

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

YUL GRAHAM,

APPELLANT

APPELLATE CASE NO 2017-000205

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 25-26, 2017.....	1
TESTIMONY	
IRVING LIONEL LEWIS (IN-CAMERA)	
Direct examination by Mr. Young	12
Cross-Examination by Mr. Mauldin	23
CHRISTOPHER WAYNE YARBOROUGH (IN-CAMERA)	
Direct examination by Mr. Young	27
Cross-Examination by Mr. Mauldin	37
Redirect examination by Mr. Young	42
OPENING STATEMENT BY MR. YOUNG	47
OPENING STATEMENT BY MR. MAULDIN.....	51
TESTIMONY	
IRVING LIONEL LEWIS	
Direct Examination by Mr. Young	54
Cross-Examination by Mr. Mauldin	70
Redirect Examination by Mr. Young.....	73
CHRISTOPHER WAYNE YARBOROUGH	
Direct Examination by Mr. Young	73
Cross-Examination by Mr. Mauldin	84
Redirect Examination by Mr. Young.....	86
Recross-Examination by Mr. Mauldin.....	86
YUL GRAHAM	
Direct Examination by Mr. Young	92
Cross-Examination by Mr. Mauldin	98
IRVING LIONEL LEWIS	
Direct Examination by Mr. Young	108
Cross-Examination by Mr. Mauldin	111

CLOSING ARGUMENT BY MR. YOUNG	118
CLOSING ARGUMENT BY MR. MAULDIN	125
CLOSING ARGUMENT BY MR. YOUNG	128
VERDICT	148
SENTENCING	153
COURT'S EXHIBIT NO. 1 (JURY NOTE)	158
INDICTMENT AND SENTENCING SHEET	159
CERTIFICATE OF COUNSEL	162

1 State of South Carolina
 2 County of Lexington Court of General Sessions

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 5 State)
 6)
 7 v.) Transcript of Record
 8 Yul Graham) 15-GS-32-1952
 9 Defendant.)

10
 11 January 25 - 26, 2017
 12 Lexington, South Carolina

13 B E F O R E:
 14 The Honorable Eugene C. Griffith, Jr., Judge;
 15 and a jury.

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 18 Attorney for the State
 19 David M. Mauldin, Assist. Public Defender
 20 Attorney for the Defendant

21
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I N D E X

	<u>WITNESS</u>	<u>PAGE</u>
1		
2		
3	Irving Lionel Lewis (In Camera)	
	Direct Examination By Mr. Young	27
4	Cross-Examination By Mr. Mauldin	38
	Christopher Wayne Yarborough (In Camera)	
5	Direct Examination By Mr. Young	42
	Cross-Examination By Mr. Mauldin	52
6	Redirect Examination By Mr. Young	57
	Opening Statement	
7	By Mr. Young	65
	By Mr. Mauldin	69
8	Irving Lionel Lewis	
	Direct Examination By Mr. Young	72
9	Cross-Examination By Mr. Mauldin	88
	Redirect Examination By Mr. Young	91
10	Christopher Wayne Yarborough	
	Direct Examination By Mr. Young	91
11	Cross-Examination By Mr. Mauldin	102
	Redirect Examination By Mr. Young	104
12	Recross-Examination By Mr. Mauldin	104
	Yul Graham	
13	Direct Examination By Mr. Mauldin	110
	Cross-Examination By Mr. Young	116
14	Irving Lionel Lewis	
	Direct Examination By Mr. Young	126
15	Cross-Examination By Mr. Mauldin	129
	Closing Argument	
16	By Mr. Young	136
	By Mr. Mauldin	143
17	By Mr. Young	146
18	Charge of the Court	152
19	Verdict of the Jury	166
20	Sentence of the Court	171
21	Certificate of Reporter	175
22		
23		
24		
25		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Photograph	22	78
4	S-2	Photograph	22	78
5	S-3	Photograph	22	78
6	C-1	Jury Note	166	
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 To this indictment, Mr. Graham has pled not
2 guilty and, therefore, asked for a jury trial. He
3 is here in the courtroom today with his attorney,
4 Mr. David Mauldin.

5 Mr. Young, will you introduce the parties at
6 your table? And then I'm going to come to
7 Mr. Mauldin and do the same for him.

8 **MR. YOUNG:** Thank you, Your Honor. Your Honor,
9 Officer Chris Yarborough with the department of --
10 city police here in West Columbia.

11 Will you stand up, sir, and face the crowd?

12 Mr. Irving Lionel Lewis who is the manager of
13 Bi-Lo.

14 Will you stand up, sir, please?

15 **THE COURT:** All right. Thank you, sir.

16 **MR. YOUNG:** Thank you, Your Honor.

17 **THE COURT:** Mr. Mauldin, you do the same.

18 **MR. MAULDIN:** Thank you.

19 I'm David Mauldin. I represent Mr. Yul Graham.

20 **THE COURT:** All right. Thank you, sir.

21 All right. Members of this jury pool, any
22 member of this jury pool related by blood or
23 marriage, close personal friends to any of those
24 five individuals just introduced to you; if so,
25 please stand?

1 **THE CLERK:** What say you for the defense?

2 **MR. MAULDIN:** Please seat Mr. Acosta.

3 **THE CLERK:** If you'll come forward, sir.

4 **THE COURT:** Are there any matters of law the
5 Court needs to take up regarding the selection
6 process employed or with the composition of the jury
7 from the State or defense?

8 **MR. YOUNG:** The State has nothing.

9 **MR. MAULDIN:** No, Your Honor.

10 **THE COURT:** All right. I'm going to ask y'all
11 to call in tonight after 6:00. Listen to the
12 instruction and follow them closely, all right?
13 Thank y'all for your patience and laughing at my
14 jokes even though they weren't funny.

15 (The remaining jury panel was excused.)

16 **THE COURT:** I've got a little bit of pretrial
17 issues to take up. So what I'm going to do, I'm
18 going to let y'all see the jury room and then y'all
19 can sit there and talk if you want, but y'all don't
20 have to stay in there because I'm not going to need
21 you back until 11:00. So you've got about 40
22 minutes to kill. You can step outside and enjoy the
23 weather, run a quick errand. Be back in the jury
24 room at 11:00 and we'll try to start then, okay?
25 But between now and then, you can't start discussing

1 the case.

2 Mr. Mills will take you back there, show you
3 where it is, how you get out and get back in. Stay
4 there if you like, don't talk about the case. We'll
5 start at 11 o'clock. Be back in the jury room at
6 11:00, okay? Thank y'all very much.

7 (The jury retires to the jury room.)

8 **THE COURT:** We'll stand at ease for about five
9 minutes.

10 (Brief recess.)

11 (State's Exhibit Numbers 1 through 3,
12 photographs, marked for identification.)

13 **THE COURT:** Are we ready to get pretrial stuff
14 done?

15 **MR. YOUNG:** Ready, Your Honor.

16 **THE COURT:** Mr. Mauldin, are you ready?

17 **MR. MAULDIN:** Yes.

18 **THE COURT:** All right. What motions do we need
19 to hear, and if so, in which order?

20 **MR. YOUNG:** Your Honor, I understand there's a
21 matter of counsel first that probably should be
22 heard and then I would ask that we go next if that
23 matter is resolved so that we can proceed, that we
24 go into the Denno matter that I mentioned to the
25 Court earlier. I have two witnesses on the Denno

1 matter.

2 **THE COURT:** Okay. You've got two witnesses
3 period?

4 **MR. YOUNG:** True, sir.

5 **THE COURT:** Mr. Mauldin, what you got?

6 **MR. MAULDIN:** Thank you, Your Honor.

7 Mr. Graham informed me this morning that he wants to
8 obtain private counsel and he would like to hire
9 private counsel in the case. And I guess that's his
10 matter to express to you why he may or may not be
11 displeased with me, why he would like to have
12 private counsel this morning.

13 **THE COURT:** Let me hear from you, Mr. Graham.
14 Tell me what's going on. It's kind of late in the
15 game to be asking for a new lawyer.

16 **DEFENDANT:** I apologize, Your Honor. I wasn't
17 employed at the time and now I'm employed. I'm a
18 barber. I just started two weeks ago. I feel like
19 I'm able to ascertain my own attorney. And I
20 apologize to the Court for the delays and all that,
21 but I really would just like to get my own attorney.

22 **THE COURT:** Well, this case wasn't put on the
23 trial roster yesterday.

24 **DEFENDANT:** No, sir. My lawyer just called me
25 about four or five days ago and said, Be at court

1 this day. I wasn't -- I wasn't expecting that.

2 **THE COURT:** Well, once your case is a certain
3 age, it's subject to be putting on the trial roster,
4 making the trial roster, just about anytime.
5 Lexington County runs a trial court week just about
6 every other week each month, sometimes there's an
7 extra week in there, but you can just about look at
8 your calendar and look, two weeks in January, but it
9 skips a week in between. So they're very regimented
10 every other week, every other week.

11 And you've had appointed counsel since February
12 of last year. Didn't even have the 40 dollar fee.
13 You've got one of the senior members of the public
14 defender's office.

15 Who's got seniority on you, Mr. Mauldin?

16 **MR. MAULDIN:** Well, Rob's the Circuit Public
17 Defender, and Beth and Sally --

18 **THE COURT:** Other than those three?

19 **MR. MAULDIN:** -- been practicing longer.
20 There's some people have been in the office longer
21 than I have.

22 **THE COURT:** I don't think you've shown me good
23 cause why we should change lawyers. I just don't
24 see it. So we're ready to go forward. I mean, this
25 is not a complicated case and it's not a --

1 **MR. MAULDIN:** The matter was on the trial
2 roster in December. And I did have a meeting with
3 him before that, and it didn't go that week because
4 of a murder trial. And I'd let him know that it
5 could be coming up for trial anytime in the future.

6 I did inform him last week that he'd have to be
7 here on Monday and reviewed with him on the phone
8 again certain things that we had to go over for the
9 trial.

10 **THE COURT:** And we had a chambers conference
11 about perhaps getting the case resolved prior to
12 this. And y'all, the two lawyers, discussed with me
13 some prior discussions of some cases that would --
14 were in the mix trying to resolve the case short of
15 a trial. And so there had been some of those
16 discussions going on before today, because those
17 offers are now gone. That's kind of the solicitor's
18 policy is once it's set for trial, they withdraw
19 their offers.

20 **MR. MAULDIN:** Yes, sir.

21 **THE COURT:** So I think it's time to get this
22 case moved.

23 **MR. YOUNG:** Your Honor, for the Court's
24 information, I have a copy of the letter that I had
25 sent to Mr. Graham, the bondsman and Mr. Mauldin

1 announcing this case would be called for trial the
2 week of December 12th, 2016. It has been, I
3 believe, on the roster since that point in time.

4 **THE COURT:** Okay. There's been ample notice.
5 There's been ample time to prepare. The 11th hour
6 is not the time to ask to change lawyers on a case
7 like this. So I'm going to deny -- I'm going to
8 deny your request to go forward.

9 Mr. Graham, you can -- if you want to, I
10 certainly wouldn't advise this, you can go forward
11 by yourself or you can go forward with Mr. Mauldin,
12 that's your choice.

13 **DEFENDANT:** Okay.

14 **THE COURT:** What do you want to do?

15 **DEFENDANT:** I'll stay with Mr. Mauldin.

16 **THE COURT:** I think that's an excellent choice.

17 **DEFENDANT:** Thank you, sir.

18 **THE COURT:** All right. We've got a Jackson v.
19 Denno hearing regarding the statements made,
20 correct?

21 **MR. YOUNG:** We do, Your Honor.

22 **THE COURT:** Call your witness.

23 **MR. YOUNG:** Your Honor, we call Mr. Irving
24 Lionel Lewis. His first name is spelled
25 I-r-v-i-n-g, Lionel like the train.

1 IRVING LIONEL LEWIS,
2 having been duly sworn, testified as follows:

3 **THE WITNESS:** My name is Irving Lionel Lewis,
4 L-e-w-i-s.

5 DIRECT EXAMINATION

6 BY MR. YOUNG:

7 **Q** All right. Mr. Lewis, to place things into
8 context, what do you do for a living and for how
9 long?

10 **A** I'm employed at Bi-Lo, which is now
11 Southeastern Groceries. I'm a store manager. I've
12 been employed there approximately 30 years, close to
13 30 years. And I've been in position as a store
14 manager for approximately ten years.

15 **Q** And this is located in West Columbia?

16 **A** This is located on 2349 Augusta Road in West
17 Columbia.

18 **Q** In Lexington County?

19 **A** Yes, in Lexington County..

20 **Q** All right. Sir, if you would, please, let me
21 direct your attention to an incident that you
22 reported to law enforcement at some point. This has
23 to do with the question of an alleged shoplifting.
24 Do you recall -- do you recall on the 21st of June
25 2015, coming into contact with a person by the name

1 of Yul Graham?

2 **A** Yes, I do.

3 **Q** Okay. Where was that point of contact?

4 **A** That was in the vestibule at the store going
5 out past the registers into the lobby.

6 **Q** Okay. Now, that was where you actually had a
7 conversation with him, correct?

8 **A** That's correct.

9 **Q** And prior to that time, had you observed him in
10 the store?

11 **A** Yes. I observed him in a mobile cart when he
12 came in the store. And in that cart, it appeared to
13 have a bag, an empty bag in it.

14 **Q** And when you -- and when you observed him
15 later, did you see him anywhere near the seafood
16 counter?

17 **A** Yes. I observed him going to a seafood
18 counter, which is a six-door frozen food case,
19 six-door counter upright. And I observed him
20 opening it up and grabbing several items out of that
21 freezer.

22 **Q** Okay. What did he do with those items?

23 **A** Those items were placed into that plastic bag.

24 **Q** Okay. The one that you saw him earlier with?

25 **A** The one I saw in the buggy earlier, in the

1 cart, mobile cart.

2 Q And afterwards, did he make other purchases, or
3 make other selections I should say?

4 A Yes. He continued around the store and I stood
5 from afar trying to maintain eye contact the entire
6 time. The only time I may have lost contact, if he
7 turned the aisle.

8 Q All right. And, subsequently, sir, did you
9 watch him go through the cashier line?

10 A Yes, I did.

11 Q Okay. And, at that time, did you observe him
12 make any purchases?

13 A I did, yes.

14 Q What about the plastic bag you observed
15 earlier?

16 A I observed that bag remain in the cart, never
17 was emptied onto the belt. He paid for everything
18 that he placed on the belt. And, at that time, he
19 proceeded out the store into the lobby, the
20 vestibule.

21 Q Okay. And all that was just to place in
22 context this encounter you said you had with him in
23 the vestibule; is that correct?

24 A Yes.

25 Q All right. Would you describe what happened

1 once you got to the vestibule?

2 **A** Yes. After Mr. Graham had passed the registers
3 and left out the first series of doors and entered
4 into the vestibule, I then approached him and asked
5 him if he had a receipt for the items in the bag.
6 And that bag was in question, the one that had the
7 shrimp in it.

8 **Q** Okay. And you actually approached him about
9 this one bag?

10 **A** Yes. I asked him about that specific bag, did
11 he have a receipt for those items.

12 **Q** And did he give any response to you?

13 **A** He said that he purchased those items from the
14 Bi-Lo on Garners Ferry Road.

15 **Q** Okay. Do you have any relationship with
16 Garners Ferry Road?

17 **A** Yes, I do. I'd previously worked at Garners
18 Ferry Road as a store manager on two occasions for
19 about two and a half, three years. And in proximity
20 of the location of the West Columbia store, that's
21 a, probably, 25, 30-minute ride if not in traffic.

22 **Q** Okay. And what was the condition of the bag
23 that you observed?

24 **A** The bag which he had in his cart, when I looked
25 at it, had ice in the bag. You could tell it had

1 just -- looked like it just came right out of a
2 freezer because nothing was melting. It was hard as
3 a rock and ice was there, not melted.

4 **Q** Okay. And did you -- did you have a
5 conversation with him about doing something about
6 this item that he had not made purchase of in your
7 store?

8 **A** Yes. I explained, I says, Look, this just came
9 out the freezer; it's not even melted ice. I said,
10 Look, if you don't have a receipt on it, I'm going
11 to have to call law enforcement. And if you're
12 willing to pay for these items, I'll allow you to
13 pay for them.

14 At that particular time, he said that he wasn't
15 going to pay for them. So we placed a call to law
16 enforcement.

17 **Q** Okay. And then did the law enforcement arrive?

