a result of getting that information on
24 Mr. Butler, what, if anything, do you do next?

25 A. I eventually get the information back on Mr. Butler

1 that he's -- his license is suspended, so when I get the
2 information back I try to pull him up on the computer in
3 my car, I have an in-car computer and we have DMV records,
4 Department of Motor Vehicle records, that I can run through
5 to find out why he's suspended, and that's what I'm trying
6 to do.

7 **THE COURT:** Could I see the lawyers up here for just
8 a minute?

9 **MS. USRY:** Yes, sir.

10 (Proceedings held at the bench; not reported.)

11 **THE COURT:** Okay. You heard testimony that the
12 driver, not the Defendant was driving under suspension.
13 That is not to be considered by you in any way in your
14 considerations of the case involving Mr. Fulwiley. That
15 testimony is just for explanation purposes, but the fact,
16 again, that Mr. Butler was driving under suspension or may
17 have been driving under suspension is not to be considered
18 by you in this case at all.

19 All right.

20 **MS. USRY:** Thank you, Your Honor.

21 BY MS. USRY:

22 Q. And, Detective Lawler, I'm gonna begin playing the
23 video and at certain points I will stop and ask you
24 questions about what's happening.

25 A. Yes, ma'am.

1 (Whereupon, State's Exhibit Number 6 was played.)

2 Q. And this is quiet right now. Is this the part that
3 you just testified to?

4 A. Yes, ma'am. That's North Lake Drive coming up on
5 Sunset Boulevard. This will be the recorded part that was
6 before the lights came on.

7 (Video played.)

8 Q. And just to clarify, the person that you're getting --
9 describe who you're getting the date of birth from and why.

10 A. That would be the driver. He's Mr. Butler. He's the
11 one operating the vehicle, so I'm asking him -- he's the
12 one I asked for who was the -- who was the owner of the car
13 related to him and he's the one that I -- he said he didn't
14 have like an ID -- his ID on him, so that's why I'm asking
15 him his info and when he asked -- the reason I'm asking if
16 it's I-E or Y is because the computer system, it has to be
17 perfect. If it's not put in the right way, William versus
18 Willie, it takes an extremely long time to find him in the
19 system.

20 Q. And the person that you hear that has an ID and says
21 I'm sorry, who is that?

22 A. That's the Defendant, Mr. Fulwiley. He's the one that
23 -- he said that, you know, he was sorry and he did present
24 a South Carolina identification card.

25 Q. And he's the one that's talking -- the comments that

1 relate to the seatbelt?

2 A. Yes, ma'am, he was.

3 Q. That's his voice?

4 A. Yeah. All the comments related to the car and
5 anything to do with Willie Butler is all the driver.

6 Q. And I'll continue playing.

7 (Video played.)

8 Q. Where's that music coming from?

9 A. That's my -- that's inside my car. It's not that loud
10 in the car.

11 Q. What's going on right now?

12 A. Right now I'm just trying to look stuff up on the
13 computer. I'm in the car, I'm typing, trying to find
14 information on both -- well, actually while I'm waiting
15 for dispatch to bring the information back I'm trying to
16 find it in my car as well.

17 (Video paused.)

18 **MS. USRY:** I beg the Court a brief indulgence.

19 Your Honor, may we approach?

20 **THE COURT:** Yes, ma'am.

21 (Proceedings held at the bench; not reported.)

22 **THE COURT:** All right. Ladies and gentlemen, please
23 go to your jury room. Of course, you may not discuss the
24 case at all. I'll have you back out very shortly. Thank
25 you.

1 I'll tell you what. While you're back there, do this
2 for me. Mr. Martin, you're the only person who will not
3 be the foreperson of this jury. The other twelve of you
4 I'd like for you to discuss amongst yourselves who's gonna
5 be your foreperson. Primarily that will be the person who
6 sits at the table and makes sure that the deliberations
7 are conducted in accordance with my instructions and that
8 will be the person who will be completing the verdict form
9 and relaying any questions you might have during the course
10 of your deliberations, whoever that might be. Mr. Martin,
11 you can tap on the door and let the bailiff know who that
12 person is that y'all have selected, okay? Thank you.

13 (Whereupon, the jury retires to the jury room at
14 10:37 AM.)

15 **THE COURT:** And you can step down, sir, but you're not
16 permitted to talk about this case or your testimony with
17 anybody at all.

18 **THE WITNESS:** Yes, sir. Thank you.

19 **THE COURT:** And we'll be in recess for a few minutes.

20 (Recess taken.)

21 **BAILIFF:** Keep your seats. Court is now in session.

22 **THE COURT:** Okay. Everything okay?

23 **MS. USRY:** I think so, Your Honor. And then in an
24 abundance of caution we have -- our office computer persons
25 are in the courtroom if I have any technical difficulties.

1 **THE COURT:** All right. Is the Defendant ready?

2 **MS. HENRY:** We are, Your Honor.

3 **MS. USRY:** And, Your Honor, I have it cued up right
4 at ten minutes forty-seven seconds. I think that's right
5 where we ended or somewhere thereabouts.

6 **THE COURT:** Okay.

7 (Whereupon, the jury returns to the courtroom at
8 10:47 AM.)

9 **THE COURT:** Whoever the foreperson is can sit wherever
10 for right now.

11 **BAILIFF:** Okay. She's the foreperson. I apologize,
12 sir.

13 **THE COURT:** That's all right. Ms. Thiele?

14 **THE FOREPERSON:** Yes, sir.

15 **THE COURT:** All right. Are we ready to continue?

16 **MS. USRY:** Thank you, Your Honor.

17 **THE COURT:** Yes, ma'am.

18 (Video played.)

19 BY MS. USRY:

20 Q. Who is the other person that you're talking to on the
21 screen now?

22 A. Right now Officer Kerwin had arrived. He's my backup
23 officer.

24 Q. So you called backup?

25 A. No, he heard over the radio some of the stuff dispatch

1 was saying and he came automatically.

2 Q. And right now who on the video are you talking about?

3 A. Right now everything to do with the driving record of
4 Mr. Butler, who's the driver of the vehicle.

5 (Video played.)

6 Q. What are you doing right now?

7 A. I'm doing paperwork. Like Mr. -- the driver,
8 Mr. Butler, doesn't have an identification, he didn't give
9 me a license, so I had to bring him up on one screen and
10 then the tickets were on the computer -- the tickets were
11 on the computer as well, so I have to get information off
12 of one screen and then move it to another screen and I'm
13 not a computer guy so it takes me a while to -- I've got to
14 do like one word at a time, one name at a time.

15 Q. Okay, sir.

16 (Video played.)

17 Q. Right there when you say I'm trying to find what's up
18 with you and your license is suspended, are you still
19 talking to the passenger?

20 A. No, at that point I'm talking to the driver. That's
21 Mr. Butler.

22 Q. Okay. And that's hard to see because Mr. Butler's
23 right off the screen, so we can't see him talking.

24 A. Yes, I'm actually -- yeah, I'm actually talking to
25 the gentleman on the left, which would be the driver of

1 the vehicle.

2 (Video played.)

3 Q. And just for clarification, what is happening right
4 now?

5 A. All that talking, I was talking, again, to Mr. Butler.
6 I was talking to him about his child support issues and
7 asking him -- trying to find out why he might have a
8 warrant and he was talking about them getting cleared up.
9 With -- while I'm still waiting for that, at this point
10 I -- you know, his -- his driving under suspension is
11 enough that he's gonna get arrested for that and that's
12 what I'm doing right now. I'm actually placing him in
13 handcuffs and he's getting charged with the driving under
14 suspension.

15 Q. And the entirety of that conversation is all directed
16 towards?

17 A. Everything that was in that conversation as far as
18 the -- anything driving suspension-wise, the child
19 support issues, the -- the warrant issues, that's all for
20 Mr. Butler, the driver.

21 Q. Thank you.

22 A. Yes, ma'am.

23 (Video played.)

24 Q. And so I don't have to stop it after this, what is
25 happening now? What is your next step?

1 A. Like the video just showed, Mr. Butler is now in the
2 backseat. At this point we already determined the vehicle
3 doesn't belong to, you know, Mr. Butler or Mr. Fulwiley,
4 so at this point the vehicle's gonna be towed. So what
5 I'm gonna do is I'm gonna find out what property that the
6 Defendant had in the vehicle because at this point he's no
7 longer allowed back in the vehicle. The vehicle -- once
8 the driver's taken into custody, the vehicle is basically
9 the Town's responsibility until we turn it over to the
10 proper tow.

11 Q. Thank you.

12 (Video played.)

13 Q. Okay. What is going on right now?

14 A. Okay. A couple of seconds prior he -- when we were at
15 the back of the car I asked if items were his, he said --
16 he said if he's not under arrest he wants to get his items
17 and go.

18 Q. Well, let's fast-forward a little bit. Actually what
19 I'm talking about is right now it looks like you have your
20 phone out. What is happening at this point?

21 A. At this point I have located all these items and the
22 CVS bag right there, the CVS bag is a -- you heard me in
23 the video say it's an older bag, and what I did is while
24 I was in the car I found a receipt for a CVS where a Pepsi
25 had been purchased and what I -- what I'm doing right now

1 is I'm actually calling the number on the receipt for that
2 CVS.

3 (State's Exhibit Number 7 was marked for
4 identification.)

5 BY MS. USRY:

6 Q. Now I'm showing you what's been marked as State's
7 Exhibit Number 7. Is that the receipt that was collected
8 from the car that day?

9 A. Yes, ma'am, that's the receipt.

10 Q. So you indicated -- you said -- what are you doing at
11 this point in the video?

12 A. At this point I'm actually -- I picked up my phone
13 and there's a number on the receipt here for the 100 Outlet
14 Point, Columbia, pharmacy and the store number. There's
15 two different phone numbers for that CVS location, so I'm
16 calling the CVS to find out if they're missing any items.

17 (Video played.)

18 Q. The person that you were just talking to off-screen,
19 who was that?

20 A. That was Sergeant Stowe. He was the shift supervisor
21 for that day.

22 Q. And he just showed up on-scene?

23 A. Yeah, I had called him earlier just to give him a
24 heads-up.

25 Q. And the previous conversation, and I believe we

1 already talked about this, the receipt was -- with regard
2 to the receipt was calling the CVS?

3 A. Yes, ma'am, calling the CVS.

4 Q. And what's the evidence number on the --

5 A. It's State's 7.

6 **MS. USRY:** Your Honor, the State moves State's 7 into
7 evidence at this time.

8 **MS. HENRY:** No objection, Your Honor.

9 **THE COURT:** State's 7 in evidence.

10 (State's Exhibit Number 7, a CVS receipt, was admitted
11 into evidence.)

12 BY MS. USRY:

13 Q. Now we've just -- again, for clarification, part of
14 the video was redacted out and we've changed screens. So
15 tell me -- when I play this video again, where -- what
16 exactly is happening?

17 A. Okay. At this point for investigation purposes
18 Mr. Fulwiley, the Defendant, was moved to the backseat of
19 the vehicle while we were getting information from CVS.

20 Q. So he's in the back of the vehicle. Is anybody else
21 in the back of the vehicle?

22 A. Yes, ma'am. He's in the back with Mr. Butler. Both
23 of them are in the vehicle.

24 Q. So the information that we're going to hear now, whose
25 voices are going to be depicted at this point?

1 A. At first most of it's going to be Mr. Butler. He's
2 upset about the whole traffic stop and he's blaming
3 Mr. Fulwiley for not wearing his seatbelt.

4 Q. So how can you tell that on this video?

5 A. Just by listening to their voices. When I did the
6 stop -- I mean, I've been dealing with both of the people
7 for, you know, the whole time we're here and then -- or now
8 I've watched the video several times over and over again
9 and I've listened to this and because of the actions and
10 the charges that the -- that the people had been charged
11 with and what they're talking about, I know who's been
12 charged with what so that way I figured out which person
13 is saying what about the other.

14 Q. So the subject matter that they're discussing?

15 A. Yes, ma'am, the subject matter.

16 (Video played.)

17 Q. So who's primarily speaking here?

18 A. Mr. Butler's doing most of the talking, but at that
19 point Mr. Fulwiley says "but you've got the child support".

20 (Video played.)

21 Q. Who was speaking right there?

22 A. Right there was Mr. Fulwiley, the Defendant.

23 Q. And I noticed that the -- his voice went down. Does
24 the volume in your car change at all at that point?

25 A. No, ma'am, the volume never changes.

1 Q. So the mic is picking up the same? That's not a blip
2 in the mic?

3 A. No, ma'am, that's him lowering his voice.

4 Q. And upon listening to this, could you tell what was
5 being said on there?

6 A. Yes, ma'am. He says that the video's gonna show him
7 in the store and he says it isn't gonna show him in terms
8 of stealing the stuff or cracking that stuff.

9 **MS. HENRY:** Your Honor, I have an objection to that.

10 **THE COURT:** Yes, ma'am. Do you want to come up or --

11 **MS. HENRY:** I'd like to approach if you don't mind.

12 **THE COURT:** All right.

13 (Proceedings held at the bench; not reported.)

14 **THE COURT:** All right. Objection's sustained. You
15 can repeat the question, please.

16 **MS. USRY:** Yes, sir.

17 **THE COURT:** And, again, the question is what is he
18 saying there, not what is he meaning, if that is what the
19 witness is trying to relate. The question is solely what
20 did he say.

21 **MS. USRY:** Yes, sir. And I apologize if I -- that's
22 what I was thinking I said. I may have misstated it.

23 BY MS. USRY:

24 Q. So you've had a chance to listen to this video
25 obviously just now and before?

1 A. Yes, ma'am.

2 Q. And what exactly is said? Not what is meant, but
3 what is said in that little section of the video?

4 A. It said that the video's gonna show him in the store
5 and he says "you're not gonna" -- "you're not gonna see me
6 stealing that shit" and I think he says "cracking that
7 shit".

8 Q. And, again, the volume doesn't change in your car?

9 A. No, ma'am, it's one steady level of recording.

10 Q. So when the volume goes down, it's the actual voice
11 going down?

12 A. He's lowering his voice, yes, ma'am.

13 Q. Okay.

14 (Video played.)

15 Q. Who is talking right there?

16 A. Mr. Butler, the driver.

17 Q. And just for clarification's sake, who was saying
18 don't say anything else, man?

19 A. That's Mr. Butler was saying don't say anything else.

20 (Video played.)

21 Q. Detective Lawler, why can't we hear your voice
22 anymore?

23 A. Because at this point when people are put in the
24 backseat of the car, they cut -- we cut one of the
25 microphones off because we've had too many incidents in

1 the past where they're talking outside and talking inside
2 at the same time and you can't hear either one. So
3 whenever a suspect is put in the car, it's always in the
4 best interest to have it recording the suspect side of
5 thing versus having both recorded and being able to --
6 having something screw up if something's missed.

7 (Video played.)

8 Q. Okay. At the very end of that you say Michael, right
9 now you're getting charged with the seatbelt and then the
10 next sentence is you're getting charged with the driving
11 under suspension. That next sentence, are you still
12 talking to Michael, Michael Fulwiley, the Defendant?

13 A. No, the driving under suspension part was directed
14 towards Willie Butler, the driver.

15 Q. So you make eye contact and don't say his name?

16 A. Yeah, he's right -- I look at him as I turn around.

17 Q. After you give Defendant Fulwiley his ticket for the
18 seatbelt at this stop, what happens next?

19 A. He -- we tell him to call a ride and he ends up
20 taking his phone and he calls somebody. He said while he
21 was with Officer Kerwin he had somebody coming from Augusta
22 and it was just about to start to rain and there was an
23 umbrella in the car and we asked -- he asked Willie Butler,
24 the driver, if he could take the umbrella and when he said
25 he could we retrieved the umbrella from the car, gave it to

1 the Defendant and then Officer Kerwin gave the Defendant,
2 Mr. Fulwiley, a ride to the S-Mart at 378 and 20 because
3 that's where his ride was gonna pick him up. So we gave
4 him a courtesy escort from the scene probably about ten
5 minutes up to Sunset and 20 at the S-Mart right up there
6 on the corner.

7 Q. And did you ultimately take items into evidence with
8 regards to what was removed from the vehicle?

9 A. Yes, ma'am, I did.

10 (State's Exhibit Number 8 was marked for
11 identification.)

12 BY MS. USRY:

13 Q. Detective Lawler, I'm handing you what's been marked
14 as State's Exhibit Number 8. Could you take a look and
15 see if you recognize that item?

16 A. Yes, ma'am, I'm familiar with this.

17 Q. How are you familiar with that particular item?

18 A. These are the items that were removed from the vehicle
19 that day.

20 Q. And once they were removed from the vehicle that day,
21 what did you do with them?

22 A. I took them back to the police department and tagged
23 them into evidence with an evidence label.

24 Q. So there's an evidence label on State's 8?

25 A. Yes, ma'am, there is.

1 Q. And you're able to identify that evidence label?

2 A. Yes, ma'am.

3 Q. And the items?

4 A. And the items inside are the ones that I packaged for
5 this case.

6 Q. And can you remove some of the items for me?

7 A. Do you want me to take them all out?

8 Q. You can line up the rest of them. Thank you.

9 A. Yes, ma'am. That will be it.

10 Q. And so just generally describe what those items that
11 were included in State's 8 are.

12 A. These are razors. They're actually not -- they're
13 just the razor cartridges, twelve of them, still in the
14 magnetic safety packaging from the store. I believe most
15 of them are all the eight-packs. These are three Zyrtec
16 still packaged, forty-five count. And a package of seventy
17 tablets of Allegra. The Claritin, there's three packages,
18 seventy count. And then there's a nasal spray, Nasacort,
19 120 sprays.