18 **A** Yes. They were -- got there pretty quick. I
19 think they were in the area because they were there
20 probably within three to five minutes.

21 **Q** Okay. And then, subsequently, did Mr. Lewis
22 make any statements to you about what had happened
23 or what was occurring? Did he make any further
24 statements to you? Not Mr. Lewis, Mr. Graham, I
25 apologize.

1 **A** At that point in time when the police officer
2 came in, he did offer to pay for the items.

3 **Q** Okay. So he then wanted to actually pay for
4 the items at that point?

5 **A** Yes.

6 **Q** Okay. Now, there may have been other
7 statements made, but you're not sure of those?

8 **A** Right. There were some other statements made
9 with him and Officer Yarborough, but I didn't
10 overhear everything on that conversation.

11 **Q** Here's the specific question: Was -- were you
12 the one doing the questioning here?

13 **A** Initially, yes.

14 **Q** Okay. Did you -- did Officer Yarborough make
15 any questions happen or did he ask any questions in
16 your presence?

17 **A** He asked me what happened.

18 **Q** He asked you what happened, but did he direct
19 any questions toward Mr. Graham?

20 **A** Yes, he did after he asked me some questions.

21 **Q** Okay. Do you know what those questions were?

22 **A** Asked him what happened, pretty much asked him
23 what happened. And then I think Mr. Graham had said
24 to him that he would pay for the items; he had
25 plenty of money. He stated to me he had plenty of

1 money. Looked like he had several hundred dollars.
2 It was a yard of money in his possession at that
3 time.

4 **Q** You actually saw this money?

5 **A** Yes.

6 **Q** Now, at the point in time this conversation was
7 occurring in the vestibule, had you threatened
8 Mr. Graham with anything that would happen to him
9 other than calling the police?

10 **A** No. Huh-huh.

11 **Q** What was his physical condition at that time as
12 you could see?

13 **A** He appeared to be normal. He was a little
14 testy. And, you know, I was very clear to him that,
15 you know, if he couldn't present me a receipt for
16 those items, that I would call the law enforcement.
17 And pretty much, at that point, when I did place the
18 call, I told him there would not be anymore turning
19 back. I would not, you know, change my position.

20 **Q** Okay. And at the point in time that you were
21 talking to Mr. Graham, did you actually tell him
22 anything that -- other than you just called the
23 police, as to what would happen to him? Did you
24 threaten him in any specific way about what would
25 happen if he didn't talk to you?

1 **A** No.

2 **Q** In other words, You've got to talk to me?

3 **A** No.

4 **Q** Did you express anything to him other than just
5 say, I've got evidence of what I have, tell me what
6 happened? Is that basically it?

7 **A** That's basically it, uh-huh.

8 **Q** Okay. Did you observe Officer Yarborough make
9 any attempt to comment toward Mr. Graham after he
10 arrived?

11 **A** No, I did not.

12 **Q** That would have threatened him or placed him in
13 any situation where he felt threatened?

14 **A** No.

15 **Q** Was Mr. Graham -- you said he was in a cart?

16 **A** Yeah, a mobile cart.

17 **Q** Mobile?

18 **A** A handicap cart.

19 **Q** So he's sit -- is he seated or standing at this
20 point?

21 **A** He was seated.

22 **Q** Okay. From an outward appearance, did he
23 appear to have any problems understanding your
24 questions?

25 **A** No, sir.

1 **Q** Did he appear to have any form of intoxicant
2 affecting him at that time whether -- from whatever
3 source?

4 **A** No, he did not.

5 **Q** Was he speaking clearly?

6 **A** Yes, he was.

7 I was going to say, the only statement he made
8 after the officer was he asked me on several
9 occasions allow him to pay for the item.

10 **Q** Okay. Was there -- during -- immediately upon
11 the arrival of Mr. Yarborough, I should say Officer
12 Yarborough, did he make an immediate attempt to
13 place him into custody or anything or did he delay
14 that?

15 **A** He talked to him first.

16 **Q** Okay. And how long was it in -- from the time
17 he came into the vestibule and you had your
18 conversation with him, how long did that take until
19 Officer Yarborough arrived?

20 **A** I would say a few minutes. I could say three
21 to five minutes. He asked him questions what
22 happened, and Mr. Graham gave him the response back
23 and then they talked for a little bit. And then, at
24 that point, I think Officer Yarborough asked him to
25 turn around and he placed handcuffs on him.

1 Q All right. Well, after Officer Yarborough
2 arrived, how long did that conversation take?

3 A About three to five minute.

4 Q So the total time in the vestibule was between
5 six and ten minutes?

6 A I would say, yeah.

7 Q Okay. And how much of a delay was there
8 between the time there was an attempt to contact
9 Officer Yarborough and he arrived?

10 A I would say about three minutes. It was a
11 pretty quick -- he got there pretty fast.

12 Q Okay. Did -- was there anyone present during
13 this encounter with Mr. Graham in the vestibule
14 area?

15 A No, sir, not to my recall.

16 Q And if the -- were you the one primarily asking
17 questions?

18 A Yes. Uh-huh.

19 Q Did you make any attempt to say to him that --
20 other than if he wanted to take care of it now by
21 paying you, did you make any offer attesting to his
22 cooperation with the police in exchange for what he
23 told you?

24 A No, sir.

25 Q Did, at any point, Officer Yarborough come to

1 you and say, I need you to be asking the questions
2 here and not me? Did he try to enlist you to ask
3 questions for him?

4 **A** No.

5 **Q** No effort like that?

6 **A** No. Huh-huh.

7 **Q** Now, from an outward appearance and from the
8 circumstances, other than stopping him to question
9 him about what was in that bag, was there any
10 purpose to what you were doing at that point?

11 **A** No, sir. I was simply acting in the
12 constraints of asking him for -- to pay for those
13 items that weren't paid for in that bag.

14 **Q** At any time, did he, during this conversation
15 with you, ask to stop talking to you?

16 **A** Not to my recall.

17 **Q** Did, at any time, he ask for an attorney?

18 **A** No, sir.

19 **Q** Did you make any promise or any other kind of
20 effort to get him to talk to you in exchange for an
21 answer he might give?

22 **A** No, sir.

23 **MR. YOUNG:** Sir, I don't have any further
24 questions.

25 **THE COURT:** Mr. Mauldin.

1 **MR. MAULDIN:** Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MAULDIN:

4 **Q** So your conversation with Mr. Graham happened
5 in the vestibule of the store, right?

6 **A** Yes, sir.

7 **Q** Okay. And you asked him if he had bought the
8 things in the bag and his reply -- his statement
9 was, I bought these at Garners Ferry?

10 **A** I asked him for a receipt.

11 **Q** Right. You asked him if there was a receipt
12 for the bag and --

13 **A** For those items in the bag.

14 **Q** -- his statement to you was, I bought these at
15 Garners Ferry. That was his statement?

16 **A** Correct.

17 **Q** Okay. And then you asked him to pay for it and
18 he declined to pay for it and then you called the
19 police; is that correct?

20 **A** I offered him the opportunity to pay for those
21 items that he did not have a receipt for and he
22 refused.

23 **Q** And that was basically it as far as the
24 conversation was concerned?

25 **A** Pretty much so.

1 **Q** Okay. And Officer Yarborough wasn't present
2 during that conversation?

3 **A** No, sir.

4 **Q** And then you say you called for police and he
5 arrived. And you observed the interaction between
6 Mr. Yarborough and Mr. Graham; is that correct?

7 **A** Well, the officer had came in and asked me what
8 was going on and I presented what happened. And, at
9 that point in time, after he finished questioning
10 me, he talked to Mr. Yarborough -- Mr. Graham.

11 **Q** And you weren't questioning Mr. Graham while
12 the officer was talking to him, were you?

13 **A** No.

14 **Q** You weren't involved in that at all?

15 **A** I was there for a brief moment, but I don't
16 think I interfered at that point.

17 **Q** Okay. So you didn't engage in conversation
18 with Mr. Graham; you let the officer take over from
19 there?

20 **A** Yes. Uh-huh.

21 **Q** Okay. And -- and from -- you said that from
22 your observation of the conversation, that the
23 officer asked him what happened and the only
24 conversation they had is that Mr. Graham tried to
25 ask to pay for the items?

1 **A** At that point, after they had talked for a
2 while, he then turned -- he came asked me and -- if
3 I would allow him to pay for those items.

4 **Q** What were they talking about when they talked
5 for a while? Did you hear any of that?

6 **A** I kind of was distracted because I was running
7 the store, but they were talking about what happened
8 and it was going over what I told him with
9 Mr. Graham.

10 **Q** Okay.

11 **A** Pretty much that. And then Mr. Graham made
12 some statements to him. I couldn't hear exactly
13 what those statements were.

14 **Q** At any time, did you hear the officer say that
15 Mr. Graham had the right to remain silent?

16 **A** I don't recall him -- actually listening to him
17 read him the Miranda rights. I just heard him
18 asking to put his cuffs on him. And then after that
19 point, I think I kind of walked away.

20 **Q** So you don't recall that?

21 **A** I don't recall that.

22 **Q** Now, between the time you confronted him and
23 the time the officer arrived, you say it was about
24 three to five minutes. Did Mr. Graham try to leave
25 the store or did you tell him he couldn't leave

1 until the cops showed up?

2 **A** No, he did not try to leave the store. He
3 cooperated.

4 **Q** You told him to stay there and he stayed?

5 **A** I pretty much stood in front of the cart and he
6 didn't try to leave at all.

7 **Q** Was he sitting in the cart the whole time?

8 **A** From what I can recall, he was sitting in the
9 cart.

10 **Q** Okay. And during the whole time that the
11 officer was talking to him, was he still sitting in
12 the cart?

13 **A** I can't recall. It was back in the 15th, but I
14 think he got up at some point I'm pretty sure. I
15 just can't tell you exactly when he got up.

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

18 **THE COURT:** All right. You can step down.

19 **MR. YOUNG:** Officer Chris Yarborough.

20 CHRISTOPHER WAYNE YARBOROUGH,
21 having been duly sworn, testified as follows:

22 **THE WITNESS:** Good morning, Your Honor.

23 **THE COURT:** Good morning.

24 ****

25 ****

1 DIRECT EXAMINATION

2 BY MR. YOUNG:

3 Q Officer Yarborough, give us your full and
4 complete name, spelling the last.

5 A Full name is Christopher Wayne Yarborough,
6 spelling Y-a-r-b-o-r-o-u-g-h.

7 Q Where do you work and for how long?

8 A I'm employed at the City of West Columbia, West
9 Columbia Police Department, nine and a half years.

10 Q Did you get a call for service on June 21st,
11 2015, regarding a potential shoplifting?

12 A I did.

13 Q Where did you go?

14 A I responded to 2349 Augusta Road, which is the
15 West Columbia Bi-Lo.

16 Q And what did you do when you arrived there?

17 A I pulled up in front of the front lobby, which
18 is surrounded by glass, and walked into the
19 vestibule to make contact with the complainant,
20 which is Mr. Lewis.

21 Q And in regard to these -- this event, did you
22 go in and encounter anyone in that area?

23 A When I entered the vestibule, I encountered
24 Mr. Lewis and Mr. Graham.

25 Q Let me -- let me hand up to you what's been

1 marked as State's Exhibits 1 and 2 and ask you --
2 actually, 2 and 3, and ask if you can identify them?

3 **A** I can.

4 **Q** What are they? By number, tell me what they
5 are.

6 **A** 3 is the front of the store, Bi-Lo. And 2 is
7 inside the store looking into the vestibule.

8 **Q** And this is -- the vestibule you're referring
9 to, is this the same vestibule area that was
10 connected with the encounter you had?

11 **A** It is.

12 **Q** All right. And is the person who is -- with
13 whom you had encountered, are those persons present
14 here?

15 **A** They are.

16 **Q** Who are the persons?

17 **A** Mr. Lewis, which is right in front of me, the
18 store manager, and Mr. Graham to my left.

19 **Q** Is that Mr. Graham over to the left?

20 **A** It is.

21 **Q** And is he sitting next to Mr. Mauldin?

22 **A** Yes, sir.

23 **Q** All right. Officer Yarborough, very quickly,
24 at this point in time, where did you see Mr. Graham?

25 **A** I observed Mr. Graham in the vestibule, which

1 is directly past the point of sale which is inside
2 the store.

3 Q Okay. How was he -- in terms of his seating,
4 was he standing, was he -- any device, walking
5 around, what was he doing?

6 A He was actually seated in a motorized scooter,
7 I guess is what it's referred to.

8 Q Did it have any basket attached to it?

9 A It did. It had a basket attached to the front.

10 Q Okay. Were there any things apparent from what
11 you could see in that basket?

12 A There were some items, yes, sir.

13 Q Okay. Now, at the point in time that you
14 approached, who approached you first about this,
15 Mr. Lewis or Mr. Graham?

16 A Well, they were conversing together, so I
17 approached them both at the same time. So,
18 initially, spoke to Mr. Lewis.

19 Q Okay. Well, could you just describe what you
20 heard or observed when you first walked in?

21 A Well, when I first walked in, asked Mr. Lewis
22 what had happened. And then he stated that he
23 observed Mr. Graham select several items, frozen
24 items, and other items other than frozen items, go
25 through the point of checkout, paid for a couple

1 other items and didn't pay for the rest and attempt
2 to leave the store by bypassing all lanes of
3 checkout.

4 **Q** Was anything pointed out to you, specifically,
5 about the items he had not paid for, where they were
6 located?

7 **A** They were located in the front basket on the
8 motorized scooter. He had stated that they were
9 frozen, frozen shrimp, I believe crawfish, which was
10 frozen as well.

11 **Q** Okay. Now, while you're there at this point,
12 is Mr. Graham making any statements?

13 **A** He -- the only statement that he made was --

14 **Q** Just at this point.

15 **A** No. No.

16 **Q** He's just quiet?

17 **A** He was conversing with Mr. Lewis, but, yeah, he
18 wasn't quiet.

19 **Q** What was he talking about?

20 **A** He'd stated that he had made a purchase for the
21 frozen items from Garners Ferry Bi-Lo.

22 **Q** Okay. And you're familiar with Garners Ferry
23 Bi-Lo and where it's located?

24 **A** I am.

25 **Q** What time were you dispatched to arrive there?

1 **A** 9:50 in the morning.

2 **Q** What time did you arrive?

3 **A** 9:50. I was pretty much there right when the
4 call came out.

5 **Q** Okay. So it was almost immediately you were
6 present?

7 **A** Yes, sir.

8 **Q** You must have been close by?

9 **A** I was.

10 **Q** Okay. So when you came in the store, there was
11 already a conversation going on in essence?

12 **A** Correct.

13 **Q** All right. And during the course of this time,
14 did you become to suspect that perhaps Mr. Graham
15 had been involved in shoplifting?

16 **A** Yes, sir.

17 **Q** All right. And was that based on everything
18 you were hearing from Mr. Graham's mouth? Was that
19 -- at this point now before -- and have you asked
20 any questions at this point when you first enter?

21 **A** The only questions I had asked after speaking
22 with Mr. Lewis was probably asking for his
23 identification and/or his name and date of birth and
24 asked him -- Mr. Graham what had transpired.

25 **Q** Okay.

1 **A** That's it.

2 **Q** And that you were getting his side of the
3 story?

4 **A** Correct.

5 **Q** Had you made -- before you made a decision to
6 place him into custody, did you make an attempt to
7 try to get his side of the story?

8 **A** I was just getting his side of the story
9 because I like to get, you know, person A's side of
10 the story and person B.

11 **Q** Well, what I'm asking is had you made a
12 decision, at the point in time you're listening to
13 him, to arrest him or not?

14 **A** Not at this point.

15 **Q** You wanted to hear his version first?

16 **A** Correct.

17 **Q** All right. So you heard that version and based
18 upon -- well, let me ask you, what did you actually
19 see connected with the bag that had been identified
20 to you?

21 **A** I saw the items that were in question that was
22 identified by Mr. Lewis and ice still inside the
23 package.

24 **Q** Okay. Based upon your training and experience
25 and understanding of how the distance is between

1 here and Garners Ferry -- what time of the morning
2 was this again?

3 **A** This was 9:50 in the morning.

4 **Q** Did you think it likely or not likely that
5 those items could still be in a frozen state?

6 **A** Highly unlikely.

7 **Q** Okay. So you made a decision at some point to
8 take him into custody, correct?

9 **A** That is correct.

10 **Q** All right. Now, during the course of the time
11 that you're there, did you hear Mr. Graham make a
12 statement either to you or to Mr. Lewis about the
13 item itself or his desire to take care of the item
14 or any other statement? Did you hear him make a
15 statement?

16 **A** I did.

17 **Q** What was the statement?

18 **A** The statement was he did it to see if he could
19 get one over on them.

20 **Q** Okay. Was he directing that at you or
21 Mr. Lewis or --

22 **A** That was a statement directed towards
23 Mr. Lewis.

24 **Q** Okay. Now, you don't know whether Mr. Lewis
25 was paying attention or not?

- 1 **A** I'm not sure.
- 2 **Q** But you heard him make that statement?
- 3 **A** Correct.
- 4 **Q** All right. Was that in response to a question
5 you asked him?
- 6 **A** No.
- 7 **Q** Did he make any statements to you at all about
8 his involvement in the shoplifting and if so, what
9 were they?
- 10 **A** He stated that he had a desire to pay for the
11 item. That was it.
- 12 **Q** Okay. Was that in relation to a question you
13 asked him or was it something he was simply stating
14 to Mr. Lewis?
- 15 **A** That was something simply that he was directing
16 towards Mr. Lewis.
- 17 **Q** Okay. So you actually asked him no specific
18 questions regarding his statement of culpability one
19 way or the other?
- 20 **A** Correct.
- 21 **Q** You just asked for his identification and what
22 his side of the story was?
- 23 **A** Correct.
- 24 **Q** All right. During the course of the time that
25 you were there, what did you observe in terms of

1 Mr. Graham's demeanor? How did he appear?

2 A He appeared standoffish. He not once got up.

3 That was it.

4 Q Okay. Did he appear to you to have any form of
5 intoxicant in his system, slurring his speech, any
6 outward signs of intoxication?

7 A No, sir.

8 Q At any point in time, did he appear to you to
9 be in extreme pain or a great difficulty of some
10 kind?

11 A No, sir.

12 Q At any point in time, did you threaten him in
13 such a fashion, directly or indirectly, which would
14 give rise to -- to give him the suggestion that he
15 better talk?

16 A No, sir.

17 Q At any point in time in your conversation with
18 either Mr. Lewis or Mr. Graham about what had
19 happened, did you give an outward sign that you
20 would, of any kind, either by direct statement or
21 otherwise, that his cooperation would be taken into
22 consideration as an exercise in trying to get him to
23 talk to you?

24 A No.

25 Q Did you offer to say that you would talk to the

1 solicitor or anyone else if he did the right thing
2 and gave you the version of facts or any version of
3 facts?

4 **A** No, sir.

5 **Q** Did you, at any point in time, deny him an
6 opportunity to use the restroom? At any time, did
7 you deny him the opportunity to talk to anyone he
8 might want to talk to?

9 **A** No, sir.

10 **Q** Did he ask for an attorney?

11 **A** No, sir.

12 **Q** Did he ask to stop answering questions from
13 either you or Mr. Lewis in your presence?

14 **A** No, sir.

15 **Q** Now, if I understand correctly, did you make,
16 actually, a recording -- or, actually, a recitation
17 of what Mr. Lewis said to you in terms of that one
18 statement?

19 **A** Yes, sir.

20 **Q** Did you -- you put that down where?

21 **A** I included that in my incident report in
22 quotations as a direct statement by Mr. Graham.

23 **Q** Okay. And from the point in time you arrived
24 until a decision was made on your part to take
25 Mr. Lewis into custody, how long did that take?

1 **A** Maybe 10, 15 minutes. It really depended on
2 how busy it was at that present time.

3 **Q** Were there a lot of things coming and going in
4 the store at the same time?

5 **A** That along with dispatch, what was going on up
6 in dispatch with the pertinent information that I
7 requested, as well as other stuff going on in the
8 city itself.

9 **Q** Okay. In terms of the -- from the time that
10 you arrived until you heard Mr. Graham make the
11 statement, I was just trying to get one over on you,
12 or whatever he said there, how long did that take
13 from the time you arrived until he actually made
14 that statement?

15 **A** Just a couple minutes.

16 **Q** So it was very early on in your time?

17 **A** Correct.

18 **MR. YOUNG:** Your Honor, I don't have any
19 further questions.

20 **THE COURT:** All right. Mr. Mauldin.

21 **MR. MAULDIN:** Thank you.

22 CROSS-EXAMINATION

23 BY MR. MAULDIN:

24 **Q** All right. Officer Yarborough, you weren't
25 there during the initial -- you came in -- you

1 weren't there when Mr. Graham rode in the vestibule?

2 **A** Correct.

3 **Q** You say that you were called and you arrived
4 shortly thereafter and saw both of these two.

5 That's what you said?

6 **A** Correct.

7 **Q** Okay. And when you arrived, you said you spoke
8 to Mr. Lewis first?

9 **A** Correct.

10 **Q** And Mr. Lewis told you that he saw Mr. Graham
11 take the items, put them in the bag, went through,
12 paid for some and didn't pay for those; is that
13 right?

14 **A** Correct.

15 **Q** Okay. And at that point in time that -- you
16 thought that Mr. Graham was probably going to be
17 arrested for shoplifting?

18 **A** I hadn't come to that conclusion as of yet.

19 **Q** Why not?

20 **A** I still needed more information.

21 **Q** Now, after you talked to Lewis, you said you
22 went and talked to Mr. Graham; is that right?

23 **A** Correct.

24 **Q** Okay. And I know you were -- talking to the
25 solicitor, you asked him for his ID and his side of

1 the story?

2 **A** Correct.

3 **Q** Okay. And I don't think you testified any
4 during the solicitor's presentation that you read
5 him his Miranda rights at any time?

6 **A** Correct.

7 **Q** Correct? And he was seated in the buggy when
8 you went up and asked him these questions?

9 **A** That is correct.

10 **Q** Is that right? If he got up and tried to walk
11 out, would he have been free to leave?

12 **A** Not at that present moment.

13 **Q** So he was probably in investigative detention
14 at that time?

15 **A** Correct.

16 **Q** So after the story from Mr. Lewis, you decided
17 to place him in investigative detention to talk to
18 him about his side of the story?

19 **A** Correct.

20 **Q** Okay. And what questions did you ask him about
21 his side of the story?

22 **A** I just asked him what -- why was I dispatched
23 and what had transpired that morning.

24 **Q** And what was his response to that?

25 **A** He had stated that he had been accused of

1 shoplifting.

2 Q And that was it?

3 A To my recollection, yes, sir.

4 Q So he didn't say anything to you about buying
5 items at Garners Ferry?

6 A He did. He did mention that he had made some
7 purchases at Garners Ferry Road.

8 Q Was that to Mr. Lewis or what Mr. Lewis had
9 relayed to you or is that something that he relayed
10 to you?

11 A That was something that he relayed.

12 Q Okay. And was it after that that he said he
13 did it because he thought he could get one over on
14 him?

15 A I'm not sure.

16 Q So you're not sure if that happened after you
17 started to question him?

18 A No.

19 Q You're not sure of what time that happened at
20 all?

21 A Not exactly, no.

22 Q So after you walked up and had him in
23 investigative detention, you asked him why you were
24 dispatched. He said he'd been accused of
25 shoplifting. You said he said that, right?

1 **A** Correct.

2 **Q** You said that he told you something about
3 buying the items from Garners Ferry Road?

4 **A** Right.

5 **Q** And you don't know at what point in time he
6 said he did it because he thought he could get one
7 over on him?

8 **A** Not exactly.

9 **Q** Was there anything else he said after you
10 started questioning him? There was an attempt to
11 pay for the items?

12 **A** Correct. He had made that offer, but that was
13 directed towards Mr. Lewis.

14 **Q** And that's it? There's no other statements
15 that he made that you can recall?

16 **A** Not that I can recall.

17 **Q** That you would testify to at trial?

18 **A** Correct.

19 **MR. MAULDIN:** All right. I have no further
20 questions.

21 **THE COURT:** All right. You may step down.

22 **MR. YOUNG:** Your Honor, I have one redirect
23 question.

24 **THE COURT:** Go ahead.

25 *****

1 REDIRECT EXAMINATION

2 BY MR. YOUNG:

3 Q I believe you testified, when I was asking
4 questions earlier, that you said very early on into
5 conversation or encounter with Mr. Lewis --

6 A Correct.

7 Q -- that he made a statement to the effect of
8 trying to get one over on you, something to that
9 effect. That was, what, two minutes you said,
10 roughly, or something like that earlier?

11 A Roughly. It was early.

12 Q And that was directed in response to whatever
13 was going on, but not at you. It was like a
14 statement he made to Mr. Lewis?

15 A Correct.

16 Q It wasn't directed at you?

17 A Right.

18 MR. YOUNG: I have no further questions.

19 THE COURT: Okay. Now you can step down.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. Mr. Mauldin, let's hear
22 you.

23 MR. MAULDIN: Thank you, Your Honor. I would
24 move that any statements he made to the officer
25 after the officer said he placed him in

1 investigative detention were made in violation of
2 Miranda. If he's in detention, he's not free to
3 leave.

4 The statements were made in response to
5 questioning of the officer about his side of the
6 story. I think the statements in particular, you
7 know, he'd been accused of shoplifting, he bought
8 the items at Garners Ferry. And I also believe that
9 the statement about he thought he could get one over
10 on him, I mean, it doesn't make sense that he would
11 say that before he's saying he bought -- you know,
12 he's saying he isn't guilty, that he bought the
13 items at Garners Ferry and didn't steal it from the
14 store, then he would have said that he tried to get
15 one over on him and then would say that.

16 And the officer admitted that he was in
17 investigative detention, that would mean he wouldn't
18 be free to leave, and that we believe that those
19 statements should not be admitted in violation of
20 the Fifth and Sixth Amendment of the U.S.
21 Constitution.

22 **THE COURT:** All right. Mr. Young.

23 **MR. YOUNG:** Your Honor, it's very clear that
24 this was an inquiry into what had happened by the
25 officer upon his arrival.

1 The statements made by the defendant to
2 Mr. Lewis were to a shopkeeper who was essentially
3 trying to manage a business and had observed
4 something happen that was apparently looking to pay
5 for something to try to resolve it. None of that
6 was incustodial, absolutely not.

7 At some point in time when the officer arrived,
8 which was very briefly between the time of asking --
9 Mr. Lewis asking this gentleman if he wanted to take
10 care of it before the police were brought and his
11 refusal to do so, the officer came in and knows
12 nothing about what's going on, hears the recitation
13 from one person, the person who's accusing this
14 gentleman of shoplifting, and then wants to hear the
15 side of the other person. There is no, at this
16 point, incustodial manner of conversation occurring.
17 All of the conversation at this point is primarily
18 by Mr. Graham.

19 And our testimony that we've presented is that
20 it was -- the answer he gave or the statement he
21 made, I was trying to get one over on you, is made
22 more to Mr. Lewis than it is to the officer,
23 although the officer's present when it's occurring.
24 The officer has no obligation to give him any form
25 of Miranda warning until such time as he's made a

1 decision to take him into custody.

2 The officer is essentially asking nothing more
3 than who you are and what your side of the story is.
4 At that point, Your Honor, that's no more than a --
5 the same thing as would happen at a roadside
6 detention to find out what happened.

7 The State believes they're both admissible and
8 they're both voluntary.

9 **THE COURT:** I'm not sure when Mr. Graham was
10 placed in investigative detention, some time after
11 the officer got there as he's gathering information
12 perhaps, in the light most favorable to Mr. Graham.
13 It wasn't immediate, but it was some time after the
14 officer had questioned him. But the testimony I
15 heard, Mr. Lewis gathered just about all the facts
16 except for the one statement about trying to get one
17 over, and it appears to me that was directed toward
18 Mr. Lewis and not in response to the police
19 officer's question.

20 So I think all of the statements were
21 voluntarily made during the gathering of information
22 in an attempt to make a decision to place him under
23 arrest or not. So they'd all be fair game under
24 Jackson v. Denno and the constitution.

25 **MR. MAULDIN:** Well, Your Honor, my recollection

1 was that he said he decided to place him in
2 investigative detention after he spoke with
3 Mr. Lewis and wanted to get his side of the story.

4 **THE COURT:** I thought you asked him, Was he
5 free to leave? And he says, Not at that time. And
6 that was subsequent to his coming in and starting to
7 get his side of the story, it was not immediate upon
8 his arrival. But in any event, my ruling is not
9 going to change. I mean, it doesn't really matter
10 when he's placed in investigative detention, the
11 statement was made to Mr. Lewis.

12 The only different statement was the one about
13 trying to get one over on you. All the other
14 statements are consistent. The officer was
15 listening to shopped at Garners Ferry, I paid for
16 them over there, I'm willing to pay for them now.
17 That's the identical statements made to Mr. Lewis.
18 There's no difference. So they're all fair game.
19 But your record is protected.

20 All right. Anything else we need to do for
21 pretrial?

22 **MR. YOUNG:** No, sir.

23 **THE COURT:** All right. Let's take a couple
24 minutes break and then get the jury in here and get
25 started.

1 case, but until then, you don't discuss the case.
2 You listen attentively, take notes if you like and
3 just listen to the testimony and evidence presented.

4 Now, if you will, please all stand and let
5 Ms. Frick place you under oath.

6 (The jury was duly sworn at 11:27 A.M.)

7 **THE COURT:** All right. Folks, the wayward
8 juror's car broke down in McDonalds going through to
9 get a little something to eat. So assuming that's
10 true, I'm not going to impose any type of penalty on
11 her. She's trying very frantically, was talking to
12 the clerk's office. Thus, any objection to me
13 moving Mr. Acosta in as the 12th juror?

14 **MR. YOUNG:** No, Your Honor.

15 **MR. MAULDIN:** No, Your Honor.

16 **THE COURT:** All right. So these are our
17 jurors.

18 We're ready to go forward, Mr. Young.

19 **MR. YOUNG:** Thank you, Your Honor.

20 OPENING STATEMENT

21 **MR. YOUNG:** Ladies and gentlemen, I appreciate
22 your attention to both aspects of this case that
23 which I'll present the witnesses, whatever else may
24 follow. Pay close attention to what the witnesses
25 say. Pay close attention so that you can make a,

1 what we call, a true verdict. It's a word that
2 comes from something in Latin, veredicto, which
3 means to speak the truth.

4 So that's what we're here to determine is the
5 truth about what happened on the day of June 21st,
6 2015, when a manager who works at Bi-Lo and he's
7 observing what's going on in his business, as most
8 folks would, especially if you're a manager, and he
9 sees this fellow who's got a bag in his cart. It's
10 one of those electorized -- electric motorized carts
11 with a shopping basket in front. And he sees him
12 over by the seafood and he sees this man reach in
13 and grab some items, not grab, but take them, select
14 them out of those storage cases and he transfers it
15 to a bag. That's odd in a way. So he's suspicious
16 about this, so he's going to keep his eye on that
17 same fellow.

18 Well, this same fellow eventually makes his way
19 over to the cashier line and when he does, he's got
20 that bag there still in the cart and that bag in the
21 cart is associated with some other items that are
22 not in a bag. And all the items that are not in the
23 bag go onto the belt for the cashier to take out,
24 check off, pay for. And he pays for all those items
25 that are apparently on the belt, and the cashier

1 takes a, you know, gives him a receipt for it.

2 The one thing that didn't happen was what was
3 already in the bag. What was already in the bag was
4 something that came of interest when the manager
5 goes outside to the vestibule area which separates
6 the main part of the business from the exterior,
7 past all points of sale, past the set of doors and
8 the man is still in this cart and the manager walks
9 up and wants to know, Do you have a receipt for
10 what's in that bag? At which point, the man says, I
11 got that at Garners Ferry.

12 Nine o'clock in the morning, 9:50, thereabouts,
13 almost ten o'clock.

14 So he says, hum. Well, the manager knows where
15 Garners Ferry is because the manager used to be --
16 used to work over there and he knows how far away it
17 is. He doesn't necessarily buy that. And he says,
18 I need to look at those items.

19 And he checks the items and they're icy, what
20 you would expect out of seafood. Sir, do you have a
21 receipt for those items? Nope. I got those at
22 Garners Ferry.

23 Sir, I'll give you a chance to pay for that
24 instead of calling the police. Nope. I bought them
25 at Garners Ferry.