20 Q. And upon your review of those items, did you find
21 anything, if at all, that would link those items back to
22 a CVS?

23 A. Yes, ma'am, I did. I had the -- I had the receipt
24 from the store and then after going through the products
25 there's a security CVS seal on the inside of this set of

1 cartridges.

2 Q. And that's razor cartridges in your hand?

3 A. Yeah, those were the Gillette. This was actually a
4 four-pack of razor cartridges.

5 **MS. USRY:** And for clarity I'm gonna mark that as
6 Exhibit 8A.

7 (State's Exhibit Number 8A is marked for
8 identification.)

9 **THE COURT:** Is there any objection to 8? I want to
10 make sure the record is clear.

11 **MS. HENRY:** No objection.

12 **THE COURT:** All right. 8 is in.

13 (State's Exhibit Number 8, a bag of evidence items,
14 was admitted into evidence.)

15 BY MS. USRY:

16 Q. So you indicate that State's 8A has a CVS marking on
17 it?

18 A. Yes, ma'am. It says CVS Pharmacy on a little silver
19 sticker on the inside of the cartridge -- I mean, on the
20 inside of the hard plastic case.

21 **MS. USRY:** Your Honor, we have no further questions
22 for this witness.

23 **THE COURT:** Cross-examination?

24 **MS. HENRY:** Yes, sir. I beg the Court's indulgence
25 just a moment.

CROSS-EXAMINATION

BY MS. HENRY:

Q. Good morning, almost afternoon. I wonder if you could clarify some of your -- some of your testimony for me about the -- where you first spotted the vehicle that Mr. Fulwiley was in.

A. Okay. Ma'am, it's gonna be at the intersection of West Main Street, Columbia Ave and Old Chapin Road. It's actually -- West Main Street actually comes in and takes a hard left, so actually two of the intersections are West Main Street, the other one's Columbia's Ave and the one straight across would be Old Chapin Road.

Q. So you first saw them coming in the intersection?

A. I saw them coming through the intersection, which would have been from the West Main side passing me heading towards -- down Columbia Ave, which would be heading towards the middle school.

Q. All right. And when you noticed the seat -- what you thought was a seatbelt violation --

A. Yes, ma'am.

Q. -- where was your car in relation to their car?

A. I was not quite perpendicular. I was at a little bit of an angle so I could -- you know, say the traffic was coming this way, I was facing at a little bit of an angle this way. So I could -- as the car was going by, I could

1 see straight out into the road.

2 Q. Okay. So you were backed in?

3 A. Yes, ma'am. The front of my car was facing the
4 roadway.

5 Q. Would you have been able to see them if they had
6 been -- rather than coming from I believe you said the
7 Batesburg, K-Mart area, in that direction?

8 A. Yes, ma'am.

9 Q. If they had come up West Main and made a turn at that
10 intersection, that would have put them in the same flow of
11 traffic, would you have been able to see that from your
12 viewpoint?

13 A. If they came up West Main and took a right in front of
14 me?

15 Q. I'm sorry, a right. Yes, sir.

16 A. Okay. All right. I would have still seen them, but I
17 would have -- the issue is I've sat at that intersection
18 several times, I'd sit sometimes for hours, and the light
19 and the traffic were all moving from the left to the right,
20 and so West Main Street and Columbia Ave actually had the
21 green light. So I as was sitting there, the traffic was
22 coming from my left going to my right, so I was just
23 looking -- you know, I can't say a hundred percent that I
24 was, but when I saw the car it was definitely coming from
25 my left, they had the green light, he came across into my

1 vision and their car was the closest, you know, obstacle
2 in my vision, which Mr. Fulwiley being the closest one to
3 me. I couldn't tell if the driver had his seatbelt on.
4 All I could see was the passenger.

5 Q. Okay. And this is a fairly busy thoroughfare, isn't
6 it?

7 A. Yes, ma'am. At different times of day it gets -- it
8 gets pretty busy.

9 Q. And this was around I believe you said 3:00 in the
10 afternoon?

11 A. Yes, ma'am. 3:10 on a Saturday.

12 Q. Okay. So this was not the only car in that
13 intersection?

14 A. I can't say for sure, ma'am.

15 Q. Well, you said traffic was going by. I assume there
16 were other cars.

17 A. Yes, ma'am. Traffic does go by, but, I mean, can I
18 sit back and say how many other cars were in the road that
19 day, no, ma'am, I can't. All I can honestly say is that I
20 saw this car go by and I did have an unobstructed view of
21 the Defendant while he was bent forward.

22 Q. So that's what drew your attention to this vehicle?

23 A. Yes, ma'am.

24 Q. This particular vehicle?

25 A. Yes, ma'am.

1 Q. There were no others during that day then that went by
2 that you noticed didn't have a seatbelt on?

3 A. Ma'am, at that time I wasn't doing a report or I
4 wasn't finishing paperwork or, you know, sometimes I
5 just sit there just for exposure, just so people see the
6 presence of law enforcement, and it keeps them from running
7 the light, it keeps an accident from happening, so a lot
8 of time when we're doing our paperwork or side stuff like
9 that just us being seen can prevent things bad from
10 happening. So most of the time when I'm sitting there
11 that's what I'm doing and, you know, being I was in traffic
12 for two and a half years so there were times where all I
13 would do is come to work and write tickets. And, you know,
14 I mean, it's part of my job. You know, I answer calls and
15 I do traffic stops and, you know, I -- I do as much as I
16 can.

17 Q. So there may have been other vehicles that passed
18 through that intersection full of traffic that people
19 didn't have their seatbelts on?

20 A. I'm sure there were days that I wrote ten seatbelt
21 tickets in, you know, a couple of hours and I'm sure while
22 I was writing those tickets other people were driving by
23 with seatbelts off, too. It's just -- I'm sure there has
24 been, but I can't say for sure that day.

25 Q. All right. Then this is a violation of traffic laws,

1 correct?

2 A. It's a -- it's a violation, yes, ma'am.

3 Q. Okay. But it is not a criminal offense per se; would
4 that be correct?

5 A. Yes, ma'am, it's not a criminal. It's just a traffic
6 violation.

7 Q. Okay. And you -- there is a statute that you're aware
8 of that covers this so it makes it lawful for you to stop
9 this car in other words?

10 A. Yes, ma'am.

11 Q. And part of that statute is that if you stop somebody
12 for a traffic violation -- for a seatbelt violation, pardon
13 me, you cannot search their car; is that correct?

14 A. It's part of just the traffic violation for just
15 stopping a car for a seatbelt?

16 Q. Yes, sir.

17 A. Yes, ma'am.

18 Q. And as an experienced officer on the police force you
19 were aware of this?

20 A. Yes, ma'am.

21 Q. But yet you searched the vehicle that Mr. Fulwiley
22 was in?

23 A. The vehicle wasn't searched. It was inventoried.
24 People use different terminology. As far as our
25 procedures, the vehicle was inventoried.

1 Q. Did you not open the passenger door, get down on your
2 knees as shown in the video, and begin taking things out
3 from the passenger area?

4 A. Yes, ma'am. I actually was in the driver's side
5 before the passenger side.

6 Q. But you came around and then got on your knees and
7 opened the passenger door and started taking things out?

8 A. Yes, ma'am, I did.

9 Q. Normally when you pull a car for a seat violation,
10 just on average I'm asking you now, how long is that
11 interaction between you and the passenger or driver?

12 A. Ma'am, I'll tell you with the new computer systems --
13 a handwritten ticket would have been ten minutes and I
14 would have been on my way. With those new computer
15 systems, I would have to say maybe twenty. I'm not really
16 the fastest and the printers go so slow.

17 Q. Okay. So this system you were not familiar with it
18 at that time?

19 A. I was familiar with it. It's just there's a lot of
20 information required to get in there and some of the new
21 systems and stuff have scanners and stuff like that where
22 they can scan the ID's from the information on the back of
23 the ID's. My problem is on this stop the driver didn't
24 have an ID, I had to research -- like I said, I had to get
25 his information because on the ticket his name, address,

1 all that, date of birth, height, weight, which is all the
2 information on the ID, which I didn't have, so I had to go
3 pull him up in the computer and then I had to relay every
4 piece of information off of his DL license, address and
5 all that stuff, onto the ticket and, you know -- so I'm --
6 I don't have one of those scanners and even if I did at
7 that point with him not having any paperwork and then I
8 have to actually enter the vehicle owner's information as
9 well, so without having a scanner I had to type in the
10 driver -- I mean, his mother's information as far as she's
11 the owner and all the vehicle information as well.

12 Q. So you would say that -- as far as the initial answer
13 to my question, before the computer ten minutes, now that
14 you have to do this maybe twenty?

15 A. Yes, ma'am. I'd say twenty minutes is about -- about
16 right.

17 Q. Just for a stop?

18 A. Yes.

19 Q. How long was this whole incident?

20 A. This whole incident from stop to finish I believe --

21 Q. From blue lights to finish.

22 A. I believe it was until Mr. Fulwiley left the scene
23 was probably about an hour and ten just guessing.

24 Q. So an hour and ten minutes he was detained for a
25 seatbelt violation?

1 A. Yes, ma'am. Originally that's what he was detained
2 for, yes.

3 Q. When you approached Mr. Fulwiley as a passenger in
4 the car, I know that you are trained as an officer to
5 always be aware of your surroundings and the safety of
6 not only yourself but others, did you in any way feel
7 threatened by Mr. Fulwiley?

8 A. At that specific time when I got them out of the car?

9 Q. Yes, sir. That's what I'm asking.

10 A. Everybody -- we have a heightened alert with everybody
11 we deal with.

12 Q. I'm specifically asking if you felt threatened by
13 Mr. Fulwiley?

14 A. I wouldn't say threatened to the point where I thought
15 he was gonna attack me, but we have to be aware of multiple
16 indications.

17 Q. Did you fear for your safety?

18 A. Did I fear for my safety? Not at that second, no,
19 ma'am.

20 Q. Had you felt some sort of threat or fear for your
21 safety, you probably would have made him turn around and
22 pat him down and so forth if you had any reason that you
23 thought he might be a danger?

24 A. Well, like I said, when I got him out of the car, I
25 looked at him, he did have on those sweatpants and he did

1 have them untied at one point and if he had something in
2 his sweatpants at that point he wouldn't have been able to
3 hold anything in his waistband with his pants untied, but
4 as far as safety, I mean, you know, I'm -- I don't call it
5 safe until the actual traffic stop's over and people are
6 on their way.

7 Q. Right. He was apologetic though; was he not?

8 A. He apologized for not wearing his seatbelt, yes,
9 ma'am.

10 Q. And he cooperated with you; did he not?

11 A. Yeah, he -- he did for the most part, yeah, everything
12 he was told or asked to do.

13 Q. Okay. So you would say it's not a normal practice
14 when you have a seatbelt violation to take somebody out of
15 the car and pat them down?

16 A. Would I say it's not a common practice? If it's just
17 a -- what I would call a standard seatbelt stop where
18 there's nothing else involved?

19 Q. Correct.

20 A. No, ma'am, it doesn't even lead further than just to
21 stopping the car, getting the information, writing the
22 ticket, passing it on and have a good day.

23 Q. Okay. When did you finally issue the summons or
24 citation for this violation to Mr. Fulwiley?

25 A. I -- after the investigation with CVS, I explained to

1 both individuals what was gonna happen and I went around
2 and we took Mr. Fulwiley out of the car, removed the
3 handcuffs and at that point he was -- I went back to the
4 driver's seat, I typed up the paperwork and when it printed
5 off he was given his copy and he actually stayed a few more
6 minutes so Officer Kerwin could drive him to where he was
7 going.

8 Q. So at that point he was free to go?

9 A. Yes, ma'am, at that point.

10 Q. Because you had no probable cause to charge him with
11 anything else?

12 A. No, ma'am, I didn't have any other issues to charge
13 him with anything else.

14 Q. I want to ask you a little bit about the conversation
15 that we watched on the video, the in-car conversation.
16 Now you said that the car's equipped with two microphones
17 basically, right? One -- or you personally were equipped
18 with an outside microphone and there's a microphone inside
19 your car?

20 A. Yes, ma'am. There's a recording device inside the car
21 and there's a recording device that is made to wear on our
22 uniform or on our belt.

23 Q. And you said when you put two suspects in a car that
24 you only leave on the inside because it's confusing or --

25 A. No, ma'am, I said when we put any suspect in the car

1 we've -- I've had issues before with other officers where
2 they've come back and they've complained that something
3 happened in the vehicle or we've actually had -- I've
4 actually been threatened before or my family members have
5 been threatened as they were yelling from the backseat of
6 a patrol car, so in my best interest that's what I do.
7 When any -- whenever anybody is put back into the police
8 vehicle, whether they're being detained, arrested or
9 whatever the circumstances, the mic box stays on in the
10 front seat and that gets just the recording from inside
11 the car so that way -- prior issues we've had, we've had
12 officers talking on the camera and issues going on in
13 the car, and they were never able to understand either
14 conversation because of the overlapping talking.

15 Q. But during the course of this entire video, the
16 outside mic is on, the inside mic is on and it's only
17 after you put Mr. Fulwiley in the back seat that the
18 outside mic is turned off; is that correct?

19 A. Ma'am, it's never turned off. It's put on the seat.
20 I don't ever turn it off because you never remember to
21 turn it back on.

22 Q. So you didn't have your personal mic on after you put
23 him in the car?

24 A. No, I can't do it that way. Only because I've shut
25 it off before and the next thing you know it's two traffic

1 stops later and I never turned it back on. So for my --

2 Q. In watching this video though, maybe I misunderstood,
3 but it appears that during the conversation which you
4 described between Mr. Butler and Mr. Fulwiley you're
5 outside the vehicle, I believe the sergeant is also doing
6 some work outside the vehicle, but you can't hear anything
7 on the outside so somebody's microphone is off; is it not?

8 A. It's not off, ma'am. It's just inside the car. So
9 if I walked around to the window, you'd be able -- it's
10 actually -- while it's inside the car it's recording along
11 with the other one that's mounted inside the car, so both
12 of them are recording just inside conversations.

13 Q. All right. I understand now.

14 A. Sorry. I didn't mean to be confusing.

15 Q. Thank you. The State's exhibit --

16 A. I have the receipt right here.

17 Q. That's the one I'm looking for.

18 A. Okay. That would be 7, ma'am.

19 Q. State's Exhibit 7, which is a CVS receipt?

20 A. Yes, ma'am.

21 Q. And this is from -- tell the jury which CVS that is
22 from, if you can.

23 A. Ladies and gentlemen, that's gonna be 100 Outlet Point
24 Boulevard in Columbia, South Carolina.

25 Q. Okay. And do you know where that location is? I

1 mean, could you sort of describe it geographically in
2 relation to --

3 A. Ma'am, I don't know it specifically, but I've been
4 told it's right at the Bush River and I-20.

5 Q. Okay. So it's outside your jurisdiction?

6 A. Yes, ma'am. It's outside the Town of Lexington's
7 jurisdiction.

8 Q. Okay. And the timeframe on that is?

9 A. The receipt at the time of purchase for the 1.5 liter
10 of Pepsi was 2:38 PM.

11 Q. And you first spotted the car at 3:10?

12 A. 3:10 I think was the -- I don't know if that's
13 considered the time I turned my lights on, but it's within
14 the vicinity of a couple of minutes of that time.

15 Q. Okay. Just a few more questions.

16 A. Yes, ma'am.

17 **MS. HENRY:** I beg the Court's indulgence.

18 BY MS. HENRY:

19 Q. Just one final question. When you finally have the
20 ticket printed or the summons printed and gave it to
21 Mr. Fulwiley, you had been detained there for over an hour;
22 is that correct?

23 A. Yes, ma'am. I think the final --

24 Q. And the reason you said that he was free to go with
25 the summons is because you did not have any reason to hold

1 him for any other crime at that time; is that correct?

2 A. At that point, yeah. The other incidents were
3 being --

4 **MS. HENRY:** Thank you, Officer.

5 **THE COURT:** Any redirect?

6 **MS. USRY:** Thank you, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MS. USRY:**

9 Q. Detective Lawler, could you have arrested Defendant
10 Fulwiley at that point for a crime that happened outside
11 your jurisdiction?

12 A. No, ma'am, I could not.

13 Q. At the conclusion of this stop, did you, if at all,
14 contact anyone else with regard to what happened at the
15 stop?

16 A. I just contacted CVS and they pursued charges or
17 whatever they pursued according to what they had.

18 Q. So you didn't make a report to whoever's jurisdiction
19 that was?

20 A. No, ma'am, I did not.

21 Q. Did you, if at all, advise CVS to?

22 A. Yes, I did. I advised CVS if they had any concerns or
23 if they had issues with what went on that day for them to
24 contact -- I didn't know whose jurisdiction that was, I
25 told them to call whoever their local jurisdiction was and

1 to file a report with them and let them know that, you
2 know, I had evidence that might relate to that -- that
3 circumstance or that issue.

4 Q. And you did -- you took the items that you collected
5 into evidence that day?

6 A. Yes, ma'am, I did.

7 Q. And you made a report with regard to those items?

8 A. That's correct. I did.

9 Q. And was this more than a stop for a simple seatbelt?

10 A. Yes, ma'am. Where it got extended is because of
11 Mr. Butler, the driver. Mr. Butler had a lot going on.
12 He had a -- he had a suspended license, which having a
13 suspended license doesn't mean you get arrested, it just
14 means we have to find out the reasons for the suspension.
15 There's different types of suspensions. We don't arrest
16 people for a suspended license because you didn't pay the
17 taxes on your vehicle. So to find out what the suspension
18 codes were is a delay. First of all, doing all the
19 paperwork for Mr. Butler without a license is a delay and
20 just trying to identify Mr. Butler. At one point dispatch
21 comes back and asks me to verify his social security number
22 because that's when they confirmed he actually had the
23 warrant out of -- out of Charleston which there entails
24 another delay because they have to notify Charleston and
25 in the video we are waiting, you know, some time to find

1 out if Charleston is gonna pick him up or not.