1 The man doesn't pay. The police are contacted.
2 The police arrive almost immediately. The police
3 does a brief inquiry of who you are and what your
4 side of the story is after hearing what the manager
5 says. He gets his side of the story, very briefly.
6 He listens to what's going on in probably no more
7 than 10, 15, 20 minutes total.

8 At the end of that, he has to take him into
9 custody because he hears things such as statements
10 that the man is making toward Mr. Lewis, who is the
11 manager, the person that has this encounter with
12 this man who's taking the items in the bag. He says
13 things like he wants to pay for it now after the
14 officer arrives. And the officer hears something
15 that perhaps Mr. Lewis didn't hear, the manager.
16 The officer hears, I was just trying to get one over
17 on you, or words to that effect.

18 Now, this is an outline of what the case is
19 about. It's basically all that the State's going to
20 offer you in that capsule, but you're going to hear
21 it not from me, you're going to hear it from that
22 witness stand. And it's not what I say that's
23 important and not what I'm outlining, it's what you
24 hear from the witness stand.

25 I'm not a source of the law, but at some point,

1 I'll probably have to give you some argument on the
2 law. And, at some point, I'll have to give you
3 something about what the law says about this and the
4 things you can consider. But the real source of the
5 law from all purposes is from that stand up there,
6 that judge wearing that black robe, and Judge
7 Griffith is going to give you the law. And all of
8 that is going to come at the end of the case after
9 you've heard all of the evidence.

10 And your job, very simply, the one that you got
11 drafted to do -- sorry, folks, we do have one form
12 of compulsory service still left in this country and
13 you're sitting in that jury seat because you didn't
14 get a choice. I'm sorry. It's an important job and
15 we've got to have you sit here and do it. You got
16 enlisted. So your enlistment will end when you've
17 had a chance to consider all of the evidence and
18 retire to that jury room back there and make a
19 decision. And what you've got to make a decision on
20 is a verdict and that verdict needs to speak the
21 truth. Thank you.

22 **THE COURT:** All right. Mr. Mauldin.

23 **MR. MAULDIN:** Thank you, Your Honor.

24 Yul Graham on that Sunday morning in June in
25 2015, decided, you know, he's going to make Sunday

1 dinner, and Sunday dinner's going to be chicken and
2 rice and some vegetables and some other items like
3 that. And he had chicken. So he's going to go to
4 the grocery store to get some of the other items
5 like that.

6 He goes in the grocery store. He's diabetic,
7 he's got some heart issues, so he's going to use
8 this motorized cart that they have to go around the
9 store. And he sees in the cart in the little basket
10 on top, there's a bag in it already there. He
11 doesn't know what's in it. It's already tied up.
12 He goes about -- he leaves it in there and he goes
13 about his shopping.

14 He sees the assistant manager somewhere in the
15 store, asked him where the yellow rice is. He goes
16 and gets the yellow rice, goes and gets some other
17 items, drives a buggy around the store with the bag
18 right there, not under -- bag right there in the
19 buggy, goes through the checkout line, pays for the
20 stuff he got.

21 And when he got there, he figured the bag,
22 somebody had paid for stuff, left it there. And he
23 goes out. He wasn't intending to steal anything
24 from the store. He figured it was abandoned,
25 somebody left it and he'd just take it. He wasn't

1 trying to steal from the store. He thought somebody
2 had left something there.

3 And he gets confronted in the vestibule by
4 Mr. Lewis and the officer here. And he says, you
5 know, Did you pay for it? No, I didn't pay for it,
6 that's not my bag.

7 And they wanted him to pay for it. And he's
8 like, Well, I'm not trying to get one over on you.
9 It's not my responsibility to turn this bag. I'm
10 not trying to steal from you.

11 And he feels bad. I mean, he knows it was
12 somebody else's stuff that they probably left there,
13 but he didn't try to steal it from the store and
14 that's what they're accusing him of.

15 That might be factually different from what the
16 State says, but their burden of proof is beyond a
17 reasonable doubt. And if there's any real
18 possibility that Mr. Graham might be not guilty,
19 you've got to find him not guilty.

20 And sometimes people's perceptions may not be
21 so good over time or might not even be good at the
22 time, just like the story the Judge told you this
23 morning, the guy thought his wife was hard of
24 hearing, but it turned out he was hard of hearing.
25 So sometimes things aren't the way that you perceive

1 them and so you should find Mr. Graham not guilty.

2 **THE COURT:** Call your witness.

3 **MR. YOUNG:** Thank you, Your Honor. We call
4 Irving Lionel Lewis.

5 IRVING LIONEL LEWIS,
6 having been duly sworn, testified as follows:

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

9 **THE WITNESS:** My name is Irving Lionel Lewis,
10 L-e-w-i-s.

11 DIRECT EXAMINATION

12 BY MR. YOUNG:

13 **Q** Mr. Lewis, where do you work?

14 **A** I work at Bi-Lo on Augusta Road, 2349 Augusta
15 Road, in West Columbia, in Lexington County.

16 **Q** Thank you. How long have you been doing that?

17 **A** I've been with Bi-Lo approximately 30 years.
18 And I've been a manager approximately ten years.

19 **Q** Okay. And, sir, if you could, please, do you
20 recall the day of June 21st, 2015?

21 **A** Yes, I do.

22 **Q** Okay. Do you recall having an opportunity when
23 you came into work, to observe persons walking
24 around inside your establishment -- what time do you
25 open by the way, just roughly?

1 **A** At that time, we were 24 hours.

2 **Q** Okay. So when you come into work, do you see
3 someone in a motorized shopping cart, one of those
4 Bi-Lo carts, over by the seafood?

5 **A** Yes, I do.

6 **Q** Do you know -- do you know who that person
7 would be that you observed at that time?

8 **A** Yes, it would be Mr. Graham.

9 **Q** This gentleman over here seated to the right of
10 Mr. Mauldin?

11 **A** Yes.

12 **Q** In the white shirt?

13 **A** Yes.

14 **Q** White-colored shirt. It's beige or something.

15 **A** Beige, yes.

16 **Q** And what did you see him do?

17 **A** I observed him in the handicap cart and he went
18 to the seafood area, which is a six-door freezer.
19 And I watched him and observed him reach in there
20 and grab several items out and place them into a bag
21 that was in the mobile cart, an empty bag.

22 **Q** This is frozen seafood?

23 **A** Yes.

24 **Q** Is this one of these -- can you see into this
25 counter or display counter?

1 **A** Yes. It's a six door, so it's a standup case
2 and it's doors, so it's -- you have to open it up
3 and pull the items out. It's not a self-contained
4 unit, open, in other words.

5 **Q** So you have to actually open something to --

6 **A** You have to open it up, uh-huh.

7 **Q** All right. So -- did you observe him do just
8 that?

9 **A** Yes.

10 **Q** And what did you see him do with those items
11 that he selected?

12 **A** Place those items into a bag.

13 **Q** Into a bag?

14 **A** Yes.

15 **Q** What kind of bag are you talking about?

16 **A** Looked like just one of the bags that we have
17 at checkout, a white bag, that was laying in the
18 cart part of the mobile cart.

19 **Q** Okay. So there was a bag in the cart that he
20 placed these items into?

21 **A** Yes.

22 **Q** Okay. What's offered in this seafood section?

23 **A** We have shrimp, crawfish, fish, hush puppies,
24 just a variety of seafood items.

25 **Q** Okay. Were you able to distinguish what type

1 of item he actually selected at the time you saw
2 him?

3 **A** Yeah. I saw him pick up shrimp.

4 **Q** You saw that?

5 **A** Uh-huh.

6 **Q** Okay. All right. Now, when you saw this, does
7 this peak your interest in any way?

8 **A** Yes. You know, when I saw it being placed in a
9 bag, you know, customers do that from time to time,
10 so, you know, I just kind of like said, okay, let's
11 make sure it gets up on the belt. So I just kept
12 eye contact. If he turned a corner is the only time
13 I might have lost eye contact, but I immediately
14 picked him up and just kind of watched from afar
15 until he got to the checkout.

16 **Q** Okay. Now -- so there were some other
17 selections made?

18 **A** Yes. He was picking up other items as he was
19 going around the store.

20 **Q** Okay. And what did he do with the other items
21 that you saw him select? Where did he place those?

22 **A** He placed them into the cart.

23 **Q** So are these visible from just looking at the
24 cart?

25 **A** Yes.

1 **Q** So whatever he put into that bag when he was
2 over at the seafood section, you couldn't see
3 exactly what was in the bag, could you?

4 **A** I could just tell -- I couldn't see everything,
5 but I could tell at least two of them because of the
6 size of the bag of the shrimp, I could tell.

7 **Q** Okay. All right. So you see this one bag and
8 these other items loosely arranged?

9 **A** Correct.

10 **Q** And then where does he go?

11 **A** He continues his shopping and then he goes to
12 checkout.

13 **Q** Okay. Now, your checkout -- if I could, you
14 have checkout lines or are they randomly in the
15 store?

16 **A** Yes, there are checkout lines up front. And
17 there's an area before you get to leave the store
18 called the vestibule, you have to go through those
19 doors. So he came through checkout and then out to
20 the door, out to leave the store into the vestibule
21 and then it's another set of doors where you go out
22 into the sidewalk.

23 **Q** Okay. You're familiar with your store
24 obviously?

25 **A** Yes.

1 **Q** And if I showed you pictures of your store,
2 would you be able to recognize those?

3 **A** Yes, sir.

4 **Q** Let me show you what's been marked as State's
5 Exhibit 1, 2 and 3. Can you look at those, please?

6 **A** Yes. This first picture --

7 **Q** Just tell me what they are.

8 **A** Okay. These are pictures of the entrance.
9 This is a picture of when you bypass the registers
10 and you're going into the vestibule. And this is
11 the outside of the store.

12 **Q** Okay. Now, are those pictures of the vestibule
13 area and the exterior of your store?

14 **A** Yes.

15 **Q** Do they fairly and accurately represent the
16 location of the doors and the vestibule area in
17 relation to the entrance to your store?

18 **A** Yes, sir.

19 **Q** Do they also fairly and accurately represent
20 the location where you had an encounter with
21 Mr. Lewis later?

22 **A** With Mr. Graham, yes.

23 **Q** Mr. Graham. I apologize, Mr. Lewis. Thank
24 you.

25 Could you hand those back to me, please?

1 **A** Uh-huh.

2 **MR. MAULDIN:** No objection to those being
3 introduced, Your Honor.

4 **THE COURT:** 1, 2 and 3, photos, admitted
5 without objection.

6 **MR. YOUNG:** Thank you, Your Honor.

7 (State's Exhibit Numbers 1 through 3,
8 photographs, admitted into evidence.)

9 BY MR. YOUNG:

10 **Q** With regard to -- Mr. Graham, if I could --

11 **MR. YOUNG:** And with the Court's permission,
12 I'd like to focus on State's Exhibit Number 2. And
13 if I could, could I have him step down from the
14 bench to show...

15 **THE COURT:** Absolutely.

16 BY MR. YOUNG:

17 **Q** Mr. Lewis, would you join me, please, down here
18 in front of the jury?

19 **A** (Witness leaves the witness stand.)

20 **MR. YOUNG:** The State would like permission, at
21 this time, to publish this one picture in
22 particular.

23 **THE COURT:** Certainly.

24 BY MR. YOUNG:

25 **Q** All right. Mr. Lewis, I'm going to hold up

1 State's Exhibit Number 2 and ask you, if you would,
2 please, tell me what this is. What is this
3 particular view that we're looking at?

4 A This view is the doors leading into the
5 vestibule.

6 Q Okay. And from what direction would they lead
7 into the vestibule?

8 A That would be after you bypass the registers.

9 Q Okay. So are these pictures over here, which
10 is in State's Exhibit 1, are they from a different
11 angle into the vestibule?

12 A Yes, sir. That's where you come into the store
13 from the vestibule.

14 Q Okay. So where would the -- in regard to
15 State's Exhibit Number 2, where would the cashier
16 line be in relation to State's Exhibit Number 2?

17 A The cashier line from this picture would be to
18 the right and going across and they would be
19 approximately 15 feet from the door.

20 Q Okay. So the cashiers are, in essence, in a
21 direction in front of this, this vestibule entrance
22 or exit, whichever you choose to call it, because
23 you can go in or go out of both, correct?

24 A Correct.

25 Q From that point, the points of sale, cashiers

1 would all be in front of this door?

2 **A** Correct.

3 **Q** All right. And at the point in time that you

4 saw Mr. Lewis at the cashier line, did he take this

5 exit or the other exit before he went out the

6 vestibule -- into the vestibule? Did he take this

7 exit or --

8 **A** He would take this exit leaving from the

9 registers.

10 **Q** So you followed him from the cashier line

11 toward this exit?

12 **A** Well, I was positioned, and you can't see it,

13 the office was right to the left and I was kind of

14 in front watching as he got rung up.

15 **Q** Okay. But this is the door he left out?

16 **A** That's the door he left and that's the door I

17 followed him out.

18 **Q** Okay. And so when you saw him -- when you had

19 your encounter with him later, you had it out here

20 in this vestibule area?

21 **A** Yes. Uh-huh.

22 **Q** All right. Thank you.

23 **A** (Witness resumes the witness stand.)

24 **Q** Now, when you approached Mr. Graham, had he

25 gone through those double doors?

1 **A** Yes. Uh-huh.

2 **Q** All right. And where was he? Was he still
3 inside the vestibule area and still inside the store
4 itself?

5 **A** Right. I stopped him inside of the vestibule.

6 **Q** Okay. And had he, at that point, passed all
7 points of sale?

8 **A** He had passed all points of sale.

9 **Q** Okay. In regard to what he was doing when you
10 stopped him, what would you -- how would you
11 describe that? What was he doing as you approached
12 him?

13 **A** He was attempting to leave the store in the
14 mobile cart.

15 **Q** And what happened as a result of that? Did you
16 take any steps?

17 **A** Yes. I stopped him in the vestibule and asked
18 him for a receipt for the items that was placed that
19 never left the cart, the mobile cart. I asked him
20 did he have a receipt for those, and that was
21 primarily the shrimp and the crawfish.

22 **Q** Okay. All right. And so what did you observe?

23 **A** At that point in time, he responded to me that
24 he had purchased those items earlier from Garners
25 Ferry Road.

1 **Q** Garners Ferry Road. Is there a Bi-Lo on

2 Garners --

3 **A** A Bi-Lo at Garners Ferry Road. I'm sorry.

4 Yes.

5 **Q** Is there a Bi-Lo there?

6 **A** Yes, there is. I'm familiar with it. I
7 managed that store for approximately three years.

8 **Q** Okay. About how far away is that store in
9 relation of driving time?

10 **A** It's about a 25-minute ride, and we're talking
11 mid June.

12 **Q** So it's warmish?

13 **A** Pretty warm, yes.

14 **Q** And when you say you observed this bag, did you
15 actually touch the bag or open the bag?

16 **A** Yes. I went in the bag, pulled it out and it
17 was ice completely all the way through and hard.
18 Nothing looked like it was melted at all, just as if
19 it had just come out of the freezer.

20 **Q** Okay. And what kind of items were in there?

21 **A** I recall two bags of shrimp, crawfish and I
22 can't remember the other item. There was something
23 else in there.

24 **Q** Okay. Now, at the point in time that you're
25 having -- you stopped him and you've asked him -- is

1 he seated, standing? Does he stand up when you talk
2 to him?

3 **A** He was seated.

4 **Q** He stayed seated?

5 **A** Yes.

6 **Q** Did you have a conversation with him?

7 **A** Yes, I did.

8 **Q** What was the conversation about?

9 **A** The conversation is after I asked him for a
10 receipt, I gave him the option if he would like to
11 pay for those items because he didn't have a
12 receipt. And I explained to him these items look
13 like they just came out of the freezer because I saw
14 it from my own eyes. And, at that point in time, he
15 refused to, and I told him if he didn't, I would
16 call the police.

17 **Q** Okay.

18 **A** And, at that point, I had someone to call the
19 police.

20 **Q** Okay. And did the police arrive?

21 **A** Yeah. They must have been in the area because
22 they were there within three minutes.

23 **Q** Okay. Now, at this point, is he still seated?

24 **A** Yes, he is.

25 **Q** And he's still in the motorized shopping cart?

1 **A** Yes, sir.

2 **Q** And is the bag that you're talking about that
3 was the one you suspected of having the frozen items
4 in it, is that still present?

5 **A** Yes, it is. Uh-huh.

6 **Q** All right. And who arrives?

7 **A** Officer Yarborough.

8 **Q** Okay. And do you have further conversation at
9 this time to explain what's going on?

10 **A** Yes. When the officer came in, I presented
11 what happened to him and told him that I observed
12 what I just mentioned, that he came in the store,
13 there was nothing in that bag and I saw him place
14 those items in the bag and I saw him pay for some
15 items, he didn't pay for those. Then I told him
16 that he told me he purchased those items from
17 Garners Ferry Road, and I looked at them. And I
18 showed him the items and there was still ice in the
19 bag.

20 **Q** And is Mr. Graham present?

21 **A** Yeah. Mr. Graham is present when I was telling
22 Officer Yarborough.

23 **Q** And does Mr. Graham say anything to you about
24 the items now? You gave him a chance to pay for
25 them earlier, does he make any statement further?

1 **A** At that point in time once the officer arrived,
2 he then said he would pay for those items. I
3 noticed that he had a lot of money on him. He had,
4 like, a yard of money in his possession. But I
5 explained to him prior to the officer, if I call the
6 police, I would not change -- if he comes, I'm going
7 to prosecute. And he elected not to pay prior to
8 the police officer.

9 **Q** You're running a store at this time, right?

10 **A** Yes, sir.

11 **Q** There's more going on than just this?

12 **A** Right. Uh-huh.

13 **Q** So people are coming and going out of your
14 store?

15 **A** People coming and going. And I was trying to
16 get prices on the items that were -- that he didn't
17 have a receipt for.

18 **Q** So are you paying strict attention to whatever
19 Mr. -- Officer Yarborough says or has a conversation
20 with Mr. Graham?

21 **A** No. I asked somebody to go get prices for me
22 and then I was trying to take care of other things,
23 but I was trying to stay in that area. But I wasn't
24 specifically listening to everything the officer
25 asked.

1 **Q** But he was having a conversation with Officer
2 Yarborough?

3 **A** Yes. Uh-huh.

4 **Q** But you were -- whatever he may have said or --
5 were you standing right there with him while all of
6 this was going on?

7 **A** I was in close proximity. And I can remember
8 Mr. Graham saying to me on more than one occasion,
9 Can I pay for them; can I pay for them? And this
10 was, you know, and I was doing other things, but I
11 didn't hear the rest of the conversations.

12 **Q** Okay. Now, just to make absolutely sure I got
13 this, your business is located at what address you
14 say?

15 **A** 2349 Augusta Road and that's in Lexington
16 County.

17 **Q** And it is in Lexington County?

18 **A** Uh-huh.

19 **Q** Okay. Is there any doubt in your mind
20 whatsoever that Mr. Graham is the person you
21 observed over by the seafood counter when you first
22 observed him open it?

23 **A** Yes. Without a doubt, I'm sure that's him.

24 **Q** Is there any doubt that you saw him retrieve
25 items from that, I guess, display case or counter,

1 whatever you want to call it?

2 **A** There's no doubt.

3 **Q** Is there any doubt that you saw him place it in
4 a bag?

5 **A** No doubt.

6 **Q** Is there any doubt that you observed him go
7 through the line and then not pay for those items?

8 **MR. MAULDIN:** Objection; leading, Your Honor.

9 **THE COURT:** Rephrase.

10 BY MR. YOUNG:

11 **Q** What, if any, doubt do you have as to whether
12 or not he paid for those items or you observed him
13 pay for those items in that bag?

14 **A** Once I saw him get those items out of the
15 freezer and place them in a bag, I immediately kept
16 eye contact. So I watched him as he approached the
17 registers. I watched him as he paid for selective
18 items. And then, at that point, I waited until he
19 got by past the terminals. So there's no doubt in
20 my -- in what I observed that he got those items
21 from that location.

22 **Q** You made absolutely sure that one bag that was
23 sitting in his shopping cart, those items were never
24 placed on the cashier's belt?

25 **A** No. They were never placed. They remained in

1 the cart.

2 **Q** And when you asked him about that bag, he said
3 that's the bag he paid for out of Garners Ferry?

4 **A** Correct.

5 **MR. YOUNG:** Would you please answer any
6 questions that Mr. Mauldin may have for you?

7 **THE WITNESS:** Yes, sir.

8 **MR. MAULDIN:** Thank you.

9 CROSS-EXAMINATION

10 BY MR. MAULDIN:

11 **Q** How long had you been working at the Bi-Lo at
12 that point in time? I guess in June of 2015, how
13 long had you been there?

14 **A** Okay. This is my second stint. I think I had
15 been at that location approximately three,
16 three-and-a-half years.

17 **Q** And do you have any kind of video surveillance
18 at that Bi-Lo?

19 **A** Yes, we do.

20 **Q** Did the officer ask you for -- a copy of any
21 video surveillance?

22 **A** Not at that time he did not, that's because I
23 told him I witnessed him taking those products.

24 **Q** But he could have asked you for it, right?

25 **A** Yes.

1 Q And you say not at that time. Did he ask you
2 for -- were you asked for it at any point in time?

3 A I do not recall.

4 Q Okay. Did Mr. Young ask you if you had any
5 video at any point in time, the solicitor?

6 A No, sir.

7 Q And this bag you say that was in the cart that
8 -- was that a Bi-Lo bag?

9 A It appeared to be a white bag, a Bi-Lo bag,
10 yes, sir.

11 Q Do they have, like, Bi-Lo printed on the side
12 of them?

13 A It has a hand -- well, we changed design now,
14 so I can't tell you exactly what was on the outside,
15 but it was a Bi-Lo bag.

16 Q And you saw him -- you say you saw him putting
17 the stuff in and then you followed him throughout
18 the store. And the only time you lost eye contact
19 with him was maybe when you hit a corner?

20 A If he turned a corner, correct.

21 Q Now, you're saying that the -- when you
22 initially stopped Mr. Graham in the vestibule, the
23 police wasn't there, right?

24 A Correct.

25 Q And he wasn't there to hear any conversation

1 you had with Mr. Graham about buying the things at
2 Garners Ferry like you said; is that right?

3 **A** He wasn't there at that point.

4 **Q** And you said that after the officer did arrive,
5 that you stayed in the area and you're getting
6 prices of the items and that kind -- is that right?

7 **A** I was in the area from the time the officer --
8 I answered the questions for the officer and I
9 remained somewhat in that proximity, but I wasn't
10 right there up on the officer. And people were
11 coming in and out of the store and I was still
12 trying to run the store.

13 **Q** But you're able to hear Mr. Graham when he
14 asked you about paying for the items when the
15 officer was there?

16 **A** I heard him say that on several occasions, yes.

17 **Q** But you don't remember him saying anything
18 like, I did it because I was trying to get one over
19 on you, talking to you?

20 **A** I didn't hear him say that to me, no, I did
21 not.

22 **Q** Okay. And this happened about a year and a
23 half ago; is that right?

24 **A** Happened June 21, '15.

25 **MR. MAULDIN:** Beg the Court's indulgence.

1 I have no further questions, Your Honor.

2 **THE COURT:** Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. YOUNG:

5 **Q** June 21st, 2015, morning, afternoon?

6 **A** I believe it was in the morning around 9:00.

7 **MR. YOUNG:** Thank you.

8 **THE COURT:** You may step down.

9 **THE WITNESS:** Thank you.

10 **MR. YOUNG:** State calls Officer Chris
11 Yarborough.

12 CHRISTOPHER WAYNE YARBOROUGH,
13 having been duly sworn, testified as follows:

14 **THE CLERK:** Once you're seated, state your full
15 name, spelling your last.

16 **THE WITNESS:** My name is Christopher Wayne
17 Yarborough, Y-a-r-b-o-r-o-u-g-h.

18 DIRECT EXAMINATION

19 BY MR. YOUNG:

20 **Q** Officer Yarborough, where do you work?

21 **A** I'm employed at the City of West Columbia, the
22 West Columbia Police Department.

23 **Q** And how long have you worked there?

24 **A** Nine and a half years.

25 **Q** Certified police officer?

- 1 **A** Correct.
- 2 **Q** Okay, sir. On the morning of June 21st, 2015,
- 3 were you on duty?
- 4 **A** I was.
- 5 **Q** All right. And did you receive a call for
- 6 service to the Bi-Lo there in West Columbia
- 7 concerning a shoplifting issue?
- 8 **A** Yes, sir, I did receive a call for service.
- 9 **Q** Okay. And from the time you received that call
- 10 until you arrived, approximately how long was it?
- 11 **A** Maybe a minute, minute and a half. I was right
- 12 there.
- 13 **Q** You just happened to be in the area?
- 14 **A** Just happened to be in the area.
- 15 **Q** What time of day was this?
- 16 **A** This was 9:50 in the morning.
- 17 **Q** Okay. Upon arrival, where did you go?
- 18 **A** Upon arrival, I actually parked my vehicle in
- 19 front of the vestibule area and I entered the
- 20 vestibule, which is where Mr. Lewis and Mr. Graham
- 21 were standing.
- 22 **Q** Okay. And just to familiarize, if you could
- 23 inform me, are you familiar with the exterior and
- 24 the interior portions of the Bi-Lo there in West
- 25 Columbia?

1 **A** Yes, sir.

2 **Q** And will you be able to recognize photographs
3 of those?

4 **A** Yes, sir.

5 **Q** Let me show you State's Exhibits 1, 2 and 3.
6 Do you recognize those?

7 **A** I do.

8 **Q** And what are they?

9 **A** 3 is the front of Bi-Lo. Exhibit 2 is inside
10 the store looking into the vestibule area. And 1 is
11 inside the store looking into the vestibule area.

12 **Q** So they're both in the vestibule area looking
13 inside, but they're from different directions?

14 **A** Correct.

15 **Q** Okay. One's from the cashier and one's from
16 the, I guess, the main entrance?

17 **A** Correct.

18 **Q** Now, with regard to that, you say you went into
19 the vestibule area where you met Mr. Graham and
20 Mr. Lewis?

21 **A** Correct.

22 **Q** Okay. Where was Mr. Graham at that point in
23 time? What was he doing?

24 **A** Mr. Graham was seated in a motorized scooter in
25 the vestibule right in front of Mr. Lewis.

1 **Q** Okay. And is there some form of conversation
2 you have either with Mr. Lewis or Mr. Graham?

3 **A** Yes, sir.

4 **Q** Who starts talking first?

5 **A** Mr. Lewis.

6 **Q** What is he telling you?

7 **A** He advised me that he observed Mr. Graham
8 select several frozen items, place them in a bag
9 that was in the motorized scooter, select other
10 items --

11 **MR. MAULDIN:** Objection; hearsay, Your Honor.

12 **MR. YOUNG:** I'll withdraw the question, Your
13 Honor, and move forward at this point with another
14 line of questioning.

15 **THE COURT:** Fair enough. Sustained.

16 BY MR. YOUNG:

17 **Q** At the point in time that you had the
18 conversation with Mr. Lewis and Mr. Lewis is telling
19 you what happened, correct?

20 **A** Correct.

21 **Q** From his perspective?

22 **A** From his perspective, yes.

23 **Q** You still have to get the side of the other
24 person?

25 **A** Correct.

1 **Q** Okay. Now, you have enough to suspect
2 something's gone on, but what do you need to find
3 out now?

4 **A** I need to find out his side of the story. I
5 need more facts.

6 **Q** Okay. And so what do you do?

7 **A** I asked Mr. Graham what happened.

8 **Q** Okay. And what does he tell you?

9 **A** He stated that he --

10 **MR. MAULDIN:** Your Honor, I would object at
11 this time based on my prior objection.

12 **THE COURT:** Your objection is noted for the
13 record. Overruled.

14 You can answer the question.

15 **THE WITNESS:** He advised me that he was accused
16 of stealing from Bi-Lo.

17 BY MR. YOUNG:

18 **Q** And what kind of explanation did he give you?

19 **A** He stated that the items that were in question,
20 frozen items, were purchased at a different
21 location, more specifically the Garners Ferry Road
22 Bi-Lo.

23 **Q** Okay. At some point, at some point during the
24 course of your conversation with him, does he start
25 talking directly to you instead of Mr. Graham or

1 does he talk to Mr. Graham more so than to you?

2 **A** He was speaking with Mr. Lewis the majority of
3 the time.

4 **Q** Mr. Lewis. I'm sorry.

5 **A** Correct.

6 **Q** And so at various points in time as you're
7 asking him his side of the story, do you hear him
8 make any statement concerning his desire to pay for
9 the items?

10 **A** I did. He made a statement that he desired to
11 pay for the items.

12 **Q** And who did he direct that toward?

13 **A** He directed that towards Mr. Lewis.

14 **Q** Okay. Did you hear him make any other
15 statements concerning his involvement in this toward
16 either you or Mr. Lewis?

17 **A** I did.

18 **Q** And what did he say?

19 **A** He stated that he did it to try to get one over
20 on him, and that was, again, directed towards
21 Mr. Lewis.

22 **Q** Now, Mr. Lewis was busy with other things at
23 this time?

24 **A** I believe so, yes.

25 **Q** Okay. But you heard him say that?

1 **A** I did.

2 **Q** Okay. Other than that, did you have much more
3 to go on?

4 **A** No, sir.

5 **Q** Okay. Now, questions that are raised earlier,
6 and I'll just ask it here, did you choose not to ask
7 for the footage of the surveillance video?

8 **A** That is correct. Mr. Lewis is actually, for
9 lack of a better term, the video because it was
10 coming from him.

11 **MR. MAULDIN:** Objection, Your Honor;
12 bolstering.

13 **THE COURT:** I'll allow -- it's what he did in
14 his investigation.

15 **BY MR. YOUNG:**

16 **Q** In terms of me asking you for that video, I
17 asked for it?

18 **A** Correct.

19 **Q** You didn't have it?

20 **A** I didn't have it, no, sir.

21 **Q** All right. At some point then, after you'd
22 gotten both sides of the story, did you make a
23 decision to take him into custody?

24 **A** Not at that point. I actually was waiting on
25 his information, which I believe I asked earlier,

1 but, at that point, towards the end of the interview
2 for Mr. Lewis and Mr. Graham, that decision was
3 made, correct.

4 **Q** And you did take him into custody?

5 **A** Correct.

6 **Q** Okay. Now, did you establish a value for these
7 items?

8 **A** I didn't personally establish a value, that was
9 Bi-Lo employees.

10 **Q** Do you recall the value that was established?

11 **A** It was probably between 45, 50 dollars maybe.

12 **Q** Okay. And these items were the ones that were
13 still in that bag?

14 **A** Correct.

15 **Q** And did you observe the condition of these
16 items in the bag?

17 **A** I did.

18 **Q** And what was the condition of the items?

19 **A** The condition was they were frozen. They were
20 still frozen as if they were just recently selected
21 from frozen counter, frozen freezer.

22 **Q** Okay. Some of the items were, other than
23 frozen items, at least one perhaps?

24 **A** At least -- there was three frozen items and
25 one wasn't frozen.

1 Q Okay. Do you recall what it was?

2 A I believe it was trail mix, so those aren't
3 frozen.

4 Q So in the bag was seafood items. Do you recall
5 those kind -- the kinds of seafood items?

6 A Shrimp and crawfish.

7 Q All right. Just to make absolutely sure I
8 understand, at the point in time you are having
9 these conversations in this encounter with Mr. Lewis
10 and Mr. Graham in the vestibule, can you see into
11 the store?

12 A I can.

13 Q And can you see the cashiers from where you
14 were in the store?

15 A Yes, sir.

16 Q Okay. The cashiers are beyond that -- the set
17 of doors that appear in this picture? And I'll hold
18 up State's Exhibit 2. The cashiers are beyond...

19 A Beyond this. That's on the inside. So behind
20 where this picture was taken, yes, sir.

21 Q So, in other words, if you're in the vestibule
22 looking through this set of double doors, the
23 cashiers are on the other side of it?

24 A Yes, sir.

25 Q And that's the point of sale inside the store?

1 **A** Yes, sir.

2 **Q** Okay. And as far as you're -- could determine,
3 when you looked in this bag, the items were inside
4 the bag?

5 **A** Correct.

6 **Q** And they weren't exterior from the bag?

7 **A** Right.

8 **Q** To make absolutely sure, Officer, you're
9 standing there -- and I want to make absolutely sure
10 that you -- you didn't make any threat toward
11 Mr. Graham to get him to say anything to you, did
12 you?

13 **A** No.