2 Q. And then is there an additional delay for inventorying
3 the vehicle?

4 A. Well, that's just all part of the same -- the same
5 thing, but any -- because of the items that were found, it
6 led to a different -- you know, a continued investigation
7 which would have meant a longer delay.

8 **MS. USRY:** No further questions, Your Honor.

9 **THE COURT:** Anything else, Ms. Henry?

10 **MS. HENRY:** Yes, sir, I do have a couple of questions.

11 **RE CROSS EXAMINATION**

12 **BY MS. HENRY:**

13 Q. Officer, you said part of the delay was -- or the
14 majority of the delay was Mr. Butler's situation?

15 A. Yes, ma'am.

16 Q. Isn't it true that in the video at around the twenty
17 minute mark, I might be off a bit, the nineteen or twenty
18 minute mark, you spoke, and I believe it was to Officer
19 Kerwin who had arrived there, you spoke to him and said you
20 were gonna do the seatbelt first?

21 A. Yes, ma'am, I think that's about right.

22 **MS. HENRY:** That's all the questions I have, Your
23 Honor.

24 **THE COURT:** All right. You can step down.

25 **THE WITNESS:** Thank you, sir.

1 (Witness excused.)

2 **THE COURT:** All right. Next witness.

3 Or, by the way, is everybody on the jury okay? Does
4 anybody need to take a break? We certainly can do that.

5 All right. Next witness.

6 **MR. POGUE:** Thank you, Your Honor. The State calls
7 James Stoudemire to the stand.

8 (Whereupon, James Stoudemire was duly sworn by the
9 Clerk of Court.)

10 **THE CLERK:** Once you seated please state your full
11 name, spelling your last on the record, please.

12 **THE WITNESS:** My name's James Stoudemire. The last
13 name is S-T-O-U-D-E-M-I-R-E.

14 JAMES STOUDEMIRE,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. POGUE:

18 Q. I would say good morning, but it's actually afternoon.
19 Could you state your full name for the record, if you
20 haven't already done so?

21 A. James Stoudemire.

22 Q. And where are you currently employed?

23 A. With CVS on Outlet Point.

24 Q. And on the date of June 7, 2014, where were you
25 employed then?

1 A. At CVS on Outlet Point.

2 Q. And what is your current position there at CVS?

3 A. I'm the store manager.

4 Q. And how long have you been the store manager there?

5 A. Three years.

6 Q. How long have you worked at CVS in general?

7 A. About ten years.

8 Q. Okay. Were you working on the date of June 7, 2014?

9 A. Yes, sir.

10 Q. Okay. And on June 7, 2014, sometime in the afternoon,
11 did you ever -- did anything unusual happen that day?

12 A. Yes.

13 Q. What?

14 A. We had a phone call from Officer Lawler from the
15 Lexington Police Department and he said -- he wanted to
16 know if we had anything missing from our store at that
17 time.

18 Q. Okay. And as a result of that conversation, what did
19 you do next?

20 A. Kind of searched my store briefly, just scanning over
21 it, and noticed that a bunch of my razors were missing.

22 Q. How did you know that the razors were missing?

23 A. Earlier in the day they were pretty nice and full and
24 then they're pretty much wiped out at that point. Then we
25 watched the video camera after that.

1 Q. Is there a certain system that y'all have that y'all
2 keep track of the numbers?

3 A. Yeah, we have a -- we have a system we use that tells
4 me how many we're supposed to have at a certain point in
5 the day and we can, you know, type in the item number and
6 it can tell us how many we have in the store.

7 Q. Tell me a little bit more about how that system works.
8 Is it something you write on a pad?

9 A. It's a scanner we use. We can scan the individual
10 items. All the individual items have UPC numbers and items
11 numbers and when we can scan it will tell us, you know, at
12 that point in time how many we're supposed to have there in
13 that spot in the store.

14 Q. Okay. All right. And I believe you said that you
15 also viewed the video. Is that what you said?

16 A. Yes.

17 Q. Okay. Why did you view the video?

18 A. Just to see if we could find out who might have, you
19 know, took the merchandise.

20 Q. When you say video, is this a video that you -- that
21 the store has installed or --

22 A. Yes, it's like closed circuit TV.

23 Q. And do you have -- I guess you had access to that as
24 the manager?

25 A. Yes.

1 Q. And when you went back and viewed the video again, did
2 you notice anything unusual?

3 A. Yeah, I think he told me the specific time that the
4 suspect had a receipt from when that was purchased through
5 the store, so we could go back to that specific time and
6 actually see who checked out at that specific time.

7 Q. Okay. And was there an individual that checked out
8 around that time?

9 A. Yes, sir.

10 Q. And did you recognize that individual at all?

11 A. I -- based on the description I could tell who it was.

12 Q. Based on the description you said?

13 A. Yes.

14 **MR. POGUE:** Permission to approach the witness, Your
15 Honor?

16 **THE COURT:** Yes.

17 (State's Exhibit Number 9 was marked for
18 identification.)

19 BY MR. POGUE:

20 Q. Mr. Stoudemire, I'm actually handing you what's been
21 marked as State's 9 for ID purposes. Do you recognize that
22 particular item?

23 A. Yes.

24 Q. What is that?

25 A. It was the video that was recorded in the store that

1 day.

2 Q. And how do you know that?

3 A. I've watched it and I've put my initials on it that I
4 watched it.

5 Q. And that video that y'all -- that you say that you've
6 watched and initialled there, is that a video that you
7 normally keep in the every day course of your business
8 there at CVS?

9 A. Yes, it's recording twelve hours a day.

10 **MR. POGUE:** Your Honor, at this time the State would
11 move to enter the CVS video into evidence.

12 **THE COURT:** Any objection?

13 **MS. GILREATH:** Not at this time, Your Honor.

14 **THE COURT:** All right.

15 (State's Exhibit Number 9, a CVS surveillance DVD, was
16 admitted into evidence.)

17 **MR. POGUE:** Permission to publish the video to the
18 jury?

19 **THE COURT:** Yes, sir.

20 Defense counsel can move -- it's not gonna be on the
21 screen, it's just gonna be on the television?

22 **MS. USRY:** Yes, sir, Your Honor.

23 **THE COURT:** Okay. Y'all can move if you want.

24 **MS. HENRY:** Thank you.

25 **THE COURT:** How long is it?

1 **MR. POGUE:** Your Honor, I believe it's roughly about
2 eight minutes.

3 **THE COURT:** All right.

4 **MR. POGUE:** Permission for the witness to step down,
5 Your Honor?

6 **THE COURT:** He can step down.

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

9 **THE COURT:** If you would, sir, stand on the other side
10 of the TV where counsel is and make sure your voice is up.
11 The lady to your left is taking everything down. Right
12 there. She's taking everything down so you've got to keep
13 your voice up, okay?

14 **THE WITNESS:** Okay.

15 **MR. POGUE:** I'm gonna go ahead and start the video.

16 (Whereupon, State's Exhibit Number 9 was played.)

17 BY MR. POGUE:

18 Q. Now, Mr. Stoudemire, could you please let us know
19 when you see the individual that you recognize from the
20 description enter the store and I'll pause it. And if you
21 could stand on this side so we can see.

22 A. You can pause it.

23 Q. Is that the individual that you recognize there just
24 walking in?

25 A. Yes.

1 Q. Can you tell from -- in your opinion from there what
2 kind of pants he's wearing?

3 A. Gray sweatpants.

4 Q. Okay. All right. Was he doing anything that looked
5 unusual when he was walking in?

6 A. Not when he was walking in, no.

7 Q. Okay.

8 (Video played.)

9 Q. Is this video playing at normal, every day speed or is
10 it slower or faster?

11 A. I think it's a little faster.

12 Q. Okay. So the time elapsed on this video would not be
13 accurate with normal time elapse?

14 A. Correct.

15 Q. It's faster?

16 A. Yes.

17 Q. Who is this person?

18 A. That's me.

19 Q. Do you have other cameras in your store besides this
20 camera?

21 A. Yes.

22 Q. Did you see the person that matched the description on
23 any of the other camera views?

24 A. No. No, I did not.

25 Q. Do you have a specific camera that's pointed that you

1 can view the razor blade aisle?

2 A. We do not.

3 Q. Do you recall on your video about how much time
4 elapsed from the time that the gentleman entered the store
5 until the time he checks out?

6 A. I believe it was about twenty minutes.

7 Q. How do you know it was twenty minutes?

8 A. Just by the timestamp on the camera.

9 Q. Let us know when you see the individual that you
10 recognize from the description check out.

11 A. That's him.

12 Q. This is this gentleman here that you recognized from
13 the description?

14 A. Yes.

15 Q. Could you tell what he placed on the counter there?

16 A. It looked like a one liter Pepsi.

17 Q. What is the individual looking at right here? What is
18 that in your store?

19 A. We have like a little magazine rack.

20 Q. And there is no audio with these videos; is that
21 correct?

22 A. That's correct.

23 Q. Could you -- could you tell what this individual was
24 doing when he was standing up here?

25 A. It looks like -- we have newspapers down there. It

1 looks like he was looking at a newspaper.

2 Q. What is the address of the store that you work at
3 here?

4 A. 100 Outlet Point Boulevard.

5 Q. And what county is that in?

6 A. Lexington.

7 Q. What's over here on this wall here that he's looking
8 at now?

9 A. It's a fragrance case where we keep our fragrances in
10 here.

11 Q. Do you notice anything unusual about the individual at
12 this point as he's leaving?

13 A. It kind of -- something about his pants, they look
14 kind of bulky and -- I don't know. They just don't -- it
15 looks kind of funny to me.

16 Q. Do you have an alarm system at your CVS store?

17 A. We do.

18 Q. Can you tell what those individuals were looking at
19 there?

20 A. It looks like they're looking toward the door.

21 Q. Does the individual that matched that description come
22 back into the store?

23 A. He does not.

24 Q. Okay. Thank you.

25 (Whereupon, the witness returns to the witness stand.)

1 **MR. POGUE:** I beg the Court a brief indulgence while
2 I slide this out of the way.

3 **THE COURT:** Are you gonna be using that on
4 cross-examination? Just leave it there for now. They can
5 decide.

6 **MS. GILREATH:** Thank you.

7 BY MR. POGUE:

8 Q. Mr. Stoudemire, I believe that you said after you got
9 off the phone with the officer that you performed an
10 inventory search; is that correct?

11 A. Yes.

12 Q. What did you find as a result of that?

13 A. I found several razors that we were missing. It
14 looked there was -- it was kind of pretty much empty at
15 that point.

16 Q. After viewing the video and discovering some inventory
17 was missing, what did you do next?

18 A. I was informed to call the Lexington Sheriff's
19 Department to file a report.

20 Q. Okay. And what happened after that?

21 A. Officer Wood came to the store and I gave him a
22 statement.

23 Q. You gave Officer Wood a statement?

24 A. I gave an officer a statement from the Lexington
25 Sheriff's Department.

1 Q. Did you -- was it a written statement or was it an
2 oral statement?

3 A. I can't remember.

4 Q. That's okay. Did you give Officer Wood a list of
5 the items that you could find that were missing from
6 inventory?

7 A. Yes.

8 Q. Okay. Was that a complete list that you had found?

9 A. It was not.

10 Q. Explain that.

11 A. It was just the items that I noticed right away.
12 Looking more closely and I found a few more items that were
13 missing as well.

14 (State's Exhibit Numbers 10 and 11 were marked for
15 identification.)

16 BY MR. POGUE:

17 Q. Mr. Stoudemire, I'm handing up to you what marked as
18 State's Exhibit 10. Do you recognize that?

19 A. Yes.

20 Q. What is it?

21 A. A snapshot from the video we just was watched.

22 Q. Does a fairly and accurately represent the video that
23 we watched?

24 A. Yes, sir.

25 Q. The video that was taken the day of June 7, 2014?

1 A. Yes.

2 Q. What is in those pictures from the video that we
3 watched?

4 A. It shows someone entering the store.

5 Q. Okay. Is it the person that matches the description?

6 A. Yes.

7 Q. Okay. Thank you. I'm now handing you up what's
8 marked as State's Exhibit Number 11 for ID purposes. Do
9 you recognize that?

10 A. Yes.

11 Q. What is it?

12 A. The pictures from the video we just watched.

13 Q. How many pictures is it?

14 A. Four.

15 Q. Okay. Do they fairly and accurately represent the
16 video that was taken on June 7, 2014, that you viewed?

17 A. Yes.

18 **MR. POGUE:** Your Honor, the State would move to enter
19 both State's Exhibit 10 and 11 into evidence.

20 **THE COURT:** Any objection?

21 **MS. GILREATH:** None, Your Honor.

22 **THE COURT:** 10 and 11 are in.

23 (State's Exhibit Numbers 10 and 11, photographs, were
24 admitted into evidence.)

25 BY MR. POGUE:

1 Q. I'm gonna hand you these two and I want you to take
2 a look at them. Do you rec --

3 **THE COURT:** Those are the ones that are in?

4 **MR. POGUE:** Yes, sir. I apologize, Your Honor.

5 BY MR. POGUE:

6 Q. I'm handing you State's Exhibits 10 and 11. Could
7 you take a look at those pictures in both 10 and 11 and
8 tell me if there's a difference between -- or do you notice
9 anything unusual between State's Exhibit 10 and State's
10 Exhibit 11?

11 A. I believe so, yes.

12 Q. What is that?

13 A. I believe his pants look different when he came in the
14 store than when he was leaving.

15 Q. Which -- which photos are the ones when he came in,
16 State's Exhibit 10 or 11?

17 A. 10 is when he came in.

18 Q. Okay. And you said, again, that State's 11 looks
19 different to you?

20 A. Yes, sir.

21 Q. Okay. And how does it look different?

22 A. Just this doesn't look like the shape of a leg. It
23 looks bulkier and like you can see like how it's like
24 squared off in a couple of points.

25 Q. All right. Thank you.

1 I'm now handing you up what's marked as State's
2 Exhibit Number 7. Do you recognize that?

3 A. Yes.

4 Q. What is it?

5 A. It's a receipt from my store.

6 Q. How do you know it's from your store?

7 A. It has our address on it.

8 Q. And what is the date on the receipt?

9 A. June 7, 2014.

10 Q. And what is the timestamp on it?

11 A. 2:38 PM.

12 Q. And what is the item that was purchased?

13 A. A 1.5 liter Pepsi.

14 Q. Okay. Thank you.

15 I'm now handing you what's marked as State's
16 Exhibit 8A. Do you recognize that item?

17 A. Yes.

18 Q. What is it?

19 A. A four-pack of Gillette Fusion razors that we carry at
20 my store.

21 Q. How do you know that you carry it at your store?

22 A. It's marked with CVS Pharmacy and we've always carried
23 this item.

24 Q. Do you know what that container is that the razor
25 blades are in?

1 A. That's an Alpha Keeper.

2 Q. Explain that. What is an Alpha Keeper?

3 A. It's just supposed to, I guess, deter somebody from
4 taking it out of the store. It has a signal chip in there
5 and when it crosses that -- going out of the store it will
6 send a signal and it will cause the alarm to go off.

7 Q. Do you remember the alarm going off the day that you
8 were working at the store on June 7, 2014, when this
9 individual -- around the time of 2:38 when this individual
10 checked out?

11 A. Yes.

12 Q. What is the sticker that's on the inside of that?

13 A. It's a security sticker. It will also send out a
14 signal to cause an alarm to go off if it's not in a keeper.

15 Q. And items like these razor blades in your store, do
16 they typically have this sort of sticker on it?

17 A. Some of them do.

18 Q. Okay. Do you put the stickers on them?

19 A. We have a designated list of items that are like
20 high-theft items that the warehouse will tag and then some
21 of them we do tag them ourselves. It's discretionary.

22 Q. Is there a reason why some of the razor blades would
23 have the hologram sticker and some of them do not?

24 A. Sometimes when we put them in the keepers, we don't
25 put a hologram on them because they're secure enough.

1 Q. So it's not unusual for some of them not to have a
2 sticker on them?

3 A. No.

4 **MR. POGUE:** No further questions, Your Honor.

5 **THE COURT:** Cross-examination?

6 CROSS-EXAMINATION

7 BY MS. GILREATH:

8 Q. Mr. Stoudemire, you mentioned earlier that there are
9 other cameras in the store, correct?

10 A. Yes.

11 Q. But this was the only one on which you observed the
12 person about whom you received a description?

13 A. Yes.

14 Q. And the -- you didn't actually call law enforcement
15 that day, correct?

16 A. Correct.

17 Q. They called you?

18 A. Yes.

19 Q. And so you hadn't actually looked to see if anything
20 was missing until they called you?

21 A. Yes.

22 Q. And whenever they called you, you actually got a list
23 from them of what they had?

24 A. Yes.

25 Q. And that was what prompted you to go check for those

1 particular items to if see if they were missing?

2 A. Yes.

3 Q. You didn't have any sort of prior notification or
4 anything that told you you were missing something?

5 A. No.

6 Q. And you hadn't checked earlier in the day? You hadn't
7 -- you said you had a scanner that would tell you how many
8 things you were supposed to have that had been scanned
9 earlier in the day to check to see?

10 A. I didn't scan, but we -- that aisle is right across
11 from the register so you can kind of notice that all of
12 the razors are suddenly gone, so it was kind of a red flag
13 that we were missing a lot of razors. It usually stays
14 pretty full throughout the day.

15 Q. But you hadn't noticed that until you got a call from
16 law enforcement?

17 A. Correct.

18 Q. And then the items that we -- that we have up here, I
19 believe it was the razor blades that have the sticker on
20 it?

21 A. Yes.

22 Q. The sticker that's on there, it's not particular to
23 your store, is it?

24 A. That one in particular is not.

25 Q. That -- it just -- it comes from -- it's a CVS

1 sticker, but it comes with it from the warehouse?

2 A. That one is placed from the warehouse, yes.

3 Q. And -- and so the items that you provided to law
4 enforcement that you indicated were missing, those were
5 based on the search that you did after they provided you
6 with a list of what they had?

7 A. Yes.

8 Q. Now whenever the -- whenever you pulled the video,
9 you didn't just pull the video for the entire day and
10 start watching it, correct?

11 A. Yes.

12 Q. They told you exactly what time to look for?

13 A. Yes, based on the receipt that they had that they
14 could tell me when he actually checked out.

15 Q. And they gave you a description of the person to look
16 for?

17 A. Yes.

18 Q. So whenever you watched the video, you weren't
19 watching for just anyone to see if you saw anything
20 suspicious, you knew exactly who you were looking for?

21 A. I was looking at the specific time that somebody
22 checked out.

23 Q. And based on that when you saw the time -- and you
24 had the description already. You said that they gave you
25 a description of that individual?

1 A. Uh-huh.

2 Q. And so the video that you pulled you were looking
3 specifically for that person?

4 A. I was looking to see who checked out at 2:38.

5 Q. But you said they had already given you a description
6 of that person that they said checked out at that time?

7 A. I was trying to confirm the identity of the person.

8 Q. Based on the description that you had?

9 A. Yes.

10 Q. And in the video that we just watched here, the --
11 the individual that you had the description of he came
12 into the store, goes off of the screen for a while and
13 whenever he comes back he's there at the cash register,
14 right?

15 A. Correct.

16 Q. So he actually buys something?

17 A. Yes.

18 Q. And that's the same thing that the receipt is for?

19 A. Yes.

20 Q. For the one liter Pepsi, I believe it was?

21 A. Yes.

22 Q. And then you said that whenever he -- he walks from
23 there he actually goes over to you said it was a magazine
24 stand?

25 A. Yeah, we have magazines and some newspapers below

1 that.

2 Q. And so -- and that's what he's seen picking up there
3 in the video, correct, magazines and newspapers off the
4 stand?

5 A. Yes.

6 Q. And then he looks at those things for a minute and
7 then you said where he goes from there is he goes and looks
8 at the -- you said it's a fragrance cabinet there?

9 A. A fragrance display case.

10 Q. He stands there for a minute and then he leaves,
11 correct?

12 A. Yes.

13 Q. And you didn't have any -- this camera doesn't show
14 outside of the store?

15 A. We have an additional camera that's outside.

16 Q. But that's not what's shown here, is it?

17 A. No.

18 Q. This particular camera doesn't show what's going on
19 outside the store at that time?

20 A. No.

21 Q. Whenever Mr. -- well, the person that you had pulled
22 the video for that matched that description, whenever he
23 exited the store nobody attempted to stop him, did they?

24 A. No.

25 Q. Nobody ran him down and questioned him about anything?

1 A. We're not -- we're not supposed to exit the store.

2 Q. But whenever he was heading out of the store, nobody
3 stopped him and asked him any questions at that point?

4 A. No.

5 **MS. GILREATH:** I beg the Court's indulgence just for
6 one moment.

7 **THE COURT:** Yes, ma'am.

8 **MS. GILREATH:** No further questions at this time,
9 Your Honor.

10 **THE COURT:** Redirect?

11 **MR. POGUE:** Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. POGUE:

14 Q. Mr. Stoudemire, you said that -- you told defense
15 counsel that you weren't allowed to chase people out of
16 the store?

17 A. Correct.

18 Q. Explain that.

19 A. Just for safety reasons we're not allowed to -- we
20 can ask somebody to stop, but if they don't stop then we're
21 not supposed to chase people past the stop point area or
22 approach somebody past the stop point area.

23 Q. Is that a store policy or is that --

24 A. That's a company policy.

25 Q. A company policy?

1 A. Yes.

2 **MR. POGUE:** No further questions.

3 **THE COURT:** Anything else?

4 **MS. GILREATH:** Just one.

5 **RE CROSS EXAMINATION**

6 BY MS. GILREATH:

7 Q. Mr. Stoudemire, you said that it is -- under company
8 policy is it to okay to ask someone to stop?

9 A. Yes.

10 Q. And nobody did that to this individual that day?

11 A. Correct.

12 **MS. GILREATH:** No further questions, Your Honor.

13 **THE COURT:** All right. You can step down.

14 (Witness excused.)

15 **THE COURT:** Can I see the lawyers for just a minute?

16 (Proceedings held at the bench; not reported.)

17 **THE COURT:** This may be the last witness before lunch,
18 ladies and gentlemen, so just bear with me on that. Is
19 everybody okay?

20 All right. You can call your next witness.

21 **MR. POGUE:** Thank you, Your Honor. The State now
22 calls Deputy Wood to the stand.

23 (Whereupon, Daniel Wood was duly sworn by the Clerk of
24 Court.)

25 **THE CLERK:** Once you're seated state your full name,

1 spelling your last for the record, please.

2 **THE WITNESS:** My name is Daniel Wood. Last name Wood,
3 W-O-O-D.

4 DANIEL WOOD,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. POGUE:

8 Q. Thank you, Deputy. How long have you -- excuse me.
9 Where are you currently employed?

10 A. Lexington County Sheriff's Department.

11 Q. Where were you employed on the date of June 7, 2014?

12 A. Lexington County Sheriff's Department.

13 Q. How long have you been with the sheriff's department?

14 A. Approximately three and a half years. I was hired in
15 March of 2013.

16 Q. What is your current assignment?

17 A. I'm currently a master deputy, which means supervisor,
18 in the warrants division for the sheriff's department.

19 Q. How about on the date of June 7, 2014?

20 A. I was a patrol deputy in the north region of the
21 sheriff's department.

22 Q. How did you become involved in the case we're here
23 today on?

24 A. On that day I was on routine patrol and I received
25 a call from dispatch that I needed to go take a report

1 for a shoplifting at the CVS located at 100 Outlet Point
2 Boulevard in Columbia, which is the area that I patrol.

3 Q. What county is that in?

4 A. That is in Lexington County.

5 Q. What did you do when you arrived?

6 A. When I arrived, I met with the manager, Mr. James
7 Stoudemire, and he took me to the back manager's office,
8 I believe, and we watched the video that we just watched
9 in the courtroom and I also was given a list of inventory
10 of items that were believed to be stolen and I was walked
11 to the areas of which the items were taken in the store,
12 so the shelves that he believed that was where the items
13 were taken, and I took a report and provided him with a
14 case number as far as that.

15 Q. After providing him with a case number, what happened
16 after that?

17 A. Mr. Stoudemire advised me that --

18 **MS. GILREATH:** Objection. It appears that he's about
19 to testify as to what Mr. Stoudemire told him.

20 **THE COURT:** All right. It may or may not be hearsay,
21 it may or may not be an objection. Do you want to be heard
22 on that?

23 **THE WITNESS:** I don't know need to -- I can change my
24 wording. In order to obtain the CD of the store that I
25 just watched, it wasn't gonna be available right away so

1 we were gonna have a copy made and come get it at a
2 different date. Knowing the origination of how the
3 shoplifting was reported being from Officer Lawler, I
4 attempted to contact him at a phone number provided by
5 Mr. Stoudemire, I couldn't get him on the phone and I
6 wrote the report and left the scene and that was my
7 involvement.

8 **MR. POGUE:** Thank you, Deputy Wood. Just one moment
9 please. No further questions, Your Honor.

10 **THE COURT:** Cross-examination?

11 CROSS-EXAMINATION

12 BY MS. GILREATH:

13 Q. Officer Wood, I just have one or two quick questions
14 for you. At the time when you were called out to the CVS,
15 this was after Mr. Stoudemire had already had contact with
16 Officer Lawler of the Lexington Police Department?

17 A. That's my understanding, yes.

18 **MS. GILREATH:** I think that's all my questions, Your
19 Honor.

20 **THE COURT:** Redirect?

21 **MR. POGUE:** No further questions, Your Honor.

22 **THE COURT:** Thank you, sir. You can step down.

23 **THE WITNESS:** Thank you.

24 (Witness excused.)

25 **THE COURT:** Any additional witnesses before lunch for

1 the State or would you like a recess?

2 **MR. POGUE:** Your Honor, I think maybe we could get the
3 last witness in before, if you'd like.

4 **THE COURT:** Okay. That would be fine.

5 **MR. POGUE:** The State calls Officer Wilkerson from the
6 Lexington County Sheriff's Department to the stand.

7 (Whereupon, Lynn Wilkerson was duly sworn by the Clerk
8 of Court.)

9 **THE CLERK:** State your full name, spelling your last
10 on the record, please.

11 **THE WITNESS:** My name is Lynn Wilkerson,
12 W-I-L-K-E-R-S-O-N.

13 LYNN WILKERSON,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. POGUE:

17 Q. Officer, what's your current rank with the sheriff's
18 department?

19 A. Currently I'm a school resource officer for the
20 Lexington County Sheriff's Department.

21 Q. What school do you -- are you assigned to?

22 A. Irmo High School.

23 Q. At the time of June 14th -- excuse me June 7, 2014,
24 what was your current assignment with the sheriff's
25 department?

1 A. My assignment at that time was property crimes.

2 Q. Okay. How did you become involved in this
3 particular case?

4 A. I received Deputy Wood's report and it was assigned to
5 me for follow-up.

6 Q. And what did you do after it was assigned to you for
7 follow-up?

8 A. I read Deputy Wood's report and that was a few days
9 after. I think that was on the 10th. I started following
10 up on the case and contacted Deputy Lawler, spoke with him
11 about the case, and went to the CVS and received a video
12 that Mr. Stoudemire had made at that time and that was on
13 -- I think that was on the 10th.

14 Q. You said you think you got a copy of the video on the
15 10th; is that right?

16 A. Yes.

17 Q. Okay.

18 **MR. POGUE:** Permission to approach the witness, Your
19 Honor?

20 **THE COURT:** Yes, sir.

21 BY MR. POGUE:

22 Q. I'm handing you up a copy of your report. Would you
23 take a look at your report and tell me -- you said you
24 picked up a copy of the video on the 10th?

25 A. Yes.

1 Q. Okay. All right. After picking up a copy of the
2 video, what did you do?

3 A. After that, I'd already spoken with Lawler on the
4 phone, I got a copy of his report and then I went to the
5 Lexington Police Department and gathered all the evidence
6 from Lawler's traffic stop and took those over to the CVS
7 and showed those to the manager, Mr. Stoudemire, and asked
8 him if he recognized any of those things from his store at
9 which time he did recognize quite a few of those items. I
10 took a photograph of those items that he recognized as his
11 and also received a written statement from Mr. Stoudemire
12 at that time.

13 Q. Did you watch the video that he gave you?

14 A. I did. After that, I went back and watched that video
15 -- portions of that video and portions of Lawler's video
16 and compared the two.

17 Q. And based upon your comparison of the two, were you
18 able to identify a subject in this particular case?

19 A. Yes, sir. Lawler had stopped Mr. Fulwiley, also had
20 in that evidence the receipt that was mentioned earlier
21 from Mr. Fulwiley being in the store, I compared the two
22 videos and it was -- looked like the same man to me, the
23 same exact clothing, in the two videos.

24 Q. Okay. Officer Wilkerson, I'm handing you up what's
25 marked as State's Exhibit 10 and 11.

1 A. Yes, sir.

2 Q. Do you recognize those items?

3 A. I recognize these as still shots from the video from
4 the CVS.

5 Q. Do you notice anything unusual about the photographs
6 from State's Exhibit 10 and State's Exhibit 11?

7 A. In State's Exhibit 10, it appears that his sweatpants
8 are a little tighter around his legs. In State's
9 Exhibit 11 they appear bulkier.

10 Q. Officer Wilkerson, I'm also handing you what's been
11 marked as 8A. Do you recognize that particular item?

12 A. Yes, sir.

13 Q. What is it?

14 A. This is one of the items that I received from evidence
15 at Lexington Police Department, all these items here, and
16 this one is the one that's marked with the CVS tag.

17 Q. And when you went to the store, was that particular
18 item able to be identified?

19 A. Yes, sir. This item and the others as well
20 Mr. Stoudemire said had came from his store.

21 Q. Thank you. Based upon your investigation and
22 follow-up, what did you do next?

23 A. Next I wanted to talk with Mr. Fulwiley, so I went to
24 his address and I could not locate him at that address.

25 Q. I was gonna say when you say his address, what address

1 did you use?

2 A. It was Alcott Drive, I believe.

3 Q. How did you find his address?

4 A. I believe it was in our -- in our RMS system. Either
5 that --

6 Q. And -- continue. I'm sorry.

7 A. Either that or on his driver's license. I think he
8 was in our database.

9 Q. You said you went to go speak with him?

10 A. Yes, sir. I went and knocked on the door, spoke with
11 a woman at the door, but I was not able to speak with him.

12 Q. Okay. What did you do after you weren't able to speak
13 with him?

14 A. I came back and then a couple of days later I went to
15 see Judge Adams, presented the evidence to Judge Adams and
16 my probable cause, and she signed the warrant.

17 Q. And what was the basis of your probable cause? What
18 was the warrant for?

19 A. The warrant was for shoplifting, that the items that
20 were described and identified by Mr. Stoudemire were his
21 and then found in the car by Deputy Lawler thirty minutes
22 later with the receipt stating that he had been in the CVS.

23 Q. Do you know whether -- or when the warrant was ever
24 served in this particular case?

25 A. I believe the warrant was served sometime in October.

1 Q. Do you serve warrants?

2 A. Well, not my own warrants for sure and not typically.

3 Q. Okay. Are you notified when the warrants that you've
4 signed for have been served?

5 A. I usually get an e-mail when my warrants are served,
6 yes, sir.

7 Q. October of what year was this warrant served?

8 A. Of this year -- of 2015.

9 Q. Okay.

10 A. On -- I think. As I recall, that's --

11 Q. Do you remember the date that you went to the judge to
12 have the warrant issued?

13 A. That was around June 23rd. Toward the end of June of
14 2014.

15 Q. So a couple of days after this incident occurred?

16 A. Yes, a couple of weeks.

17 Q. And it wasn't until you say October of '15 -- of 2015
18 that that warrant was served?

19 A. Right, it was much later.,

20 Q. Is it unusual for it to take that long to get served?

21 A. It happens sometimes, but not usually.

22 Q. Okay.

23 A. It doesn't usually take that long.

24 **MR. POGUE:** No further questions, Your Honor.

25 **THE COURT:** Cross-examination?

1 **MS. GILREATH:** No questions for this witness, Your
2 Honor.

3 **THE COURT:** You can step down. Thank you.

4 **THE WITNESS:** Yes, sir.

5 (Witness excused.)

6 **THE COURT:** All right. Any additional witnesses for
7 the State?

8 **MS. USRY:** Your Honor, at this time the State rests.

9 **THE COURT:** All right. Ladies and gentlemen, the
10 State has rested, which means the State has presented the
11 evidence it is going to present in its case in chief.
12 Under the rules that we have it requires me to take a
13 recess at this point anyway and it is close to lunch.
14 I'm gonna ask you to please be back in your jury room at
15 2:15. In the meantime, you may not discuss the case at
16 all, even amongst each other. If you go anywhere else,
17 see anyone else over the lunch break, do not discuss it
18 with anyone at all. No research, no information seeking,
19 nothing of the sort. We'll have you back out here at 2:15.
20 Thank you.

21 **BAILIFF:** Come with me, please.

22 (Whereupon, the jury was excused for lunch at
23 12:53 PM.)

24 **THE COURT:** All right. Any motions from the
25 Defendant?

1 **MS. HENRY:** At this time, Your Honor, we would move
2 for a directed verdict based on our objections and our
3 prior motions. I believe the State has raised suspicion,
4 but there is nothing -- circumstantial evidence and that's
5 all they have thus far -- connecting that is insufficient
6 to support the case going forward. We would ask for a
7 directed verdict.

8 **THE COURT:** All right. The State's position on the
9 circumstantial evidence argument?

10 **MS. USRY:** Your Honor, we do believe that we have a
11 good amount of evidence that points that the Defendant
12 committed shoplifting to include when you're taking, you
13 know, the standard that you're looking at now for this
14 directed verdict motion, the fact that the items were
15 found in the Defendant's car, it was about thirty minutes
16 after leaving a CVS, that same Defendant, those items were
17 connected to CVS via the manager there, Mr. Stoudemire,
18 the fact the Defendant was seen in the store about thirty
19 minutes before. There was testimony from the stand that
20 his pants appeared different when he walked in and out of
21 the store. And, in addition to that, the statements made
22 in the back of the car and the way that the Defendant's
23 voice is reflected I think goes to the fact that they were
24 talking about, one, not talking in the back of the car
25 anymore and, two, the way he talked about this camera is

1 gonna show me in the store, but not stealing that stuff.

2 **THE COURT:** All right. Any response from the
3 Defendant?

4 **MS. HENRY:** Well, I would note that this was not his
5 car, it was Mr. Butler's car. They had explanation for
6 the items that were in the car, which law enforcement
7 apparently didn't check out, but the -- the fact that he
8 was in a CVS, there's no video footage, no testimony that
9 anyone saw him there on the razor aisle or the medication
10 aisle stashing things away. I just don't think it's strong
11 enough to submit to the jury.