14 **Q** Did you make any attempt to impose your will on
15 Mr. Graham by some method, such as, I'll help you
16 out if you'll just talk to me about what happened?

17 **A** No, sir.

18 **Q** Did Mr. Graham, you know, did you give him the
19 idea that if he didn't cooperate, things would go
20 bad for him?

21 **A** No, I did not.

22 **Q** Did you tell him anything, in the conversation
23 you had with him, that would suggest to him in some
24 fashion that, you know, you can stand up for him
25 with the solicitor or someone like that in authority

1 if he cooperated?

2 **A** I did not.

3 **Q** Did you promise him anything?

4 **A** I did not.

5 **Q** Did you, at any time, observe him to be in
6 physical distress?

7 **A** No.

8 **Q** Did he appear to be intoxicated?

9 **A** No, sir.

10 **Q** At any time when you were conversing with him
11 or when you observed Mr. Lewis with him while you
12 were there, did you see anything from Mr. Lewis that
13 would give you the idea that he didn't understand
14 your questions or what you were asking him about?

15 **A** No, I did not.

16 **Q** Did he show outward signs of pain or any other
17 difficulty?

18 **A** No.

19 **Q** Did he ask for a lawyer?

20 **A** No.

21 **Q** Did he try to tell you he didn't want to talk
22 to you?

23 **A** No, sir.

24 **Q** And you didn't offer him any Miranda rights
25 either, did you?

1 **A** I did not.

2 **Q** Simply because you were just trying to get his
3 side of the story?

4 **A** Correct.

5 **MR. YOUNG:** Would you please answer any
6 questions Mr. Mauldin has for you?

7 **THE WITNESS:** Sure.

8 CROSS-EXAMINATION

9 BY MR. MAULDIN:

10 **Q** In the bag in question here today, you said
11 about 45, 50 dollars, somewhere in that area value.
12 How much did he pay for the groceries he did pay
13 for?

14 **A** I don't recall that.

15 **Q** Okay. You don't recall that.

16 And you said in the bag with the frozen items
17 was also a bag of trail mix?

18 **A** Correct.

19 **Q** And you weren't in the store. You didn't see
20 what happened inside of the store?

21 **A** I did not.

22 **Q** And -- and you didn't request a video of
23 anything in the store?

24 **A** I did not.

25 **Q** And when you first went to the store, you

1 talked to Mr. Lewis first, right?

2 **A** I did.

3 **Q** And based off of what he told you, you didn't
4 -- you weren't going to arrest Mr. Graham at that
5 time?

6 **A** Not at that time.

7 **Q** Okay. But what he told you was similar to what
8 he testified in court to today; is that right?

9 **A** Correct.

10 **Q** So based off of what he said today, you didn't
11 think you were going to arrest Mr. Graham?

12 **A** I hadn't made that decision yet. I had made my
13 decision after I finished speaking with Mr. Graham.

14 **Q** So he'd hardly be a video if what he said, you
15 didn't take it to arrest Mr. Graham?

16 **A** Would he be on video?

17 **Q** No. You said he would be the video, because
18 that's why you didn't ask for it. But you said
19 after what he told you, you weren't going to arrest
20 Mr. Graham until after you talked to Mr. Graham. So
21 you weren't going to take his word and arrest
22 Mr. Graham.

23 **A** I was going to take it into consideration along
24 with Mr. Graham's story.

25 **Q** But you still didn't request for the video; is

1 that right?

2 **A** That's right.

3 **Q** And you didn't have a body cam either to
4 record, though. You weren't equipped with one?

5 **A** Right.

6 **MR. MAULDIN:** No further questions, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. YOUNG:

9 **Q** If Mr. Graham had told you something that would
10 have given you great pause as to whether or not to
11 believe he had taken those items from the seafood
12 counter display area and placed them in that bag, if
13 he had given you -- what he told you had given you
14 great cause and pause at that point, would you have
15 requested a video?

16 **A** Possibly, yeah. I would probably ask for
17 another officer to come stand by while I viewed the
18 video.

19 **MR. YOUNG:** Okay. I have no further questions.

20 **MR. MAULDIN:** I've got one, Your Honor.

21 **THE COURT:** All right. Go ahead.

22 RECROSS-EXAMINATION

23 BY MR. MAULDIN:

24 **Q** What on earth could he have said to make you do
25 that?

1 **A** He stated that he wanted to see if --

2 **Q** No, I didn't ask what he did say. I said what
3 could he have said that would make you want to
4 request a video?

5 **A** I'm not sure.

6 **MR. MAULDIN:** Okay.

7 **THE COURT:** You can step down.

8 **THE WITNESS:** Thank you.

9 **MR. YOUNG:** State rests.

10 **THE COURT:** All right. Talk to the lawyers
11 real quick.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 **THE COURT:** I want to put on the record, both
16 parties reserve their right to make their motions
17 after the State's case. We're going to hear those
18 after the testimony is taken, okay. So everybody's
19 protected in the motions they have a right to make
20 right now, but we're going to move on with the
21 testimony to try to get that done before lunch.

22 All right. We're going to take -- the State's
23 provided their testimony. Y'all are going to
24 present some evidence?

25 **MR. MAULDIN:** Yes, Your Honor.

1 **THE COURT:** All right. The defense is going to
2 present their testimony and evidence of their
3 choosing. Then we'll probably take a lunch break
4 and then we'll put the case together after lunch and
5 let y'all begin your deliberations then. But until
6 then, you can take a break now. You still can't
7 discuss the case because you haven't received
8 anything.

9 All right. Mr. Mauldin.

10 **MR. MAULDIN:** Thank you, Your Honor. At this
11 time, the defense would call Yul Graham.

12 We might need to have a quick side bar, Your
13 Honor.

14 (The defendant leaves the courtroom.)

15 (Whereupon, a bench conference was held off
16 the record, in the presence of the jury, but out of
17 the hearing of the jury.)

18 **THE COURT:** That kind of solves the problem for
19 me. I can put the motions on the record.

20 Y'all step in the jury room. Have you back in
21 here in just a couple minutes and then I'll have you
22 back in here and finish the testimony. Can't
23 discuss the case quite yet.

24 (The jury retires to the jury room.)

25 **THE COURT:** All right. Let's stand at ease for

1 a minute until Mr. Graham gets back in here.

2 **MR. MAULDIN:** He has diabetes.

3 (Pause.)

4 **THE COURT:** Since he's back in the courtroom,
5 Mr. Mauldin, you want to go ahead and do your
6 motions?

7 **MR. MAULDIN:** Certainly, Your Honor. At this
8 time, Your Honor, on behalf of Mr. Graham, I'd move
9 for a directed verdict. Taking the evidence in the
10 light most favorable to the State, there hasn't been
11 a case to submit to the trier of fact. Request
12 dismissal of the charges.

13 **THE COURT:** All right. And the State's
14 provided enough facts, in the light most favorable
15 to them, to at least create a question of fact for
16 the jury to consider. So the Court would
17 respectfully deny that.

18 All right. Let's talk to Mr. Graham.

19 Mr. Graham, we waited for you to come back.
20 You've got a right to testify; you don't have to.
21 It's your decision solely. Mr. Mauldin can give you
22 advice and tell you the pros and cons, the benefits
23 to detriments. But you are the one who gets to make
24 the decision on whether you wish to present
25 testimony or not. Have you had enough time to speak

1 with Mr. Mauldin about that?

2 **DEFENDANT:** No, sir.

3 **THE COURT:** You have not? Why not?

4 **DEFENDANT:** I'd like to speak to him now.

5 **THE COURT:** And I'm going to let you do that.

6 You speak to him now. I'm going to ask you, are you
7 comfortable? Because if you don't testify, the last
8 thing I'll tell the jury is, ladies and gentlemen of
9 the jury, you may not even discuss, during your
10 deliberations, Mr. Graham's decision to exercise his
11 right to remain silent, can't even talk about it in
12 the jury room. You've got to consider the case,
13 guilt or innocence, on what the State's presented.

14 And the other procedural advantage to that is
15 Mr. Mauldin will be the last one to speak to the
16 jury if you choose to not present any evidence in
17 the case. So talk to Mr. Mauldin right now.

18 (Pause.)

19 **THE COURT:** Mr. Mauldin, Mr. Young has more or
20 less conceded that the 2007 shoplifting is too
21 remote and would probably lose on a 403 analysis.

22 **MR. MAULDIN:** Yes, sir.

23 **THE COURT:** And him being hesitant in that
24 would indicate or give me a strong lean that I would
25 not allow that. He's not going to offer it. So if

1 that helps with your discussion --

2 **MR. MAULDIN:** Well, if he's conceded, Your
3 Honor, I will graciously accept that concession.

4 **THE COURT:** All right. He has so you can
5 continue your conversation.

6 **MR. MAULDIN:** Thank you, sir.

7 (Pause.)

8 **MR. MAULDIN:** Your Honor, we're ready to
9 proceed.

10 **THE COURT:** All right. Does anybody else need
11 a restroom break?

12 (There was no response.)

13 **THE COURT:** All right. Bring in the jury.

14 (The jury returns to the courtroom.)

15 **THE COURT:** All right. Mr. Mauldin.

16 **MR. MAULDIN:** Thank you, Your Honor. At this
17 time, the defense will call Yul Graham.

18 **THE COURT:** All right. Mr. Graham, come around
19 and be sworn.

20 YUL GRAHAM,
21 having been duly sworn, testified as follows:

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

24 **THE WITNESS:** Yul Graham, G-r-a-h-a-m.

25 *****

1 DIRECT EXAMINATION

2 BY MR. MAULDIN:

3 Q Hey, Mr. Graham. How old are you?

4 A Forty-eight.

5 Q Okay. And June of 2015, where were you living
6 in the county?

7 A At [REDACTED] -- [REDACTED] Holland Street.

8 Q Okay. Is that in West Columbia?

9 A Yes, sir.

10 Q And on that Sunday morning back in June of
11 2015, why were you going to the Bi-Lo?

12 A No. At that time, I was living at -- excuse me
13 -- at that time, I was living at [REDACTED] Wessinger
14 Street.

15 Q But that's still in West Columbia, right?

16 A Yeah, that's still in West Columbia.

17 Q Okay. Why were you going to the Bi-Lo that
18 day?

19 A It was Father's Day. I was going to go get
20 some rice and other stuff to go with dinner. I was
21 cooking chicken and rice and vegetables.

22 Q And how did you get to the Bi-Lo?

23 A I drove.

24 Q Okay. Anybody go with you?

25 A No.

1 **Q** Okay. All right. And when you went to the
2 Bi-Lo, why did you pick a motorized buggy instead of
3 a regular buggy?

4 **A** Because at the time, I was barbering and I was
5 standing up all week and my feet be hurting. I have
6 diabetic nerve pain and -- well, neuropathy and my
7 legs and my feet they hurt. So when I go in a
8 store, I know I'm going to be doing a bunch of
9 walking around, I just get on the buggy.

10 **Q** And when you got to that buggy, what did you
11 see?

12 **A** The buggy was out there, it was early in the
13 morning. Like Officer Yarborough, and I call him
14 Mr. Wallace, like they stated, it was about nine,
15 ten o'clock and I came into the store and the buggy
16 was empty. I seen a bag in a regular shopping cart.
17 So I touched it, but I didn't look in it. I just
18 put it in the buggy and I started riding around. So
19 when I got --

20 **Q** Well, why did you do that? Why did you --

21 **A** I just figured somebody left their bag. So I
22 was, like, oh, somebody left their bag. It's
23 happened before that you go to the grocery store,
24 people leave sodas under the cart out in the parking
25 lot and stuff like that. So I seen the bag. I said

1 -- you know, I just put it in the cart. I proceeded
2 on into the store. I seen Mr. Wallace.

3 **Q** Who's Mr. Wallace?

4 **A** The gentleman right there in the white shirt.
5 I call him Mr. Wallace. His name tag says Wallace
6 on it.

7 **Q** Okay. All right.

8 **A** So -- that's what I thought. He's shaking his
9 head no, but that's what I always assumed.

10 So he looked like he was stocking shelves and
11 stuff or doing something on the aisle. I came up --
12 when you come into the store, like they showed all
13 of the vestibule pictures, when you go into the
14 Bi-Lo, you go straight past the vegetables and the
15 produce part and then when you turn at the end, you
16 ride past all these freezers and different counters.
17 And so I was doing that when I noticed him. And I
18 said, Hey, where's the yellow rice? And he said,
19 It's on aisle so and so.

20 I forget the aisle number. So I proceeded to
21 go down that aisle and I got that. I got the yellow
22 rice. I went to get string beans. And my wife
23 called me. I answered the phone. She said, Don't
24 forget the water.

25 So I got a case of water and then I proceeded

1 to the checkout and I paid for those items. And
2 then when I left --

3 Q Okay. When you were at the checkout, this
4 buggy has, like, a cart part in the front of it?

5 A It's a big -- like this desk, it's a big basket
6 in front of you and you sit down like I'm in the
7 chair. It's like I'm riding the buggy now.

8 Q And this bag that you picked up in the store,
9 it was in the bag {sic} right there on --

10 A It was in the buggy, like the rest of my stuff
11 was in the buggy.

12 Q And you went through the checkout line with the
13 checker right there with that bag on the cart?

14 A Yeah. It was a cashier ringing the stuff out
15 of the buggy and it was a bag guy in front of the
16 buggy. And the bag guy was bagging up the stuff
17 that the cashier was ringing up.

18 Q Okay. And they were there, they could have
19 seen the -- would they have been able to see the bag
20 in your buggy?

21 A Yeah, the bag was clearly in the buggy.

22 Q Okay. And they let you ride through the
23 cashier line after you paid; is that right?

24 A Yes, sir.

25 Q Okay. All right. And when you were leaving,

1 what happened next?

2 **A** After I came out, I was going through the --
3 getting ready to go through the vestibule, when I
4 got -- crossed the doors, I noticed Officer
5 Yarborough and Mr. Wallace. I don't know his name;
6 I call him Mr. Wallace. I noticed the store manager
7 and the officer standing there and they stopped me
8 and he asked me --

9 **Q** He who?

10 **A** The store manager asked me about the bag in the
11 buggy. And I told him, I said, Well, the bag was in
12 the buggy already. And I told him -- during our
13 conversation, I told him, I said, I know you from
14 Garners Ferry. Because that's where the barbershop
15 is at. It's JR's Barber Salon on Garners Ferry
16 Road; I work there. And I remember him because we'd
17 go get lunch next door, and I remembered him from
18 there.

19 And we went on talking. He said, Well, you
20 don't have a receipt? I said, No, I don't have a
21 receipt. I said, This bag was already in the buggy.

22 **Q** At any point in time, did you offer to pay for
23 the items?

24 **A** Yeah. I told him, I said, Well, if it's such a
25 big deal, I'll go ahead -- he said he was going to

1 call the cops. So I was like, For a bag that was
2 already in the buggy? I said, I'll just go ahead
3 and pay for it.

4 I didn't even know what it was. I was like it
5 couldn't be that much. I said, I'll go ahead and
6 pay for it. And, you know, it being a Sunday, I'd
7 just worked all week.

8 Q And you had some money on you?

9 A Yeah.

10 Q And you paid for the items -- other items that
11 were in your cart; is that right?

12 A Yeah.

13 Q And did you say anything about getting over on
14 anybody or anything like that?

15 A No. I told them it wasn't my job to turn that
16 bag in. I said if -- I don't think that's my
17 responsibility. I mean, if you're Honest Ed, then
18 you do that then, but I'm not.

19 Q So were you intending to steal anything from
20 the store?

21 A No. I told them that. I said, I'm not
22 intentionally trying to steal nothing from you.
23 I'll go ahead and pay for it. I said, But the bag
24 was already in another cart.

25 Q Well, were you going to keep the bag or -- I

1 mean, what were you going to do with it?

2 **A** I was -- I'll be honest, I was going to keep
3 the bag. I didn't know what was in it, but I was
4 going to check it. And come to find out, it was
5 stuff in there I don't even eat.

6 **Q** Well, why don't you eat that stuff?

7 **A** I don't eat seafood and I never had crawfish.

8 **MR. MAULDIN:** No further questions.

9 **THE COURT:** Mr. Young, cross-examination.

10 **MR. YOUNG:** Beg the Court's indulgence for just
11 a moment.

12 (Pause.)

13 CROSS-EXAMINATION

14 BY MR. YOUNG:

15 **Q** Just so I get -- just so I get your version
16 straight, your testimony was that you said you
17 crossed the door and you noticed the officer and the
18 manager standing there, right?