12 **THE COURT:** All of these things are in evidence?

13 **THE COURT REPORTER:** I was going to -- I'm sorry. I
14 need to -- I was going to ask for clarification.

15 **THE COURT:** I'm asking for it now. There's been one
16 -- the bag has been marked. There's one item from the bag
17 that's been marked. How about all the other stuff?

18 **MS. USRY:** Your Honor, I thought we marked the bag
19 for all the items and then with --

20 **THE COURT:** Well, I just want to be sure. I mean,
21 the bag was marked when it was full.

22 **MS. USRY:** Yes, sir.

23 **THE COURT:** So I understand that. I was just kind
24 of wondering. So everything that was in the bag is gonna
25 go back in the bag because they were in the bag when it

1 was marked. My question is where is -- to the extent you
2 think it's necessary, where's the evidence that all these
3 other things came from CVS?

4 **MS. USRY:** Your Honor --

5 **THE COURT:** They came from CVS bags?

6 **MS. USRY:** Right. Yes, sir.

7 **THE COURT:** Where's the evidence, other than that one
8 razor box, where that other stuff came from CVS?

9 **MS. USRY:** I believe the witnesses testified --
10 from Mr. Stoudemire, the items that were missing from his
11 store.

12 **THE COURT:** He said he noticed the razors were
13 wiped out. He identified one box, which is enough for
14 shoplifting.

15 **MS. USRY:** Yes, sir.

16 **THE COURT:** He identified one box with a CVS security
17 tag on it. Did he identify that box to be merchandise
18 from that store? In other words, you know, those little
19 numbers on those bar codes, did that come from his store?

20 **MS. USRY:** He was able -- it does not have a bar code
21 on it, but he was able to identify the items were packaged
22 similar to the items in his store and recognized the
23 markings on his store in conjunction with the number of
24 items that were missing from the store.

25 **THE COURT:** How about all the Claritin and the

1 Nasacort? Were those -- I know they're identified in
2 evidence -- they're in evidence, but are they identified
3 as being from the store, too, or do we know?

4 **MS. HENRY:** I believe there's no testimony to that
5 effect.

6 **MS. USRY:** I would agree that there's no testimony to
7 that, Your Honor.

8 **THE COURT:** And the Zyrtec?

9 **MS. USRY:** In regards to the Zyrtec, there's testimony
10 to the fact that they viewed the area and noticed items
11 missing from that area, Your Honor.

12 **THE COURT:** But they can't -- and I haven't looked
13 at any of them. Are the bar code -- were the stickers
14 removed from those things by the culprit or by somebody or
15 were they just never on there? I just never heard an
16 explanation of how it works.

17 **MS. USRY:** They're not bar codes on the items.
18 Mr. Stoudemire looks at his inventory and sees what he's
19 missing and identifies items as actually being items from
20 the store.

21 **THE COURT:** Did he identify these items that are in
22 evidence as missing from his store or did he identify items
23 in general?

24 **MS. USRY:** Yes, sir.

25 **THE COURT:** In general?

1 **MS. USRY:** He gave a general description of the items
2 that were missing from his store when the officer presented
3 the evidence.

4 **THE COURT:** I must have missed it. What did he say
5 those were from the witness stand?

6 **MS. USRY:** He did not specifically list the items
7 from the witness stand. He did not specifically list the
8 items from the witness stand.

9 **THE COURT:** All right. So how is the jury supposed
10 to know that all that stuff came from CVS beyond a
11 reasonable doubt?

12 **MS. USRY:** Your Honor, I think taking the totality of
13 his statements from the stand and the items missing, and
14 the officer brought the items from the car to him, and the
15 testimony by Detective Lawler that he put those items
16 from the car into the evidence room and there's an officer
17 that testifies he picked up the evidence from the evidence
18 room at Lexington Town and took it to the CVS.

19 **THE COURT:** Oh, there's -- and the evidence custodian
20 hasn't testified, right?

21 **MS. USRY:** No, sir, Your Honor, but Detective
22 Wilkerson testified that he picked up the evidence from
23 the Lexington Town police department and took it to the
24 CVS for the -- for Mr. Stoudemire to identify the
25 information, the evidence, and he made a comment from the

1 stand that all of these items -- kind of in passing that
2 all of these items were items he identified.

3 **THE COURT:** I'm kind of moving away from what the
4 motion is, but --

5 **MS. HENRY:** Your Honor, I think --

6 **THE COURT:** I'm just a little bit confused about what
7 the evidence shows.

8 **MS. HENRY:** I don't think there's been any testimony
9 there that showed those particular items came from the
10 Outlet Point CVS.

11 **THE COURT:** Well, another possible alternative, which
12 I can't consider, is that he just kind of made a sweep of
13 all retail establishments within the Lexington County area
14 and just stole a few things from several places, but what
15 I'm trying to narrow down is where is the evidence? I
16 must respectfully disagree with the Defendant that there's
17 no -- there's not enough evidence to go to the jury that
18 he stole something from somebody, but that's not the
19 question. The question is not -- is whether or not
20 there's sufficient evidence to go to this jury that he
21 shoplifted items from the CVS store that are referenced in
22 the indictment; razors and sinus medicine -- razors and
23 allergy medicine. We've got -- so help me out with the
24 razor part.

25 **MS. USRY:** Yes, sir, Your Honor. He identified from

1 the stand that -- he does talk about one specific razor,
2 the -- and when I say "he", Mr. Stoudemire talked about,
3 as we said, 8A. He does talk about that one and picked it
4 up when we specifically asked him about that. Otherwise,
5 the testimony shows from the witness stand from Detective
6 Wilkerson that he picked up the items put into evidence
7 by Detective Lawler from the Town, he took those items to
8 Mr. Stoudemire for identification at his store and he
9 indicated that after he identified the items as coming
10 from his store he returned the evidence to Lexington
11 Police Department.

12 **THE COURT:** Okay.

13 **MS. HENRY:** Your Honor, as to that -- specifically
14 the 8A razor, my recollection of Mr. Stoudemire's
15 testimony is that it had a CVS hologram on it that
16 indicated it came from the CVS warehouse.

17 **THE COURT:** Or a CVS facility.

18 **MS. HENRY:** There was no specific identification that
19 those -- or that that item came from his store.

20 **THE COURT:** Okay.

21 **MS. HENRY:** CVS is all over town.

22 **THE COURT:** Okay. Anything else?

23 **MS. USRY:** Nothing further, Your Honor. I do believe
24 the specific question -- the way the question was worded
25 to Mr. Stoudemire was do you recognize this item which

1 I'm showing you, 8A, and he indicated he did recognize
2 that item.

3 **THE COURT:** As what? And, you know, let's get real
4 here. He's not gonna know yeah, I know that exact same
5 box was in my store. If he knows that, then he's got
6 problems. Nobody knows that. Yeah, I recognize all
7 twelve of these, they came from my store because I
8 recognize the angle of the box, I know all my inventory.
9 So I'm not saying it has to be a slam dunk on the -- that
10 these items came from there, but what I'm looking for is
11 some type of evidentiary connection between what -- what's
12 in this courtroom and what came from the CVS store.

13 **MS. USRY:** Yes, sir. And there's testimony he did an
14 inventory and noticed what was missing from his store and
15 then later was able to identify those items.

16 **THE COURT:** Okay. Anything else, Ms. Henry? It's
17 your motion. I'll give you the last word.

18 **MS. HENRY:** Again, Your Honor, I don't think there's
19 been any testimony in the evidence that's been presented
20 to the jury that supports the identification of that
21 specific item coming from the CVS.

22 **THE COURT:** All right. Well, I think that
23 circumstantially there's at least enough on the razor
24 blades. Mr. Stoudemire said the razor blades -- or the
25 razors were wiped out. I don't recall the testimony, and

1 I'm not saying there wasn't because I was listening to him
2 pretty carefully because he was a little soft-spoken and
3 so I had to listen, about -- what did he say about Zyrtec,
4 Claritin or whatever else? What did he say about that? I
5 can't remember.

16 **MR. POGUE:** Your Honor, I don't believe that he
7 specifically referenced those brand names, Zyrtec and --

8 **THE COURT:** Did he say allergy medicine?

9 **MR. POGUE:** Your Honor, in all honestly to the Court,
10 I don't recall exactly if he said any specific brand names
11 of the drugs. I think from my recollection -- and, again,
12 we'd have to go back if it's an issue, but he testified
13 that he -- when he did his inventory that he, again,
14 recognized that there were numerous items missing that he
15 was able to discover from his scanner system and then I
16 think I asked him -- or, excuse me, I think he referenced
17 that some of the items were missing from the aisle where
18 those particular items were contained.

19 **THE COURT:** And those particular items being the ones
20 that were sitting in front of him on the witness stand?

21 **MR. POGUE:** Yes, sir, Your Honor.

22 **THE COURT:** Okay. All right.

23 **MS. HENRY:** My recollection is he said yes, we have
24 those items in our store.

25 **THE COURT:** I think there's enough to go to the jury

1 on the razor blades and I'll think about how it's to be
2 narrowed down, if at all, but this is not the prototypical
3 shoplifting case as we call know. He's not caught with it
4 in the store as he's leaving. I thought I heard somebody
5 argue in opening statements that he waited for the lady to
6 leave the store so when the alarm went off that they would
7 all look at her because all he had was a Pepsi, but he went
8 out ahead of her, didn't he? I'm just curious.

9 **MR. POGUE:** Your Honor, I believe according to the
10 video, yes, he did leave before.

11 **THE COURT:** She stayed and looked at some --

12 **MR. POGUE:** It seemed to me like she was -- he was
13 probably waiting on her to leave, but this is all just
14 speculation.

15 **THE COURT:** He walked out by himself.

16 **MR. POGUE:** He walked out before she did, yes, sir.

17 **THE COURT:** And CVS just looks at people who go out?
18 So I could go in there today and get a bottle of shampoo
19 and just leave?

20 **MR. POGUE:** We wondered the same thing, Your Honor.

21 **THE COURT:** All right. Okay. I'm gonna respectfully
22 deny the Defendant's motion at this stage.

23 Do you have any additional motions on that point
24 anyway?

25 I think there are some evidentiary shortcomings, but

1 I think they go to weight and not whether it goes to the
2 jury.

3 **MR. HENRY:** Your Honor, we don't have any further
4 motions.

5 **THE COURT:** All right. Jury charges from anyone in
6 writing?

7 **MS. HENRY:** No, we'd depend on the Court's.

8 **THE COURT:** Okay. I'll charge the pertinent portion
9 of the shoplifting statute which does have definitions
10 and I'll -- other than that, the intent which is an
11 element of every crime, will be charged, and all the other
12 things. I'll be happy to leave up here for you to look at
13 the basic charge I gave in the last case, which would
14 include all of my standard charges, okay?

15 **MS. HENRY:** That will be fine. Thank you.

16 **THE COURT:** All right. If you could be back at 2:10
17 and we'll start with the -- are you gonna offer any
18 evidence?

19 **MS. HENRY:** No, sir.

20 **THE COURT:** All right. So you'll rest on the record
21 if that's still your desire at that point?

22 **MS. HENRY:** Yes, sir.

23 **THE COURT:** Other than that, we'll go straight into
24 the arguments. The State will present its argument and
25 then the defense, okay?

1 **MS. HENRY:** (Nods head.)

2 **THE COURT:** Thank you.

3 (Whereupon, a luncheon recess was taken at 1:08 PM.)

4 **BAILIFF:** All rise. Court's now in session.

5 **THE COURT:** Y'all got my jury charge? Is there
6 anything else that you need to put on the record before
7 we start?

8 **MS. HENRY:** Not from the defense, Your Honor.

9 **THE COURT:** Okay.

10 **MS. USRY:** Your Honor, the only thing I guess I do
11 want to address, and it may not be a big deal or improper,
12 but I thought before we started the case that we weren't
13 supposed to ask any questions about the other items in the
14 -- and Wal-Mart being involved in the case because they
15 did look -- you know, I thought we made -- and I backed
16 off of that somewhat. In our arguments about the evidence
17 at the end of the case, Ms. Henry mentioned there's no
18 evidence that they did any other investigation or any --
19 looked at any of these other items and I -- we backed off
20 of that in our case in chief based on pre-trial talking
21 about -- they made an issue of us looking into Wal-Mart
22 and other -- these other items in the car and we pulled
23 that picture that had all the items taken from the car and
24 I guess I'm concerned in closing is she gonna be now able
25 to argue that we didn't look into and do --

1 **THE COURT:** No. No. You're talking about --
2 especially the items in the photograph that I excluded --

3 **MS. USRY:** Yes, sir.

4 **THE COURT:** -- or any other items that are not in
5 Bag 8?

6 **MS. USRY:** Yes, sir.

7 **THE COURT:** There's not gonna be any conversation
8 about those.

9 **MS. USRY:** Okay. That -- that was my concern.

10 **THE COURT:** That's not the way I took her question,
11 but maybe I'm wrong.

12 **MS. USRY:** Okay. And I might have misunderstood. I
13 thought it was all the items.

14 **THE COURT:** And you may be entirely incorrect about
15 what she -- what did you mean by that, Ms. Henry?

16 **MS. HENRY:** Was that during the directed verdict
17 motion?

18 **THE COURT:** No, ma'am. Or was it?

19 **MS. USRY:** Well, the argument was made as part of her
20 directed verdict.

21 **THE COURT:** Okay. All right.

22 **MS. USRY:** She indicated there was no testimony about
23 other investigation done. I just wanted to make sure.

24 **MS. HENRY:** There wasn't any questions -- no questions
25 put to the witnesses about that.

1 **THE COURT:** Okay. Well, any arguments to the jury
2 about any failure to look into anything that wasn't in the
3 CVS bag or is not in evidence, of course, is gonna be out
4 of bounds.

5 **MS. HENRY:** Right. I understand.

6 **THE COURT:** I'm clear on it now.

7 **MS. USRY:** Thank you. Again, I may have been
8 misunderstood.

9 **THE COURT:** Is there any objection to the verdict form
10 from either side?

11 **MS. USRY:** None from the State, Your Honor.

12 **MS. HENRY:** None from the defense, Your Honor.

13 **THE COURT:** Both of you have had the opportunity to
14 look at the copy of the charge that you almost stole from
15 me?

16 **MS. HENRY:** I'm sorry.

17 **THE COURT:** And you've looked at it, too?

18 **MS. USRY:** Yes, sir, I glanced over it.

19 **THE COURT:** All right.

20 (Pause in proceedings.)

21 **THE COURT:** The jury is here. Of course, the State
22 agrees it will argue first?

23 **MS. USRY:** Yes, sir, Your Honor.

24 **THE COURT:** And does everybody have a handle on
25 what's in evidence and what's been marked for ID? I

1 think everything -- by my count, Number 5 is not in. Is
2 everything else accounted for as far as what you can show
3 to the jury?

4 **MS. USRY:** I believe so. Yes, sir, Your Honor.

5 **THE COURT REPORTER:** Except for 1, 2 and 3 which were
6 marked yesterday.

7 (Pause in proceedings.)

8 **THE COURT:** Are you good?

9 **THE COURT REPORTER:** Yes, I'm good.

10 **THE COURT:** All right. Bring in the jury.

11 And I'll allow y'all to rest in front of the jury,
12 okay?

13 **MS. HENRY:** Thank you.

14 (Whereupon, the jury return to the courtroom at
15 2:19 PM.)

16 **THE COURT:** Okay. We're ready to move forward,
17 ladies and gentlemen. The State has rested. I will now
18 ask defense counsel if there will be any presentation of
19 evidence from the defense.

20 **MS. HENRY:** Your Honor, the defense rests.

21 **THE COURT:** All right. Ladies and gentlemen, the
22 evidence that's going to be presented in this case for
23 you to consider has been introduced. We're now going to
24 move forward to the closing argument portion of the trial.
25 That is the opportunity and the right of the attorneys

1 to argue to you the conclusions that they believe the
2 evidence or lack of evidence would compel you to reach.

3 This is a very important part of the trial, so please
4 pay very close attention. I will tell you that what the
5 lawyers say to you during the course of their arguments
6 is not evidence. Evidence must come to you in those
7 ways that I mentioned earlier. They are permitted in the
8 course of their arguments to refer to the evidence and
9 the law as I am going to give it to you. If they happen
10 to mischaracterize any evidence or any portion of the
11 law, please go with the evidence as you recall it to be
12 and go with the law as I charge it to you, not necessarily
13 what the lawyers say that it is. They're not gonna
14 purposely do anything to mischaracterize evidence or the
15 law. I just want to make sure you understand that your
16 role as factfinders make you rely on what you consider the
17 evidence is, not what the lawyers have told you that it is.

18 All right. The order of the argument will be the
19 State arguing first and then the Defendant will have the
20 last argument.

21 Yes, ma'am.

22 **MS. USRY:** Your Honor, may it please the Court?

23 The video's gonna show me in the store, but it ain't
24 gonna show me stealing that shit, cracking that shit. The
25 words of the Defendant, Michael Fulwiley. The words of

1 someone who on June 7th of 2014 entered a CVS wearing
2 baggy sweatpants, went into an aisle that was not on
3 camera in the CVS and took items away from the CVS. In
4 the process of doing so, he was in the store for twenty
5 minutes. Twenty minutes. He went to the cash register
6 and bought a Pepsi. He was in there for twenty minutes,
7 he picked out a Pepsi and then left the store.

8 Ladies and gentlemen, I submit to you that during
9 those twenty minutes in the CVS the Defendant was actively
10 taking items from that store, was taking razor blades, he
11 was taking allergy medication, he was concealing them on
12 his person and then leaving the store. That is a
13 shoplifting. Under the laws of South Carolina the taking
14 away with the intent to deprive the owner of the value of
15 the property is a shoplifting.

16 Now the State has the burden of proof in this case
17 and we welcome that burden and the burden is beyond a
18 reasonable doubt. You hear that a lot. Beyond a
19 reasonable doubt is not absolute certainty because no
20 one could be forced to prove something to absolute
21 certainty. It's beyond a reasonable doubt. It's
22 something that leaves you firmly convinced. It is not
23 beyond all doubt.

24 Now the defense may stand up here and want you to
25 believe that because this incident is not on video it did

1 not happen. These days we have cameras in a lot of
2 places and we catch a lot of things, but we don't catch
3 everything, and just because something is not on video
4 doesn't mean it did not happen.

5 You've had a lot of evidence and you heard today from
6 the witness stand and you're gonna hear the judge talk
7 about direct evidence and circumstantial evidence. Direct
8 evidence is if I'm up and I see it snowing outside, I know
9 it is snowing. Circumstantial evidence can be described
10 as if I go to bed at night and it's clear outside and I
11 wake up in the morning and the ground is white outside I
12 know that it has snowed. I didn't have to see it snow to
13 know that that happened. I took a view of my surroundings
14 and took all that in and came to the determination that
15 that happened overnight.

16 This case is a case of circumstantial evidence. We
17 don't have the Defendant on tape. We do have the
18 Defendant at the CVS for a long length of time picking
19 out a Pepsi. We have him being pulled over for a seatbelt
20 violation and there's no doubt, ladies and gentlemen,
21 that the officer just stumbled into this. When they
22 pulled Mr. Fulwiley over, they had no idea that he had
23 these items on his person, no idea. They pulled a car
24 over for a simple seatbelt violation. And you heard
25 Detective Lawler testify that he's done numerous seatbelt

1 violations and they are -- they're fast, they write a
2 ticket and you go.

3 This turned into something else and it turned into
4 something else because the passenger {sic} had a DUS, so
5 they had to sit there longer. Then they determined that
6 they couldn't let the car leave the scene, they had to
7 inventory it per department policy. Officer Lawler took
8 into account in his radar, and he's got -- he's been an
9 officer for a long time, so things are happening, they're
10 starting to kind of set his radar off, small things that
11 add and build on themselves, when he pulls the car over,
12 he sees the Defendant leaning over, reaching under the
13 seat, he can see him kind of making some motions like
14 that.

15 He continues talking to the Defendant, he pulls
16 him out of the car, he asks him questions while he has
17 them out of the car. Whose stuff is in the car, when he's
18 attempting to inventory it, whose stuff is this? That's a
19 simple question, ladies and gentlemen, and the Defendant
20 cannot answer that. It his stuff, it's our stuff, it's
21 ours together. It's back and forth. That's a simple
22 question that he cannot answer.

23 He also during the stop sees him get out of the car
24 and appear to be smoking a cigarette, but also adjusting
25 his pants, and that sends off a signal in his head, too.

1 He notes that. That's not normal behavior.

2 He inventories the car and finds multiple items that
3 are new in the car. He finds items that are still in the
4 security case from CVS. In fact, one item in particular
5 still has a CVS sticker on it and the CVS clerk testified
6 that these are the -- the security devices they use in
7 their store.

8 Ladies and gentlemen, this flea market does not sell
9 items still in their security box. They're not gonna do
10 that because if they're out at the flea market selling
11 items still in the security package, it's a red flag that
12 this item has been stolen. The Defendant did not buy
13 these items at a flea market. That is not true.

14 Officer Lawler also during his inventory of the car
15 pulls a receipt from CVS. He happens to find it, sees
16 that it's about thirty minutes prior to the stop and calls
17 the number just trying to do his due diligence and his
18 investigation and see what's going on and talks to
19 Mr. Stoudemire who then looks at his inventory and notices
20 he's missing items from the store. And, in fact, he's
21 missing the specific items that are later brought to him
22 from Detective Lawler. That's not a coincidence. It's
23 the exact items.

24 Now the Lexington County Sheriff's Department has to
25 investigate the case because it's not within the Town's

1 jurisdiction, so they do that. They send two officers;
2 one the day of to go out and meet with Mr. Stoudemire and
3 to see the video. They're not able to get the video that
4 day, so they talk to him about the items and they actually
5 send another officer, an investigator, to take the evidence
6 from the Town's evidence to the CVS to confirm those items
7 are from there.

8 We have all that, all those pieces. When he pulls
9 that seatbelt -- that car for the seatbelt he has no idea
10 and slowly he goes through and checks things off his list
11 and he builds an investigation. Detective Lawler does
12 and the sheriff's department does. But on top of that
13 when this is all over, Detective Lawler pulls his in-car
14 video and watches it and sees conversations between the
15 Defendant and the driver, Mr. Butler, in the backseat of
16 the car. And those conversations I submit to you are very
17 important because they're in the back of the car, no one
18 else is in the car with them, and they're talking to each
19 other. And during that time the Defendant lowers his voice
20 because he knows he's in a police car and he whispers to
21 the man seated next to him in the car that video is gonna
22 show me in the store, but it's not gonna show me stealing
23 that shit, cracking that shit. And what does Mr. Butler,
24 the driver, say in response? And I'm not quoting this
25 directly, you can watch them again, but he says something

1 to the effect of man, don't talk anymore. Don't say
2 anything else.

3 That is criminal intent. They know what he did.
4 Mr. Fulwiley, the Defendant, knows what he did. That's
5 criminal intent. And I submit to you when you view all
6 the circumstantial evidence together, not in a vacuum but
7 pull it all together, all the pieces link and the picture
8 that's painted is that on June 7th of 2014 Defendant
9 Fulwiley went into a CVS and he unlawfully put items in
10 that store down his pants and he left and he was caught
11 thirty minutes later by the sheer luck of an officer who
12 had to then go back and make the connections of what
13 happened and put that case together. And I submit to you
14 that the evidence that has been presented to y'all today,
15 this morning, it's a short trial, amounts to proof beyond
16 a reasonable doubt that this crime occurred, that a
17 shoplifting occurred, in Lexington County on June 7th of
18 2014. Thank you.

19 **THE COURT:** Thank you.

20 Defendant's closing?

21 **MS. GILREATH:** Wear your seatbelt, save your
22 receipts, don't wear baggy sweatpants to CVS. Don't buy
23 something and then hang around for another second. Don't
24 look around before you buy something because it can only
25 mean one thing. It can only mean one thing. The State

1 would have you believe that it could only mean one thing.

2 Now the judge is gonna talk to you about reasonable
3 doubt. The State's already mentioned it a little bit and,
4 of course, nobody is gonna argue that every single thing
5 is proven to an absolute certainty, but doubts that are
6 reasonable, doubts that make sense, doubts that are based
7 on the State's own evidence, those doubts are reasonable.

8 Now let's talk about what the reasonable doubt is
9 in this case. In this case, you have Mr. Fulwiley. He
10 gets pulled over in a traffic stop for not wearing his
11 seatbelt. Now the State's made a big deal about this
12 conversation between Mr. Fulwiley and the driver,
13 Mr. Butler, that takes place in the backseat of the car.
14 They make a big deal about it. They say he lowered his
15 voice. They say he said they'll have me on video going in
16 there -- and I'm slightly paraphrasing -- they'll have me
17 on video in there, but they're not gonna see me steal that
18 shit. They want you to believe that that means that he
19 did steal it. Now they make a big deal about lowering his
20 voice because he's in the back of a police car. Did he
21 lower his voice or did he trail off as part of normal
22 conversation as anybody does? Now they make a big deal of
23 the fact that they're talking about this as though -- as
24 though Mr. Fulwiley would have no other reason to bring
25 this up, as though it's out of the blue, as though he has

1 no idea that they're suspecting him of stealing already.

2 They get him out of the car, do several other things,
3 and eventually when they start taking the stuff out the
4 first thing they do is they go to Mr. Fulwiley and say do
5 you have a receipt for this. What's the first thing
6 that's gonna go through anyone's mind when a police
7 officer approaches you and says do you have a receipt for
8 this? Are you gonna think he's just curious or are you
9 gonna think he thinks I stole something? When a police
10 officer takes that receipt and calls CVS, even though the
11 receipt is for something that you clearly bought, calls
12 them and starts asking hey, are you missing anything,
13 giving him a description of you, of course you're gonna
14 think they think I stole something. Would it make sense
15 then to not say a word about it once you're cuffed in
16 the backseat of a police car?

17 Mr. Butler, the driver, had been sitting in the police
18 car for a little while at that point. Does it really make
19 no sense at all that he would essentially be telling him
20 what's going on? It's clear. They're spreading all this
21 stuff out all over the hood of the police car. You saw it
22 in the video. Would it make sense for him at that point
23 to not make any comments on it? And what did he say?
24 They make a big deal about him lowering his voice. Why
25 wouldn't he have said I hope they don't have video because

1 I did steal that stuff? They want you to take something
2 that was said and twist it into a different meaning than
3 what it has.

4 Now the other thing that they make a big deal about
5 is that Mr. Fulwiley was in the store for twenty minutes
6 or so total. Now, of course, he did buy his Pepsi and he
7 paid for that, but they want you to think that it could
8 only mean one thing. Being there longer than just walking
9 straight to the drink coolers, pulling out a Pepsi and
10 then going straight to the cash register and paying for
11 it, being there longer could only mean one thing. Is it
12 really reasonable to think that if someone's in a store,
13 whether it's CVS or a grocery store or Wal-Mart or
14 anywhere, any other store, that someone might just walk
15 in, buy something and come out and that the only other
16 reason that they might be there longer than just that
17 very specific amount of time has to be because they're
18 stealing something? We all know that's not true. There
19 are plenty of other reasons. You might be looking for
20 something that you can't find, you might be trying to
21 decide what drink you're gonna get. There are plenty of
22 other reasons. It doesn't all just point to one thing.

23 Now the other thing that the State makes a big deal
24 out of is that whenever Mr. Fulwiley pays for his Pepsi
25 that he doesn't leave immediately and they've made this

1 big deal out of that as though just because he didn't
2 leave immediately well, that must mean he was stealing
3 something. But you saw on the video, and you'll have the
4 video to take back, he doesn't buy something and then go
5 wandering through the rest of the store. You can see
6 exactly what he's doing. You heard Mr. Stoudemire say
7 that that was a magazine rack and it had newspapers on it
8 and you can see in the video that that's exactly what
9 he's doing. He picks some of these things up, he looks
10 at them, he puts them back and then he goes and looks at
11 something that's in the fragrance cabinet. Now they want
12 you to think is that he was waiting, he was waiting on the
13 person behind him to finish so that he could leave at the
14 same time as that person, but is that what happened? Did
15 he wait until that other person left and went with them?
16 If he was that calculating that he felt like he needed to
17 wait for someone else to leave, why didn't he do it?

18 Now the other interesting thing about this, and you
19 can see this clearly in the video as well, the lady that's
20 behind Mr. Fulwiley in line when she pays for her stuff
21 she doesn't immediately leave either. Are they trying to
22 say that she stole something? It doesn't all point to
23 just one thing. That's what they would have you believe,
24 but it doesn't all just point to one thing.

25 Now you also heard Mr. Stoudemire and he indicated

1 that there are other cameras in that store. Now he said
2 that there's not one that's zeroed in on the razor aisle
3 where they have the razors that have the security stickers
4 and boxes and everything there. They don't have one that
5 zeroed in on that, but do you really think that there's not
6 another camera in that store that shows the medication
7 aisle?

8 It's not just razors that they say Mr. Fulwiley took.
9 They say he took Claritin, Zyrtec, more Claritin, Allegra,
10 more Claritin, more Zyrtec, more Zyrtec, and Nasacort. Do
11 you really think that CVS does not have a single camera in
12 that store that shows back in that direction, that shows
13 what's going on around the medication? CVS is a pharmacy.
14 Medication is their thing. Of course, they have other
15 things. They have Pepsi, they have razors, they have
16 magazines and newspapers and fragrances, but they're a
17 pharmacy and he told you -- Mr. Stoudemire told you that
18 there was no other video that showed Mr. Fulwiley. How on
19 Earth would it be possible for him to make it all the way
20 back to the medication aisle, take all of this stuff and
21 then leave without there being any cameras anywhere in the
22 store that at least shows him entering that section of the
23 store, much less taking all this stuff? It just doesn't
24 make any sense.

25 He also told you that well, we didn't have video

1 showing the razor aisle, but when asked well, then how did
2 you know that some was missing, he said well, we have a
3 direct line of sight, we can see it. Then why on Earth
4 would they not have seen Mr. Fulwiley coming into the
5 store, going to that section where they have a direct line
6 of sight and taking it? Taking this one, more razors,
7 more razors, more razors, more razors, more razors, more
8 razors, more razors. If they had a direct line of sight
9 to this aisle, how on Earth would they miss this? How?

10 You've also heard that they not only did not know
11 that anything was missing until the police called them,
12 they didn't just go to check and see if anything is
13 missing, they were given a list of here is what the police
14 had and they went and looked based on the list that the
15 police had. And you also heard Mr. Stoudemire say that
16 they hadn't checked earlier that day to see if anything
17 was missing, they checked when they heard what the police
18 had. And when they pulled the video, they didn't pull
19 video to see did anybody take anything, they didn't check
20 to see well, it is possible that maybe there was something
21 missing earlier and we just didn't notice it prior to
22 Mr. Fulwiley getting there. He told you that he took the
23 time on that receipt, he took the description that the
24 police gave him and he pulled that video. He pulled the
25 video of that person. He was already being told we've got

1 the guy, here's what's missing. So what else is he gonna
2 think? The police are telling him we've got this stuff,
3 it sounds like it might be from your store, we've got this
4 guy that was definitely just there. What else is he gonna
5 think?

6 Now the other thing that the State makes a big deal
7 of is these baggy jogging pants that Mr. Fulwiley is
8 wearing. They mention that he keeps messing with the
9 pants and adjusting them and you can see on the video that
10 he does adjust his pants. When he gets out of the car to
11 smoke a cigarette and then was told to get back in the
12 car, he gets out and he adjusts his pants. Now we know
13 at that point it's undisputed he doesn't have anything on
14 him. Is there really no other reason to be adjusting
15 jogging pants?

16 And you've heard that they say that, you know, when
17 -- when Mr. Fulwiley comes into the store his pants look
18 one way and when he leaves the store his pants look
19 another way. You'll have the pictures and you'll have the
20 video. I want you to think honestly. Does it look like
21 he has all of this, all of this? I can't even pick it all
22 up at one time. Does this look like he's carrying all of
23 this in baggy sweatpants? You heard Ms. Henry say in the
24 beginning that you were gonna see that there was enough
25 stuff that if Mr. Fulwiley had had all of this on him his

1 pants would have fallen down or he would have looked like
2 Santa Claus. There's no way that all of this could fit
3 into those baggy sweatpants without falling down. Look at
4 how he's walking in the -- in the video.

5 There's no way that all of this fit in his sweatpants
6 that day, and, ladies and gentlemen, that's reasonable
7 doubt. The State wants you to believe that this is
8 evidence that Mr. Fulwiley shoplifted from CVS. We're
9 not here to speculate about where else these things might
10 could have come from. All that matters is did he take
11 them then when we have this video, were they in his
12 sweatpants, were they on him, did he leave with them from
13 that CVS store that day? And even Mr. Stoudemire told you
14 that these things that have the CVS sticker on them, it
15 doesn't indicate that it came from this store, it only
16 indicates that it came from a CVS facility, perhaps a
17 warehouse. He told you it could have even come from a
18 warehouse.

19 Now when Mr. Fulwiley was first asked do you have a
20 receipt, what did he say? He said they don't give you a
21 receipt at the flea market. So isn't it at least possible
22 knowing that these things come from the warehouse with
23 that sticker on them they could have come from somewhere
24 else, they could have been sold by someone at the flea
25 market? There's nothing that they were able to present to

1 you today that links these very specific items with that
2 particular store other than Mr. Stoudemire just saying
3 that he had observed them and identified them. Now I
4 would say it's not clear from what he said whether he
5 means these are things that come from our store that we
6 sell in our store or that these very specific items
7 definitely came from my store that day. They haven't
8 given you any proof of that, and, ladies and gentlemen
9 that's reasonable doubt. These are doubts that are
10 reasonable to have. It is reasonable to wonder how on
11 Earth somebody could leave a store with all of these
12 things on them completely unnoticed.

13 Now they make a big deal about that he walks out of
14 the -- the store and I think the State said in their
15 opening that it looks to them like they looked at him, but
16 you also heard Mr. Stoudemire say that if they believe
17 that someone's taken something, policy says say something.
18 They may not chase them down the street, they might not
19 go running after them, tackle them to the ground or
20 anything, but you also heard him say nobody said a word
21 to Mr. Fulwiley. Nobody tried to stop him, nobody tried
22 to ask to see what was in his bag, nobody tried to ask do
23 you have anything else on you. If they really thought
24 that he was stealing this stuff in that moment, wouldn't
25 someone have said something?

1 So the State would have you believe that these things
2 can only point to one conclusion. That all of these
3 circumstances could only point to one thing. That's just
4 not true. And all these other things that it could point
5 to, that things were bought at the flea market, that he
6 was just wandering around looking at other things, that he
7 was picking up a newspaper and reading it, they want you
8 to hone in on only one possibility. There are too many
9 other possibilities to overcome their burden in this case
10 and that's what reasonable doubt is. A doubt that's
11 reasonable based on the evidence that you have. Something
12 that makes you not firmly convinced, not convinced that
13 there's not a possibility that something else happened.