19 **A** Yeah. They were there when I came past the
20 checkout line. Their version of the story was --

21 **Q** Wait a minute.

22 **A** Okay.

23 **Q** That's question one. Question two is why would
24 you then testify that, who you call, Mr. Wallace was
25 going to call the cops?

1 **A** He said that.

2 **Q** Well, cops are already there --

3 **A** In the store. No, he said that in the store.

4 **Q** What?

5 **A** He said that in the store. He confronted me in
6 the store before I even went through the checkout.

7 He said, What's that bag? I said, The bag's been
8 here. He said, Okay.

9 When I asked him where the yellow rice was at,
10 he asked me about the bag in the cart. When I came
11 cross the cashier line, they were already out there.

12 **Q** When you came to the cashier line, they're
13 waiting for you in the vestibule?

14 **A** They were already in the vestibule.

15 **Q** He didn't follow you into the vestibule?

16 **A** No, he didn't follow me in the vestibule. He
17 confronted me about that bag when I asked him where
18 the yellow rice is at.

19 **Q** And his name tag says Wallace?

20 **A** That's what I thought it said.

21 **Q** You thought it said?

22 **A** I been knowing that man for years. He can
23 testify to that. He know me from Garners Ferry and
24 he know me from West Columbia. And the little white
25 tag with the red writing on it always said -- I

1 thought it said Mr. Wallace. That's why when you're
2 saying his name now, I was like, damn, who's that?

3 Maybe I was mistaken. Apparently I was since
4 that isn't his name.

5 **Q** Well, maybe you're mistaken about other things?

6 **A** No, I'm not mistaken about anything. I
7 remember this day clearly because it was Father's
8 Day. I went to jail. My family was -- the whole
9 weekend was just ruined.

10 **Q** Okay. So your version is is that you go into
11 this store, you choose a motorized cart, it's got a
12 basket in front of it, and in the basket is already
13 this bag?

14 **A** No. The bag was in another push shopping cart.

15 **Q** Oh, it wasn't in the basket?

16 **A** I put it in the basket.

17 **Q** So you went over to a push cart shopping cart
18 and picked up a bag of seafood and put it into
19 your --

20 **A** No. I picked up a bag that I didn't know what
21 was in it and put it into the riding buggy.

22 **Q** So did you notice at the time you picked it up
23 whether it was cold to the touch or not?

24 **A** No. I just picked it up by handles. It was
25 tied.

1 Q Okay. You're not the one that tied it?

2 A No.

3 Q And you're not the one that looked for a
4 receipt either, did you?

5 A No, I didn't.

6 Q Okay. So you thought this was somebody else's
7 property?

8 A No. I just thought somebody had forgot the
9 bag.

10 Q You thought it was something that somebody
11 forgot?

12 A Yes.

13 Q Was it your property?

14 A No.

15 Q Did you pay for that item?

16 A No.

17 Q You chose to take it anyway?

18 A Yeah. That's like if you was walking down the
19 street and you seen ten dollars on the ground, you
20 going to turn around and say, oh, who dropped this
21 ten dollars? That's all I was doing that day, man.
22 It wasn't --

23 Q You didn't point out to anyone that this was
24 their property? Like it was still perhaps Bi-Lo's
25 property?

1 **A** No. When he confronted me about the bag, I
2 told him --
3 **Q** You just need to answer my question. If I ask
4 it, then you can answer it. Let me ask it.
5 **A** Okay.
6 **Q** You chose not to approach anyone in the store
7 that someone had left property?
8 **A** I chose not to do that.
9 **Q** You chose not to do that. You chose not to
10 point out that it contained frozen items?
11 **A** I didn't know what it contained. Like I said,
12 I didn't look in the bag.
13 **Q** And you chose to take it through the store and
14 out of the store?
15 **A** I did.
16 **Q** That's your version.
17 How much money did you have on you?
18 **A** On me? About 470-something dollars.
19 **Q** 470-something dollars?
20 **A** Yes, sir.
21 **Q** So you had adequate money to pay for
22 everything, right?
23 **A** Yes, sir.
24 **Q** But if you did get out that door without paying
25 for it, you'd be getting one over on them, wouldn't

1 you?

2 **A** No, sir.

3 **Q** You wouldn't be getting one over on them?

4 **A** No.

5 **Q** Would you be getting one over on the person
6 that supposedly left that bag?

7 **A** I don't look at it like that.

8 **Q** Describe this bag for me now when you pick it
9 up. Has it got some weight to it?

10 **A** Not really.

11 **Q** Not much weight.

12 **A** Not much weight at all --

13 **Q** Lumpy?

14 **A** Pardon me?

15 **Q** Lumpy? Has it got, you know, you can tell
16 there's stuff --

17 **A** It was a tied supermarket bag, and you can pick
18 it up with one hand and drop it in the buggy. It
19 wasn't much weight to it --

20 **Q** Was there anything in that bag?

21 **A** Excuse me?

22 **Q** When you picked it up, could you tell there was
23 something in the bag?

24 **A** Yeah, there was something in the bag.

25 **Q** So if a person is standing there looking at a

1 bag that's flat lying on a cart and a bag that was
2 full of something --
3 **A** Full of something, that's a difference.
4 **Q** Yeah, right. So could you tell from looking at
5 it, there was something in it?
6 **A** Yeah.
7 **Q** So if a person was looking in a bag, like you
8 had, that you say you put in from one cart to
9 another in the Bi-Lo, they could see there was
10 something in it?
11 **A** Exactly.
12 **Q** Okay. Okay. So you deny being on the seafood
13 aisle at all?
14 **A** No, because when you come in the store, you go
15 straight and then you turn right. And all of the
16 seafood counters go all the way down the thing until
17 you get to the dairy and the hot dogs and --
18 **Q** So you went past it?
19 **A** No. I seen him and I asked him --
20 **Q** Just wait a minute. Wait a minute. I want you
21 to answer my question and I want to you to answer it
22 directly. Answer the question, did you go past the
23 seafood aisle or not, yes or no?
24 **A** Yeah, I passed it.
25 **Q** You went in front of it?

1 **A** I was driving down and I went down the aisle
2 that he was on. He was --
3 **Q** Sir, answer my question. Did you pass the
4 seafood aisle or not?
5 **A** I did.
6 **Q** All right. Did you pass in front of it --
7 **A** I did.
8 **Q** -- so that you could see what was inside?
9 **A** No, because I seen him. I know where the stuff
10 is at. I seen him and I asked him where the yellow
11 rice was at. So I turned the buggy and went to the
12 aisle he told me it was on.
13 **Q** Did at any point --
14 **A** I went past the seafood counter, if that's what
15 you're trying to get to --
16 **Q** Sir, I'm going to ask another question, see if
17 you can answer this one. When you went down or past
18 the seafood aisle, did you stop at any point?
19 **A** I did.
20 **Q** You did stop on the seafood aisle?
21 **A** I stopped and talked to him.
22 **Q** Okay. Did you open any doors?
23 **A** No, I didn't.
24 **Q** You opened no doors?
25 **A** No, I didn't.

1 **Q** Yet, you clearly saw Mr., who you call, Wallace
2 there on that aisle?

3 **A** He was on a grocery aisle. The seafood cases
4 that he explained to you are these big freezers that
5 go down the back of the store. He was on a side
6 aisle stocking or marking groceries. He was on a
7 grocery aisle. I spoke to him. He spoke to me. I
8 asked him where the yellow rice was at. He directed
9 me there, that's where I went.

10 **Q** And at no time, did you tell him that you had
11 purchased what was in that bag at Garners Ferry?

12 **A** No. He asked me about the bag --

13 **Q** I asked you a question.

14 **A** No, I did never tell him that.

15 **Q** Yes or no?

16 **A** No.

17 **Q** No, you did not tell him that?

18 **A** I did not tell him that.

19 **Q** And you did not say to anyone that you were
20 trying to get something over on --

21 **A** No, sir!

22 **Q** -- the store or Mr. Wallace or whoever?

23 **A** No, sir.

24 **Q** Neither of those statements occurred?

25 **A** No, sir.

1 Q At all?

2 A At all.

3 Q At any time you were present --

4 A I told him I remember --

5 Q At any time you were present in the store?

6 A I told him I remember him from Garners Ferry.

7 MR. YOUNG: I don't have any further questions.

8 THE COURT: All right. Anything else,

9 Mr. Mauldin?

10 MR. MAULDIN: No, Your Honor.

11 THE COURT: You may step down.

12 MR. MAULDIN: Your Honor, at this time, the
13 defense would rest.

14 THE COURT: Very well.

15 Mr. Young, do you want to place anything in
16 rebuttal?

17 MR. YOUNG: Briefly.

18 THE COURT: All right. Let's get that done
19 then. We're going to hold the motions till the --
20 at the end of the State's case, as well as the end
21 of the defense case. We'll consider those at the
22 end of the rebuttal testimony. Everybody's
23 protected, both sides.

24 MR. YOUNG: I understand, Your Honor. We'll
25 recall Mr. Irving Lewis.

1 **THE CLERK:** Mr. Lewis, you're still under oath.

2 **THE WITNESS:** Yes, ma'am.

3 IRVING LIONEL LEWIS,

4 having been previously duly sworn, resumed the

5 witness stand and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. YOUNG:

8 **Q** Mr. Lewis, you came dressed for work today?

9 **A** Yes, sir.

10 **Q** Do you have your badge with you?

11 **A** Yes, sir.

12 **Q** Hand it to me.

13 **A** (Witness complies.)

14 **Q** Mr. Lewis, what does -- what does your badge
15 say on the outside of it?

16 **A** Irving.

17 **Q** Okay.

18 **A** It says Bi-Lo, and it has Irving. And then it
19 has the time when I started the company, 1982 -- I'm
20 sorry -- '89.

21 **Q** Where do you wear it?

22 **A** I wear it on my shirt right here.

23 **Q** Would you put it on your shirt as you would
24 have worn it on that day?

25 **A** (Witness complies.)

1 **Q** Thank you.

2 Mr. Lewis, tell me how you get to the seafood
3 aisle?

4 **A** Typically, when you enter the store, way
5 Mr. Graham did, you would walk straight down to the
6 seafood aisle. Typically, to walk around to the
7 counters to where I saw him, you would go to the
8 left. You'd go through deli/bakery. Then you go
9 through produce. You'll turn the corner and then
10 there's the six doors to the seafood counter.

11 **Q** Okay. And when you first encountered him, is
12 there any doubt in your mind to where you saw him?

13 **A** No, sir.

14 **Q** Okay. And did you approach him at any time and
15 speak with him?

16 **A** No, sir. I never approached him and never
17 spoke to him.

18 **Q** At any time, did he approach you and tried to
19 speak with you?

20 **A** No, sir, he didn't. I don't think he saw me at
21 all.

22 **Q** Okay. At any time -- of course -- was your
23 first opportunity to speak with him when you had the
24 encounter with him in the exterior area?

25 **A** Yes, sir.

1 **Q** And that would be in the vestibule?

2 **A** That would be in the vestibule.

3 **Q** Was Officer Yarborough present at that time?

4 **A** No, sir. He was -- Officer Yarborough was
5 called -- we called the police department after I
6 asked him about the receipt and he couldn't present
7 it.

8 **Q** Okay. Now, I'm going to ask you this question:
9 Can you describe when you saw the bag that the
10 seafood in question was -- in which it was placed,
11 can you tell me about the bag? Did you see it
12 before he placed seafood in it?

13 **A** Yes, sir. I was making my rounds around the
14 store when I observed the empty bag in the cart, and
15 then I kind of just, from a distance, watched him,
16 that's when I observed him going to the seafood
17 counter.

18 **Q** Sir, when you say empty bag, what is an empty
19 bag -- what did it look like in that situation?

20 **A** It was a bag laying on the counter. I can show
21 you a bag if you need it, but it's just a plain
22 empty bag, white bag.

23 **Q** Does it lay flat?

24 **A** It lays flat.

25 **Q** When you first saw it, was there anything

1 apparently in it or not?

2 **A** It was clearly empty.

3 **Q** It was flat?

4 **A** Flat.

5 **MR. YOUNG:** Your Honor, I have no further
6 questions.

7 **THE COURT:** Anything, Mr. Mauldin?

8 CROSS-EXAMINATION

9 BY MR. MAULDIN:

10 **Q** You made a little mistake about your badge
11 there today, didn't you?

12 **A** Just on the years because I worked with a
13 sister company and those times do tie in.

14 **Q** Doesn't mean you're a liar, though?

15 **A** No.

16 **MR. MAULDIN:** Okay. Thank you.

17 **THE COURT:** All right. You can step down.

18 **MR. YOUNG:** The State has nothing further in
19 rebuttal, Your Honor.

20 **THE COURT:** All right, folks, I think it's a
21 good time for lunch. What I'm going to do is I'm
22 going to let you go to lunch till -- can you be back
23 in the jury room by two o'clock? We'll try to get
24 started at two o'clock sharp. I should have the
25 lawyers organized and ready to go for their closing

1 summaries, as well as my instructions, but until you
2 get all that, you're not allowed to discuss the
3 case.

4 Enjoy your lunch. We'll see you back here,
5 hopefully, in the courtroom at 2:00, so be back
6 before 2:00.

7 (The jury was excused for lunch.)

8 **THE COURT:** All right. We'll stand at ease
9 until 2:00. Jacob was asking me about the
10 instructions. There's three shoplifting potential
11 instructions. Do y'all have a request for anything
12 other than a general one?

13 **MR. YOUNG:** Judge, the only thing I know is
14 there's certain portions of the statutory provisions
15 that would be applicable here. I intend to, at some
16 point in my close, argue about that. And then
17 there's the inference that arises under the separate
18 statute about concealing. Those are the only two I
19 think that need to be addressed in my view, in
20 addition to whatever else the general instructions
21 would be. I intend to cover those in my close. And
22 -- it's a permissible inference based upon the
23 concealment and I intend to cover that in my
24 closing.

25 **THE COURT:** Anything particular for you,

1 Mr. Mauldin?

2 MR. MAULDIN: Well, I think they charged him
3 under (A)(1), I think, on that.

4 THE COURT: Everything else is just a standard
5 charge other than that statute.

6 MR. MAULDIN: Right. I would object to the
7 inference charge, that it's an improper charge on
8 the facts. And, furthermore, I don't think that the
9 facts in the case support it in that he had the bag,
10 it was right there on top of the cart, he went
11 through the checkout line and there was no -- it
12 wasn't concealed, it was out in the open. Mr. Lewis
13 testified that he saw the bag out in the open, the
14 bag was out in the open the whole time, it wasn't
15 concealed at all.

16 So, number one, it's an impermissible charge on
17 the facts and, two, the facts here in this case
18 don't require that charge. They weren't hidden in
19 his pants. They weren't, you know, concealed in any
20 way to that effect.

21 MR. YOUNG: Your Honor, if I could, I'd like to
22 address that point. The statute reads, It is
23 permissible to infer that any person, and I'm
24 speaking of 16-13-120, That any person willfully
25 concealing unpurchased goods or merchandise of any

1 store -- I'm cutting through the verbiage -- Either
2 on the premises or outside the premises of the store
3 has concealed the article with the intention of
4 converting it to his own use without paying the
5 purchase price thereof within the meaning of section
6 16-13-110.

7 It is also permissible to infer that the
8 finding of unpurchased goods or merchandise
9 concealed upon the person or among the belongings of
10 the person is evidence of willful concealment.

11 Part of -- part of the law provides that you
12 can transfer any merchandise displayed, held, stored
13 or offered for sale by any store or other mercantile
14 -- or retail mercantile establishment from the
15 container in which it's displayed to any other
16 container with the intent to deprive the merchant of
17 the full retail value.

18 Whether alleged or not within the indictment,
19 Your Honor, that is the statement of law in this
20 state and I see no basis in which the State could
21 not argue from the premise of concealment as giving
22 a rise to an inference.

23 **THE COURT:** I'm going to think about that.
24 Inference is -- the facts could support it. I do
25 not want to comment on the facts, but I may consider

1 giving that inference since it is in the statute.

2 All right?

3 **MR. MAULDIN:** The statute could be wrong, Your
4 Honor.

5 **THE COURT:** Could be, but it's the statute
6 right now, so it may be -- it may be the statute I
7 charge.

8 **MR. YOUNG:** I didn't write it.

9 (Pause.)