14 Now, ladies and gentlemen, they haven't proven that.
15 They have not been able to prove to you that Mr. Fulwiley
16 took all of these things, left the CVS with them concealed
17 that day. They just haven't shown that. The State's
18 asked you to use your common sense. We're gonna ask you
19 to do the exact same thing, use your common sense, and we
20 believe that when you review the evidence and you think
21 about common sense, that you're gonna find Mr. Fulwiley
22 not guilty. Thank you.

23 **THE COURT:** Thank you, Ms. Gilreath.

24 All right. Ladies and gentlemen, let me have your
25 attention. Of course, this is the part of the trial when

1 I give you the charge on the law. You may have heard it
2 referred to as jury instructions. It's the same thing.
3 I'm going to explain to you what the law is, and as you
4 know from the preliminary instructions I gave you, you are
5 to put your common sense view of the evidence together
6 with the law as I give it to you and that will lead you to
7 the completion of this verdict form by your foreperson.

8 I will tell you what I told you at the beginning.
9 Your verdict in the case must be unanimous. That means
10 all of you have to agree. This cannot be seven to five
11 or even an eleven to one vote. Everyone on the jury must
12 agree with the verdict whatever it might be. So obviously
13 you have the responsibility of giving the issues in this
14 case the serious consideration that they deserve and not
15 until you do that can you reach a unanimous verdict.

16 Obviously during the course of this trial you and I
17 have had certain duties to perform. You are the sole
18 judges of the facts and I'm the judge of the law. One of
19 the ways that that can be illustrated to you is when the
20 witnesses testify, and today they were testifying to you,
21 not to me. When the witnesses may have stepped down, they
22 were stepping down for your benefit. Even when a witness
23 is in the witness chair, the witness is not pointed toward
24 me. All of that is a good illustration to explain that it
25 doesn't matter what I think about what a witness has to

1 say, it doesn't matter to me what a witness's demeanor
2 might be. That's all for you to consider. I have no role
3 in that whatsoever, so if I have said or done anything
4 during the course of the trial that makes you think that
5 I favor one particular result over another, obviously
6 you can put that out of your mind because it's your
7 responsibility and your responsibility alone to decide
8 what goes on this form. I have nothing to do with that.

9 Now during the course of this jury charge I'm going
10 to be explaining certain legal principles to you. These
11 include, but they're certainly not limited to things that
12 you've already heard about, the credibility of witness,
13 I have talked to you about direct and circumstantial
14 evidence, I've talked to you about the presumption of
15 innocence, reasonable doubt. I'll explain to you, again,
16 certain factors that you may and may not take into account
17 in reaching your decision in this case and I'll explain to
18 you what the law on shoplifting is and I'll talk to you
19 about criminal intent.

20 If you come into the case with a preconceived notion
21 of what you think the law is or what you think it should
22 be, you must put that out of your mind because I go back
23 to that oath that you've taken. You've sworn an oath to
24 base your verdict on the evidence and the law and that is
25 not the law what you think it is or what you think it

1 should be, it is the law exactly as I give it to you.

2 Now, ladies and gentlemen, as factfinders as I've
3 mentioned to you, you have to evaluate the believability,
4 the overall credibility of the witnesses who testified.
5 You can believe every word that has come out of a witness's
6 mouth, you can disbelieve every word or believe parts and
7 disbelieve the rest. Use you common sense in making the
8 determination of whether or not a witness's testimony is
9 believable. I've talked to you about demeanor. You can
10 take that into account. You can take into account whether
11 or not that witness's testimony has been strengthened or
12 weakened by other evidence in the record, you can take
13 into account whether or not that witness might have a bias
14 or prejudice for or against one result over another and
15 you can take into account anything else that you think is
16 appropriate in evaluating credibility.

17 In so far as the evidence, I've explained to you at
18 the beginning of the trial how evidence comes in. Just to
19 change for just a moment, there are two types of evidence
20 that are generally presented during a trial. You've heard
21 of these probably, direct evidence and circumstantial
22 evidence. Direct evidence is evidence that directly
23 proves the existence of a fact. It doesn't require any
24 deduction. Circumstantial evidence, on the other hand, is
25 proof of a chain of facts and circumstances that would

1 indicate or prove a resulting fact. Crimes can be proven
2 by circumstantial evidence or direct evidence or some
3 combination of the two. The law makes no distinction
4 between the weight or value that you are to give to either
5 direct or circumstantial evidence. However, to the extent
6 that the State of South Carolina relies on circumstantial
7 evidence, all of the circumstances must be consistent with
8 each other and when taken together point conclusively to
9 the guilt of the accused beyond a reasonable doubt. If
10 the circumstances merely portray a defendant's behavior as
11 suspicious, then the State's proof has failed. As I will
12 explain to you in more detail, the State has the burden of
13 proving the Defendant guilty beyond a reasonable doubt and
14 that burden rests with the State regardless of whether the
15 State relies on direct evidence, circumstantial evidence
16 or some combination of the two.

17 As I mentioned to you at the time of jury selection,
18 the fact that the Defendant has been arrested or charged or
19 indicted is not evidence of anything. As I've mentioned
20 to you, the Defendant has entered a plea of not guilty to
21 the charge of shoplifting, which is in the indictment. He
22 does not have to prove or disprove anything. The State
23 has the sole burden of proving the elements of the crime
24 charged.

25 Now, ladies and gentlemen, it is a very important

1 rule of law that no matter what the charge is a person who
2 is charged with a crime is always presumed innocent of
3 that crime unless and until guilt has been established
4 that satisfies a jury of guilt beyond a reasonable doubt.
5 The presumption of innocence does not end, it does not
6 terminate, when you stand up in a few minutes and go to
7 your jury room. The presumption of innocence accompanies
8 the Defendant unless and until you reach a verdict of
9 guilt based on evidence satisfying of you guilt beyond a
10 reasonable doubt. Some people have described the
11 presumption of innocence like a cloak or a robe that's
12 over the Defendant's shoulders and that cloak remains on
13 the Defendant's shoulders until it's stripped away by
14 evidence satisfying a jury of guilt beyond a reasonable
15 doubt. So in closing on that point, those words, the
16 presumption of innocence, that is not a legal theory that
17 we casually toss around. That is a substantial right that
18 every defendant enjoys.

19 So far in this charge I have used the word
20 "reasonable doubt" several times, probably more than ten.
21 I'm gonna tell you about that now. This is a rhetorical
22 question. What's a reasonable doubt in the law? A
23 reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to take action. The State
25 does have the burden of proving the Defendant guilty

1 beyond a reasonable doubt. I believe only one of you has
2 been on a jury before, but if you're familiar with the
3 burden of proof in a civil case that is by what we call
4 the preponderance or the greater weight of the evidence.
5 If you have ever seen a statue of Lady Justice, she's
6 blindfolded holding up a sword in one hand and a scale in
7 the other. Those scales are perfectly even. In a civil
8 case, the party that has the burden of proof by the
9 greater weight of the evidence has to tip those scales
10 barely, ever so slightly. If that's done, the party has
11 met their burden of proof. In criminal cases, the State's
12 proof must be more powerful than that. The State's proof
13 must be proof beyond a reasonable doubt. Proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced
15 of a defendant's guilt. If based on your consideration of
16 the evidence you are firmly convinced that the Defendant
17 is guilty of the crime of shoplifting, you must find him
18 guilty. If, on the other hand, you are not firmly
19 convinced, you think there's a real possibility that the
20 Defendant is not guilty, you must give the Defendant the
21 benefit of the doubt and find him not guilty.

22 Now, ladies and gentlemen, I instruct you and I
23 emphasize to you again that a defendant may be tried even
24 if the defendant does not attend the trial, but the fact
25 that the Defendant is not present may not be considered by

1 you at all against the Defendant in any manner whatsoever.
2 Likewise, the fact that the Defendant did not testify or
3 otherwise offer any evidence is not to be considered by
4 you at all. As a matter of fact, the Defendant not
5 testifying is not to be even thought about by you in the
6 jury room, it cannot enter into your decisions. It has no
7 impact whatsoever on your consideration of the issues of
8 whether or not the State has met its burden. Again, I'll
9 remind you that the Defendant doesn't have to prove or
10 disprove anything, so the fact that he's not here and the
11 fact that he has not testified is not a matter for your
12 consideration at all.

13 All right. Ladies and gentlemen, I'll get very
14 specific with you now. I'm gonna talk to you about with
15 regard to the crime of shoplifting what the State must
16 have proven to you beyond a reasonable doubt. Our
17 Legislature has adopted a statute that governs or
18 describes or codifies the offense of shoplifting. The
19 Defendant is charged with shoplifting. The State must
20 prove beyond a reasonable doubt that the Defendant took
21 possession of, carried away, or transferred from one area
22 of a store to another or caused to be carried away or
23 transferred merchandise with the intent to deprive the
24 merchant of the possession, use or benefit of that
25 merchandise without paying the full retail value.

1 I'm gonna define some of those terms. The term
2 "full retail value" means the merchant's stated or
3 advertised price for the merchandise. The term
4 "merchandise" means any goods, foodstuffs or wares of
5 any type of description regardless of their value. The
6 word "merchant" means the owner or operator of a store or
7 any agent or employee of that store. The words "with
8 intent" in the context with the intent to deprive the
9 merchant of the possession, use or benefit, that means
10 willfully intending the result which actually occurs and
11 not accidentally. As I'll instruct you in more detail in
12 a moment, intent may be shown by acts and conduct of the
13 Defendant and other circumstances from which you may
14 naturally and reasonably infer intent.

15 Now, ladies and gentlemen, I further charge you that
16 if you find that -- beyond a reasonable doubt that the
17 Defendant willfully concealed un-purchased goods or
18 merchandise from the premises outside the premises on his
19 person or otherwise, you may consider this as evidence, if
20 you consider it at all, that the Defendant has concealed
21 the merchandise with the intent to convert it to his own
22 use without paying for it. The word "concealed" is
23 defined by the Legislature, too, and that means to hide
24 merchandise so that although there may be some notice of
25 its presence, it is not visible through ordinary

1 observation.

2 I mentioned to you a moment ago the element of
3 criminal intent with regard to shoplifting. To be more
4 expansive on that, I will charge you that criminal intent
5 is something -- is an element of the crime charged and the
6 State must prove the element of intent beyond a reasonable
7 doubt.

8 Now, ladies and gentlemen, criminal intent can be
9 proven by direct evidence or circumstantial evidence or
10 some combination of the two. There's no way that medical
11 science can, at least yet, dissect a person's brain and
12 look at the brain and determine what, if anything, that
13 person intended to do, so the law says that criminal
14 intent may be inferred from circumstances that are shown
15 to have existed. It is not necessary to establish
16 criminal intent by direct evidence, but, again, it can
17 be established as long as it's established beyond a
18 reasonable doubt by direct evidence, circumstantial
19 evidence or a combination. So in closing on that point,
20 criminal intent is a mental state of conscious wrongdoing
21 and it's up to you to determine what, if anything, the
22 Defendant intended to do based on the evidence in the
23 case.

24 Now, ladies and gentlemen, as I mentioned to you,
25 your verdict must be unanimous. It is very simple on the

1 verdict form. That does not mean that your deliberations
2 are simple, I don't mean that, but the question says this:
3 As to the charge of shoplifting, we unanimously find the
4 Defendant, and there are two choices, not guilty, guilty.
5 Whatever your unanimous decision is, Madam Forelady, you
6 put a check or an X in the appropriate space and you sign
7 the verdict form, date it and tap on the door and let the
8 bailiff know you have a verdict. If during the course of
9 your deliberations you have any questions, you write the
10 question down on a notepad that will be in the jury room,
11 you sign the question, you date it and tap on the door and
12 let the bailiff know that you have a question.

13 The reason I give that instruction about the verdict
14 form, and it is a true story, a case that I had as a
15 lawyer, the jury was back there for hours and hours. They
16 had reached a verdict long ago, they just didn't know what
17 to do. So I'm telling you once you have reached a verdict,
18 make sure you let us know.

19 Now I will tell you this. With regard to questions,
20 you can ask questions that you think are appropriate, but
21 I will tell you upfront you will not be getting any new
22 evidence. You're not going to be getting any new
23 information. The evidence that you're going to have in
24 your collective memory or in the form of exhibits is it.
25 You're not gonna get any additional or new information or

1 evidence. You can ask any question you would like, but
2 the law dictates if and how I respond. But I did want to
3 let you know that nothing new will be given to you. The
4 two DVDs will be made available to you as well to watch in
5 their entirety. I don't know what kind of equipment we'll
6 send back there for you to watch that on, it will either
7 be a laptop or some type of screen, I don't know, but if
8 you do want to watch either one of those DVDs, that can
9 certainly be set up for you.

10 Please do not take any of the material in that paper
11 bag. If you take it out of the bag, that's fine, but don't
12 open the package. So whatever -- however these packages
13 are packaged, don't start taking things out like individual
14 pieces or pills or whatever might be in those boxes.

15 All right. Please keep in mind that your verdict has
16 to be unanimous. Obviously that means all of you have to
17 agree.

18 The next order of business in this trial will be for
19 me to consult with the lawyers outside of your presence
20 as to whether I left something out or said something
21 incorrectly, so what I'd like for you to do now is go
22 ahead and go to your jury room. Do not begin discussing
23 the case yet. And, Mr. Martin, you can remain behind in
24 the hall, but the rest of you can go in your jury room.
25 Your signal to deliberate will be when the bailiff comes

1 to the door with this form and with the exhibits and tells
2 you that you can begin your deliberations, all right?

3 Thank you.

4 (Whereupon, the jury retires to the jury room at
5 3:08 PM.)

6 **THE COURT:** All right. Any exceptions or additions
7 from the State?

8 **MS. USRY:** No, sir, Your Honor.

9 **THE COURT:** From the Defendant?

10 **MS. HENRY:** No, Your Honor.

11 **THE COURT:** Any objection to me releasing the
12 alternate?

13 **MS. USRY:** No, sir, Your Honor.

14 **MS. HENRY:** No, sir.

15 **MS. USRY:** And, Your Honor, I'll tell you we're
16 prepared to send the TV with the DVD player back with
17 everything and both the CDs were burned so they can play
18 on a DVD player.

19 **THE COURT:** If they do want to watch it? In other
20 words, go ahead and send it back now?

21 **MS. USRY:** You can. We're gonna leave it here in the
22 courtroom, but you can go ahead and send it back there and
23 they can have at it.

24 **THE COURT:** That's fine. I know from experience if
25 you were asking me to play it I would not know how. I

1 apologize for that. So if they have any problems with
2 that, I'll nominate the two youngest people in the room
3 to go back there with it, one from each side.

4 All right. Do you have a copy of the verdict form?

5 **THE COURT REPORTER:** No.

6 **THE COURT:** While I'm talking to the alternate, would
7 y'all, please, make sure that all the exhibits are in
8 order?

9 **MS. USRY:** Yes, sir.

10 (Recess taken.)

11 (Whereupon, the evidence was sent back to the jury at
12 3:12 PM.)

13 **THE COURT:** All right. We'll be at ease. It's 3:12.

14 (Recess taken.)

15 **THE COURT:** All right. I understand the jury has a
16 verdict. Is the State ready?

17 **MS. USRY:** Yes, sir, Your Honor.

18 **THE COURT:** And the defense?

19 **MS. HENRY:** We are.

20 **THE COURT:** All right. Bring in the jury.

21 (Whereupon, the jury returns to the courtroom at
22 3:54 PM.)

23 **THE CLERK:** Madam Forelady, have you reached a
24 verdict?

25 **THE FOREPERSON:** We have.

1 **THE COURT:** Please pass it up by the bailiff.

2 **THE FOREPERSON:** (Hanging.)

3 **THE COURT:** Is your verdict unanimous?

4 **THE FOREPERSON:** Yes, sir.

5 **THE COURT:** Okay. Thank you, ma'am.

6 **THE CLERK:** You're welcome, sir.

7 **THE COURT:** Publish it.

8 **THE CLERK:** Indictment 2016-GS-32-00670, the State
9 versus Michael Fulwiley, charged with shoplifting. As
10 to the charge of shoplifting, we unanimously find the
11 Defendant guilty, and it is so signed by the forelady,
12 dated August 12, 2016.

13 Madam Forelady, ladies and gentlemen of the jury,
14 if this is your verdict please indicate each of you by
15 raising your right hand.

16 All hands raised, Your Honor.

17 **THE COURT:** All right. Thank you.

18 Anything from the State before the jury is released?

19 **MS. USRY:** No, sir, Your Honor.

20 **THE COURT:** Anything from the defense before the jury
21 is released?

22 **MS. HENRY:** We'd ask the jury be polled.

23 **THE COURT:** All right, Ms. Frick.

24 **THE CLERK:** As I call your juror -- excuse me just a
25 minute.

1 (Discussion between the Court and the Clerk of Court.)

2 **THE CLERK:** As I call your juror number, please hold
3 up your hand where I can recognize you. I will ask you as
4 to the verdict was this your verdict and is it still your
5 verdict, then give me your response, please.

6 Number 85, as to the verdict was this your verdict
7 and is it still your verdict?

8 **JUROR:** Yes, ma'am.

9 **THE CLERK:** 49, as to the verdict was this your
10 verdict, is it still your verdict?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** 60, as to the verdict was this your
13 verdict, is it still your verdict?

14 **JUROR:** Yes, ma'am.

15 **THE CLERK:** 196, as to the verdict was this your
16 verdict, is it still your verdict?

17 **JUROR:** Yes, ma'am.

18 **THE CLERK:** 209, as to the verdict was this your
19 verdict, is it still your verdict?

20 **JUROR:** Yes, ma'am.

21 **THE CLERK:** 119, as to the verdict, was this your
22 verdict, is it still your verdict?

23 **JUROR:** Yes, ma'am.

24 **THE CLERK:** 75, as to the verdict was this your
25 verdict, is it still your verdict?

1 **JUROR:** Yes, ma'am.

2 **THE CLERK:** 82, as to the verdict was this your
3 verdict, is it still your verdict?

4 **JUROR:** Yes, ma'am.

5 **THE CLERK:** 188, as to the verdict was this your
6 verdict, is it still your verdict?

7 **JUROR:** Yes, ma'am.

8 **THE CLERK:** 42, as to the verdict was this your
9 verdict, is it still your verdict?

10 **JUROR:** Yes, ma'am.

11 **THE CLERK:** 96, as to the verdict was this your
12 verdict, is it still your verdict?

13 **JUROR:** Yes, ma'am.

14 **THE CLERK:** 171, as to the verdict was this your
15 verdict, is it still your verdict?

16 **JUROR:** Yes, ma'am.

17 **THE CLERK:** All jurors polled, Your Honor.

18 **THE COURT:** Thank you. Anything else from the
19 defense?

20 **MS. HENRY:** No, Your Honor.

21 **THE COURT:** All right.

22 Ladies and gentlemen, that includes, of course, your
23 service in this case. I do appreciate the attention that
24 you paid and the consideration that you gave the issues.

25 As I mentioned to you yesterday, I was gonna explain

1 to you some of the reasons for the delays, and I must
2 commend the attorneys for this because as you may know we
3 do have a Constitution, the United States Constitution,
4 and we have something called the Fourth Amendment which
5 governs searches and seizures. There is a somewhat always
6 emerging or always developing area concerning automobile
7 traffic stops and the issues that we explored yesterday
8 dealt with those. My only regret about that is that you
9 could not have been in here to watch because it is a pure
10 examination of how our constitution works. There are
11 arguments on both sides about whether or not certain things
12 are done properly and in the end I have to make those
13 decisions, but I do want to commend the lawyers on how
14 they argued those issues to me. It's not easy. What they
15 do is not easy, but they do an excellent job.

16 On a less -- or a lower note, the reason we couldn't
17 start yesterday afternoon is the doggone recording
18 equipment wasn't working properly, so that's why we
19 couldn't start because those things were gonna be shown
20 to you and the redaction didn't go as planned and that
21 wasn't anybody's fault. When you have moving parts in a
22 machine that we're counting on sometimes things just don't
23 work right, and I apologize for that. We were all ready
24 to go. It was pretty frustrating for everybody.

25 But, anyway, your service for the week is over. If

1 any of you need a work excuse --

2 **BAILIFF:** They've been taken care of, Your Honor.

3 **THE COURT:** You've already gotten those. The only
4 thing that remains now, the way the process works, since
5 Mr. Fulwiley is not here I am going to sentence him, but
6 the sentence will be sealed. Nobody's going to know what
7 that is until he is perhaps at some point in the future
8 picked up on a bench warrant. I will order a bench
9 warrant be issued for his being detained. If you want to
10 stay and watch the two sides argue to me about what the
11 sentencing should be, you can do that, you can stay right
12 here in your seats in the jury box or you can go home if
13 you want or you can leave the jury box and go around to
14 the back of the courtroom and come in those doors and
15 watch.

16 You're not under any pressure to do any of that, but
17 you are free to go and I certainly do appreciate your time
18 and patience and I hope you've learned something. I hope
19 if you are ever involved in a case, whether it's civil or
20 criminal, and a jury is impaneled you now realize how
21 important your role is and I certainly appreciate it.
22 Thank you.

23 **BAILIFF:** If you'll give me -- I'm gonna have her --

24 **THE COURT:** Ms. Thiele, she's gonna want to see you
25 very briefly in the jury room, okay?

1 **BAILIFF:** If you'll drop your button in here on
2 your way out, you're free to go. Do whatever you want to.
3 You can sit down right there if you want to. Whatever
4 you want to do.

5 **THE COURT:** All right. We'll be in recess for maybe
6 a minute or two and then we'll talk to you about your
7 motions, if any, and whether or not you want some time,
8 okay?

9 (Whereupon, the jury was dismissed at 4:01 PM.)

10 (Recess taken.)

11 **THE COURT:** All right. Of course, it goes without
12 saying that my sentence is not gonna be in any way based
13 on the fact that the Defendant is not here, so that's not
14 gonna enter into anything and I will not entertain any
15 argument from the prosecution, I'm not saying that you
16 would, but I've heard it before that the sentence should
17 be greater because the defendant didn't come to the trial.
18 That would not be something I would base my sentence on.

19 All right. First of all, does the Defendant want to
20 make any motions at this time or would you like the ten
21 days?

22 **MS. HENRY:** I'd like to make a motion now, Your Honor.

23 **THE COURT:** Ma'am?

24 **MS. HENRY:** I'd like to make a motion now.

25 **THE COURT:** All right.

1 **MS. HENRY:** We would like to make a motion for a new
2 trial. We'd like to renew all of our objections and the
3 information that was given to the Court during the course
4 of our hearings.

5 **THE COURT:** Yes, ma'am.

6 **MS. HENRY:** And that's all we have, Your Honor.

7 **THE COURT:** Okay. I believe that the -- just to make
8 sure my ruling is -- incorporates what I said over the
9 course of yesterday afternoon, I guess, and yesterday
10 morning outside the presence of the jury, the traffic stop
11 angle of this case is very interesting, but I think that
12 my ruling that the stop was not unreasonably extended is
13 sound. Even if the traffic stop never ended, we had an
14 unusual set of circumstances in so far as a passenger was
15 the reason the car was pulled over, but the length of the
16 detention was because of the driver's suspended status and
17 I think what we're required to do from the bench is to
18 look at things based on the totality of the circumstances
19 and overall I think the stop was reasonable in length.

20 I don't think -- if the purpose of the stop ended, I
21 don't think it was unreasonably extended. It did not
22 turn into a new detention. I think that Ms. Gilreath's
23 arguments were very well put, but I think they just fall
24 short of any constitutional violations.

25 I still hold true to my ruling that even though the

1 merchandise from the floorboard might have been seized
2 illegally, and I don't mean to slight the law, I mean
3 illegally in the constitutional sense, that their
4 discovery was inevitable based on the inventory procedure.
5 I think we can all see how -- one of the reasons that the
6 law on this subject is so -- or somewhat scattered is
7 because facts aren't always consistent, they're not always
8 canned and easy to put your fingers on, but I -- it did
9 give me some pause, but I think that I have to holdfast
10 to those rulings, and I'll deny your motion for a new
11 trial.

12 Okay. What is the State's position on sentencing?

13 **MS. USRY:** Your Honor, the State stands by the
14 evidence that was submitted during trial. The State does
15 have true certified copies of prior shopliftings in order
16 to enhance the sentence that we are prepared to hand up
17 to the Court to make our copy -- or to make a Court's
18 exhibit.

19 **THE COURT:** Do you have this?

20 **MS. HENRY:** She showed it to me, Your Honor.

21 **THE COURT:** All right. He was convicted on
22 October 30, 2015, of shoplifting. Not that it matters,
23 but that was at a Target. He was convicted December of
24 2007 of shoplifting and that reflects that was a third or
25 subsequent. He was given a sentence of eight years; is

1 that right? With a recommendation of ATU?

2 **MS. USRY:** Yes, sir.

3 **THE COURT:** So in 2007 he got eight years and then in
4 2015 he was sentenced to three hundred -- wait a minute,
5 thirty days time served. That was a plea.

6 How many other -- how many others does he have; do
7 you know?

8 **MS. USRY:** Your Honor, I'm attempting to go through
9 his record now. I should have typed this up earlier. It
10 begins in 1982 and I'm through 1992, so over the course
11 of those ten years I'm counting, I think, six or seven
12 shopliftings. There's receiving stolen goods. At least
13 one of those shopliftings is a shoplifting third, so
14 it's an enhanced plea in 1990. There's a breach of trust
15 during those ten years and a petty larceny during that
16 time period.

17 **THE COURT:** Well, how about can you work backwards
18 from 2007 and see what -- or 2015 and see if there are any
19 other property crimes?

20 **MS. USRY:** Yes, sir.

21 **THE COURT:** Or any other -- any other convictions, I
22 guess, for that matter.

23 **MS. USRY:** Yes, sir. Give me an extra second, Your
24 Honor. There is a conviction in October 2015 for
25 shoplifting. A misdemeanor charge, Your Honor.

1 **THE COURT:** Okay.

2 **MS. USRY:** There appears to be the one that you
3 referenced, a shoplifting third or subsequent, in 2007.

4 **THE COURT:** And that was the eight-year sentence?

5 **MS. USRY:** Yes, sir, Your Honor.

6 **THE COURT:** All right.

7 **MS. USRY:** There's a 2006 shoplifting. In 2005,
8 there's an assault and battery with intent to kill and a
9 possession of a weapon during a violent crime for which
10 he received ten years.

11 **THE COURT:** That was 2000 what?

12 **MS. USRY:** That was -- it says 2005 on here, Your
13 Honor.

14 **THE COURT:** He might have been sentenced at the
15 same time as the -- well, no, that was -- I was kind of
16 wondering how he would be out to get sentenced for
17 shoplifting in 2007, but that was -- probably would not
18 have made parole. Did we have 85 percent back then?

19 **MS. USRY:** Your Honor, I'm not sure. And I do want
20 to correct myself. The possession of a weapon during a
21 violent crime was not-prossed. It was just the assault
22 and battery with intent to kill. It's reflected on the
23 sentencing sheet as an intent to kill, but maybe it was
24 pled down. I'm not exactly sure, Your Honor.

25 **THE COURT:** That's probably correct.

1 **MS. USRY:** There's a 2005 simple assault and
2 battery as well and then it appears there's a number of
3 shopliftings around -- I believe I'm back to 2001 and
4 there's a number of shopliftings listed repeatedly on his
5 record, so I can't tell if it's one or just -- it's
6 repeating one multiple times the way it's done or if
7 there were three at that time.

8 **THE COURT:** All right. I'm making a correction on
9 the sentencing sheet. You've got this as a waiver instead
10 of as indicted, so I'll change that.

11 **MS. USRY:** Thank you, Your Honor.

12 **THE COURT:** All right. So what's the State's position
13 on sentencing?

14 **MS. USRY:** Your Honor, the State stands by the
15 evidence that was presented at trial and we believe that
16 it is clearly a -- based on just the information I've
17 given Your Honor so far as the Defendant's prior record
18 goes back to 1982 and that should be taken into account
19 that this isn't his first rodeo in taking things from a
20 business and depriving them of the value of those goods.

21 **THE COURT:** Anything from law enforcement?

22 **CORPORAL LAWLER:** No, sir.

23 **THE COURT:** All right. Anything from CVS that they
24 might have wanted to relay to me through you?

25 **MS. USRY:** Your Honor, I don't believe so. I think

1 -- I think insurance took care of these items for them is
2 my understanding, so they're not requesting restitution
3 in this case.

4 **THE COURT:** All right. Any argument from the defense
5 pertaining to sentencing?

6 **MS. HENRY:** We would like to present some mitigation,
7 if we could?

8 **THE COURT:** Yes, ma'am.

9 **MS. HENRY:** Mr. Fulwiley is now fifty-six, I believe.
10 He's got an eleventh grade education. He's a Vietnam {sic}
11 veteran, Your Honor. He served from 1977 to 1981. He
12 received some type of injury during the war, I don't know
13 what it was, but he does have a back issue. And he had
14 tried to work with Richland County. They have a veterans
15 court there. Unfortunately, we don't have one here, but
16 I have spoken with Shirley Furtick, who is the coordinator
17 for that program in Richland County, and she had agreed at
18 some point -- we had hoped to work this out as some type
19 of plea and put him in that court, and she had agreed to
20 try to coordinate something with Lexington County, but
21 that didn't work out.

22 As I say, he is a veteran. He's been to the VA many
23 times. I'm not sure about substance abuse issues, but I
24 think they may be present. He is a grandparent. A lot
25 of his children are older. They're all grown. He's been

1 living in Columbia all his life. I'd ask the Court to
2 consider his age and his infirmities in sentencing and
3 it's gonna be really tough for him, so we'd like you to
4 consider that.

5 **THE COURT:** All right. Thank you, ma'am.

6 Anything else from the State?

7 **MS. USRY:** Nothing further from the State, Your Honor.

8 **THE COURT:** All right. I'm gonna sentence the
9 Defendant on the sheet and the sentence will be sealed.
10 And it will be opened at the next term of court by a
11 circuit judge whenever he may be brought up into court on
12 that bench warrant, okay?

13 Any questions?

14 **MS. HENRY:** No, Your Honor.

15 **THE COURT:** I do appreciate the way you tried the
16 case. I know that some people may think oh, this is just
17 a simple shoplifting, but it's not. I think y'all did a
18 good job and I appreciate the way you've presented
19 everything to me.

20 All right. Thank you.

21 **MS. HENRY:** Thank you, Your Honor.

22 **MS. USRY:** Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded for
24 August 12, 2016, at 4:14 PM.)

25

1 State of South Carolina Court of General Sessions
2 County of Lexington

3

4

5 State)
6)
7 v.) Transcript of Record
8 Michael Fulwiley) 16-GS-32-670
9 Defendant.)

10

11

March 15, 2017
Lexington, South Carolina

12

13

B E F O R E:

14

The Honorable William P. Keesley, Judge.

15

16

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

17

Casey N. Rankin, Assist. Solicitor
Attorney for the State

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Sally J. Henry, Assist. Public Defender
Attorney for the Defendant

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Stacy L. Sheppard, RPR
Circuit Court Reporter

1

I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

20

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1 (The following proceedings were held on
2 March 15, 2017.)

3 **THE COURT:** Are you Michael Fulwiley?

4 **DEFENDANT:** Yes, Your Honor.

5 MICHAEL FULWILEY,

6 having been duly sworn, testified as follows:

7 **THE COURT:** You're represented by Ms. Henry?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** All right. Ms. Rankin is here for
10 the State. They've handed me a verdict form from a
11 trial where a jury, on August 12th, 2016, found you
12 guilty of shoplifting. Apparently, that was done in
13 your absence.

14 **MS. HENRY:** That's correct, Your Honor.

15 **THE COURT:** And I have here a sealed sentence.

16 **MS. HENRY:** Judge James was the presiding
17 judge.

18 **THE COURT:** I'm going to open the sealed
19 sentence.

20 This is in indictment 2016-GS-32-00670, State
21 versus Michael Fulwiley, an indictment for
22 shoplifting third or subsequent offense under the
23 enhancement statute. Judge James sentenced you on
24 August the 12th, 2016.

25 The sentence reads that the defendant is

1 committed to the State Department of Corrections for
2 a determinant term of eight years. The defendant is
3 given credit for time served pursuant to section
4 24-13-40 to be calculated and applied by the State
5 Department of Corrections. It's signed by Judge
6 James.

7 So you have an eight-year sentence.

8 Do you have any matters to take up?

9 **MS. HENRY:** Not at this time, Your Honor.
10 Thank you.

11 **THE COURT:** All right. You need to talk to
12 your attorney about any matters you wish to pursue.
13 If there's any appeal to be taken from the trial, it
14 has to be done in writing within a very short period
15 of time, if you can still appeal it. So you need to
16 talk to your lawyer about any kind of motion you may
17 wish to make or any type of appeal you may wish to
18 file. You understand?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** All right. Give him a copy of this
21 before he goes back.

22

23 END OF PROCEEDINGS

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 15th of March, 2017.

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

May 2, 2017

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

WITNESSES

Lexington County Sheriffs Department

L. Wilkerson

Law Enforcement Case #: 14010283

KWU

ARREST WARRANT NUMBER

2014A3210700171

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 5-16-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3200670**The State of South Carolina****County of Lexington****COURT OF GENERAL SESSIONS****MAY TERM 2016****THE STATE****vs.****Michael Fulwiley****CDR #: 2877****Indictment for****Shoplifting, 3rd or Subsequent,
Enhancement****§ 16-13-0110(A)****DONALD V. MYERS, SOLICITOR**

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Shoplifting, 3rd or Subsequent, Enhancement

§ 16-13-0110(A)

At a Court of General Sessions, convened on May 2016, the Grand Jurors of Lexington County present upon their oath:

That **Michael Fulwiley** in Lexington County, South Carolina, on or about June 7, 2014, previously having been convicted of at least two offenses for which the term of imprisonment is contingent upon the value of the property involved, did take possession of or carry away, transfer from one person to another or from one area of a store to another merchandise held or offered for sale by a store with the intention of depriving the merchant of the possession, use or benefit of the merchandise without paying the full retail value; to wit: razors and/or allergy medications with an estimated value of \$1000 or less from the CVS located at 100 Outlet Point Boulevard in the Columbia area South Carolina; all in violation of Section 16-13-110 and Section 16-1-57 of the Codes of Law of South Carolina, (1976, as amended).

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

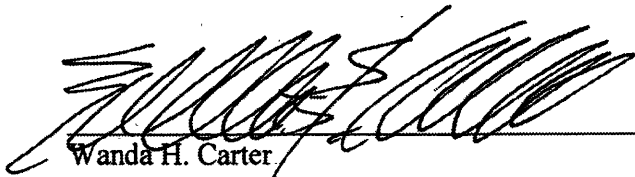
Against the peace and dignity of the State, and contrary to the statute in such case made and provided

K. H. H. H.
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

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

ATTORNEY FOR APPELLANT

This 19th day of March, 2018.