10 **MR. YOUNG:** Your Honor, I just want to make
11 sure I don't argue contrary to instruction.

12 **THE COURT:** I'll tell y'all when I get back
13 here just before 2:00. We're going to go eat real
14 quick.

15 **MR. MAULDIN:** Your Honor, it is a general
16 charge on intent. I think there's a specific intent
17 that's in this case to deprive the store of the
18 value of the merchandise.

19 **MR. YOUNG:** I think that's right. I think that
20 is correct.

21 **THE COURT:** All right. See y'all back a few
22 minutes till 2:00.

23 (Whereupon, there was a luncheon recess.)

24 **THE COURT:** I'm kind of inclined to give the
25 inference charge out of the statute.

1 **MR. MAULDIN:** I still maintain my objection to
2 that. I object and take an exception now.

3 Your Honor, you allowed us to reserve the right
4 to renew the directed verdict motion after the State
5 had finished its reply and obviously after the
6 defense closed its case and after reply. We do
7 renew our motion for a directed verdict on the
8 grounds previously stated and based on all motions.

9 **THE COURT:** Absolutely. All grounds are
10 protected and preserved and --

11 **MR. YOUNG:** Your Honor, one small matter.

12 **THE COURT:** So your directed verdict is
13 respectfully denied.

14 Yes, sir.

15 **MR. YOUNG:** I'm sorry. I didn't mean to
16 interrupt.

17 **THE COURT:** I just hadn't fully ruled.

18 **MR. YOUNG:** Bag, I intend to use this during my
19 close as demonstrative evidence only.

20 **MR. MAULDIN:** I just say it wasn't introduced
21 in evidence at trial, Your Honor. We object. The
22 bag was described at trial.

23 **THE COURT:** I'm going to allow it. I don't see
24 that it's unduly prejudicial. The bag was talked
25 about by everyone. It's probative, but it's not

1 going back to the jury room.

2 **MR. YOUNG:** And it's ubiquitous, Your Honor.
3 These are the most common items on the planet earth.

4 **THE COURT:** I mean, that and a Kleenex.

5 **MR. MAULDIN:** And, Your Honor, when things do
6 go back to the jury room, they did give you a copy
7 of the redacted indictment versus the original
8 indictment?

9 **THE COURT:** Yes. And I've got the redacted
10 indictment. Ms. Frick already has it. She's the
11 one that redacted it and that's what I'm going to
12 use. Is that okay? You can see if you like.

13 **MR. MAULDIN:** I've seen it, Your Honor, but I
14 just want to make sure that the original indictment
15 doesn't go back.

16 **THE COURT:** Ms. Frick is a step ahead of you.

17 **MR. MAULDIN:** Okay. And, finally, Your Honor,
18 you know, that new case that came out in December of
19 Beatty, we would require that the State open on the
20 facts and the law.

21 **THE COURT:** They will. Mr. Young will be glad
22 to do it. He practiced law way back when that was
23 the rule first.

24 **MR. MAULDIN:** He was JAG back then, Your Honor.

25 **THE COURT:** He'll argue consistent with Beatty.

1 He'll open fully.

2 **MR. YOUNG:** I'll discuss both the law and the
3 inference on the law and then shut up, sit down and
4 come back to that later.

5 **THE COURT:** You've got to go over the facts,
6 too, is what he's saying.

7 **MR. YOUNG:** Yeah, the facts that support.

8 **THE COURT:** But you've got to open in full
9 rather than just on the law.

10 **MR. YOUNG:** I understand.

11 **THE COURT:** I thought you understood what I
12 said.

13 (The jury returns to the courtroom.)

14 **THE COURT:** We're ready for the parties to give
15 their closing summaries, then I'll give you my
16 instructions on the law and then you can begin your
17 deliberations after that time. So give your
18 attention to Mr. Young.

19 CLOSING ARGUMENT

20 **MR. YOUNG:** Folks, before I go into the meat
21 and potatoes of what I'm going to say, I want to
22 thank you for your attention. It's often that
23 sometimes the jurors don't pay attention and y'all
24 did. Thank you.

25 With regard to what we must do at this point,

1 Your Honor -- excuse me -- ladies and gentlemen, I'm
2 responsible for this point to open on what we call
3 the facts and the law. That means I've got to
4 explain my version of the facts of what I have and
5 how it satisfies the terms of the law that is before
6 you and the Judge will instruct you on.

7 We have before you Mr. Irving Lewis, his name's
8 not Wallace, and we have before you Mr. Chris
9 Yarborough. These are the sources of facts that
10 came from that witness stand that the State's
11 relying on.

12 What we have is, essentially, Mr. Irving Lewis
13 saying that he saw a gentleman with a flat bag enter
14 his store, one of these {indicating} kind of bags
15 that you find just about anywhere you go. He had it
16 in his cart. Then he saw him go over to a place
17 that sells seafood in his store which has doors that
18 you have to open. And he opened the door and he
19 removed some seafood items and placed it in that
20 bag.

21 Now, at this point, I would point out to you
22 that in our state, shoplifting would cause --
23 requires that a person do something associated with
24 taking or carrying away or basically transferring
25 from one area of a store to another. The law talks

1 about that.

2 So, at this point, the State's evidence
3 demonstrates that he picked up some items out of
4 that seafood counter. And if they're the same items
5 that we're talking about when we get to the counter
6 outside in the vestibule area over here, past those
7 doors, past all points of sale, if it's the same
8 item, then we're talking about him taking it from
9 one part of the store to another and he's actually
10 past the points of sale.

11 Now, if he basically transfers this merchandise
12 that's been displayed, and as I've indicated to you,
13 it was in this display case, and it's being offered
14 for sale, if he takes it basically out of that
15 store, he then has demonstrated he's carried it
16 away. He's carried it away because he wants to
17 deprive the person who's offering it for sale, the
18 merchant, the possession, the use or the benefit of
19 that particular item or items without paying full
20 retail value.

21 And the evidence supporting that would tend to
22 indicate, from what we have offered you on the
23 stand, is that the gentleman involved, Mr. Graham
24 over here, not according to his story, but according
25 to what the State has offered you, at that point, he

1 didn't have a receipt for this item. And I -- I
2 think that's actually not in contention. I think he
3 would probably agree he didn't have a receipt for
4 what was in that bag.

5 But his version I think goes along the lines of
6 something like it was just there, I transferred it
7 from out of a cart into my bag and went through the
8 doorway, so to speak. He didn't pay for it. I
9 think all that's kind of an admission.

10 So it's kind of like this: From the very start
11 when we talked about this matter, what's in the bag,
12 that's still the question and that's kind of what
13 you've got to decide.

14 Now, there is an inference that goes along with
15 this. The Judge, when he instructs you on this,
16 keep in mind that this is what we call a permissible
17 inference. When a person gets a permissible
18 inference, a person can take it like it sounds like
19 and say, that's fine, that sounds to me like that's
20 the same thing you're talking about, and infer the
21 -- one fact from another or if there's something to
22 rebut it, he can say, no, I don't have to buy that
23 at all. So it's not like you've got to accept this.

24 A permissible inference is something when the
25 Judge tells you about, you can say, well, I can buy

1 that or I don't have to buy that, so it's a
2 permissible inference.

3 This is something that says that a person in
4 the State of South Carolina who has to consider this
5 matter, It's permissible to, quote, infer that any
6 person willfully concealing unpurchased goods or
7 merchandise in any store or other mercantile
8 establishment either on the premises or outside the
9 premises of the store has concealed the article with
10 the intention of converting it to his own use
11 without paying the purchase price thereof within the
12 meaning of the shoplifting statute that I was just
13 talking about. That's permissible. You can infer
14 that.

15 Now, where would our evidence come from about
16 that? Our evidence would come from the fact that --
17 well, you heard from the stand that this flat bag
18 got filled and got put in this bag -- not this bag,
19 but a bag like this -- it got put in a bag. So,
20 therefore, at that point, you can decide if that was
21 evidence of the attempt to conceal it. Okay? To
22 make it look like something it wasn't.

23 So -- and it's also permissible to infer that
24 the finding of the unpurchased goods or merchandise
25 concealed upon the person or among the belongings of

1 the person is evidence of willful concealment. The
2 way this was accomplished, if you recall, is from
3 the witness stand's testimony. And your
4 recollection, of course, is the one you have to go
5 by not mine. I'm not the person testifying here.
6 I'm trying to recall what the State's evidence is so
7 you'll understand what I'm saying.

8 The evidence was that when Mr. -- when
9 Mr. Graham was observed, he was observed both in the
10 store making the selection of the things he put into
11 the bag, the same bag we're talking about, came
12 through the line and did not take that bag and place
13 it on the belt, did not attempt to pay for it.
14 Okay? That's the testimony that we have. And then
15 when it was found, it was found amongst other items
16 he had paid for. Okay?

17 So, in essence, you can infer or not, depending
18 on you, it's permissible, that these unpurchased
19 goods were concealed upon the belongings that he
20 had, the things he had purchased. The State submits
21 that that's a consideration that you have, something
22 you must take into account.

23 Those are all the factors that the State would
24 offer as to how the evidence would tend to support
25 the elements of the offense before you. And, of

1 course, what you do have in this case is, if you
2 accept the State's version, that this man
3 essentially put stuff in this bag and went through
4 the checkout line, didn't put it on the belt to
5 start with, got outside the door and was confronted
6 at that time and then later confronted with law
7 enforcement and, at some point in time, that
8 existed.

9 I would also submit to you that, at some point
10 in my cross-examination of the defendant in this
11 case, Mr. Graham, that he indicated to you that he
12 had picked up items, an item, transferred it to his
13 buggy. And when he transferred it into his buggy,
14 the one with the motorized compartment -- or
15 motorized part to it, he put it into his motorized
16 buggy. He then went through the checkout line and
17 he knew all along that wasn't his. And it -- it
18 wasn't his and he didn't intend to pay for it.

19 So that may also tie into something the Judge
20 may instruct you on when it comes to the question of
21 intent. Those are issues for you to consider and
22 the State would submit to you that you should
23 consider those matters as to whether or not he had
24 intent at the time to take those items in the first
25 place. Thank you.

1 **THE COURT:** Mr. Mauldin.

2 **MR. YOUNG:** Your Honor, do I still have the
3 opportunity after Mr. Mauldin?

4 **THE COURT:** Sure do.

5 **MR. MAULDIN:** Thank you, Your Honor.

6 Ladies and gentlemen, Mr. Graham is not guilty
7 of a shoplifting. Shoplifting's a specific statute.
8 It's a crime that he's on trial for today. And in
9 that statute, there's a specific intent to deprive
10 the store of their full retail value of their items.
11 And when he went in, he didn't think that he was
12 taking this stuff from the store, he thought that
13 somebody left it and he was going to take advantage
14 of it, just like he said on the stand, like finding
15 money on the sidewalk or something like that, that's
16 what he was going to do.

17 You heard both sides of the story, but the
18 proof here is beyond a reasonable doubt. It's not
19 whether you believe one side just a little bit more
20 than the other, it's beyond a reasonable doubt.
21 It's doubt that leaves you firmly convinced of the
22 defendant's guilt beyond all possibility of the fact
23 that he's not guilty. It's just not that you
24 believe Mr. Lewis a little bit over Mr. Graham, you
25 have to be firmly convinced. And what would do that

1 for you?

2 Well, I think the video would have done that
3 for you, okay. They had it. The officer didn't
4 request it at the time, that would have been easy to
5 do. Mr. Lewis said no one ever requested it of him.
6 And the officer said on the stand that the solicitor
7 requested it of him, but it's not here today and
8 they have no reason why it's not here. But that
9 would leave you firmly convinced.

10 You've got these two sides of the story, you've
11 got Mr. Lewis and Mr. Graham. This happened about
12 one and a half years ago. Mr. Lewis is the manager
13 of the store. I'm sure he's had to deal with
14 umpteens shopliftings since that period of time. And
15 I'm sure Officer Yarborough's had to deal with
16 umpteens shopliftings and umpteens other kinds of
17 crimes during this period of time. But Mr. Graham
18 specifically remembers because it ruined his whole
19 weekend, that whole Father's Day weekend. He would
20 have more opportunity to remember things.

21 One of the things that kind of popped in my
22 mind is the fact of this trail mix they're talking
23 about. Mr. Lewis said that it was an empty bag when
24 he went to the seafood aisle. He put these items
25 in, and he kept eye contact with him except for

1 anytime he turned a corner. How did this trail mix
2 get in there?

3 It was in there because it was in there with
4 the other stuff when Mr. Graham walked into the
5 store and found the bag in the cart that he
6 transferred it to, that's why. He didn't testify
7 about seeing him picking up any trail mix, putting
8 any trail mix in there. So his memory might not be
9 that great a year and a half later. You'd be a lot
10 more certain if you had the video.

11 And Officer Yarborough testified saying, Well,
12 I thought -- I thought Mr. Lewis was the video,
13 that's why I didn't get it. But then he testified
14 that he talked to Mr. Lewis and based on what he
15 said, he didn't think he had enough to arrest
16 Mr. Graham until he started talking to Mr. Graham.
17 If it's not enough for an arrest, how is it enough
18 for a conviction? That's all you've got to go off
19 of.

20 And the solicitor sitting there questioning
21 Mr. Graham, interrupting him, not letting him finish
22 his sentences and making a big deal about getting
23 the name tag wrong. Well, the solicitor was getting
24 Mr. Lewis and Mr. Graham confused. He was calling
25 Mr. Lewis Mr. Graham, Mr. Graham Mr. Lewis in his

1 dictation in questions. Does that make him
2 unreasonable or does that make him a liar just
3 because he had mistake -- mistake something? No, it
4 doesn't.

5 Then he's talking about concealing these items.
6 No one testified that the items were hidden anywhere
7 or anything. They were in a bag right on top of the
8 buggy, went to the checkout line right there with
9 the bag right on top of the buggy in full view of
10 the cashier with the bag right on top of the buggy,
11 full view of the bag boy. They didn't stop him or
12 question him about it; he went straight through.
13 There was no concealing.

14 Payments he's kind of dodgy with, you know, I
15 mean, if somebody left something and he picked it
16 up, but he's not stealing from the store and that's
17 what he's charged with today.

18 And it's up to you to determine the credibility
19 of the witnesses, but, again, the proof is beyond a
20 reasonable doubt and I submit the State has not done
21 that. Thank you very much.

22 **THE COURT:** All right. Mr. Young.

23 **MR. YOUNG:** Thank you, Your Honor.

24 Ladies and gentlemen, I get two bites to talk
25 to you and I appreciate that second opportunity.

1 This -- I want to talk about credibility for a
2 minute and about common sense and about kind of what
3 you're going to be asked to do in a few moments.

4 Been a lawyer a long time, but I've never had
5 the chance to sit where you are because my job is to
6 present evidence and your job is to decide on the
7 truth of it. And they don't trust us lawyers to
8 make these decisions; they trust juries. You're the
9 bedrock of our institution that supports the justice
10 system in the United States of America. It is a
11 bulwark, something brought over from England, and it
12 stayed with us and it stays with us because it
13 works. And this man is entitled, has the very, very
14 important right to be tried by a jury of his peers,
15 the people, you. And you're the only ones that are
16 going to make this decision about who's telling the
17 truth.

18 I started out this whole conversation with you,
19 this whole presentation, with the words that it's
20 important that your verdicts be the truth. It is.

21 **MR. MAULDIN:** Objection, Your Honor; burden
22 shifting.

23 **THE COURT:** Don't shift the burden.

24 **MR. YOUNG:** All we're doing here today is to
25 making a determination of what's the truth for you,

1 that's it.

2 **MR. MAULDIN:** Objection, Your Honor; burden
3 shifting.

4 **THE COURT:** I didn't hear that comment at that
5 time. I was answering another question.

6 **MR. YOUNG:** I made the comment, All we're doing
7 here today is making a determination of what's the
8 truth.

9 **THE COURT:** There was a comment in the Beatty
10 case, just -- they're going to answer the questions
11 of fact, and that's probably a better way to word
12 it.

13 **MR. YOUNG:** I'll change that to the facts,
14 that's it. You're determining what are the facts,
15 what have you heard from the jury {sic} stand from
16 him and from our witnesses, that's it. That's
17 your -- and then you apply the law, that's it. It
18 sounds simple. It's a tough job once you get back
19 there. I'm sure you guys are probably going to
20 debate this a little bit, that's fine.

21 So what is our story and what's his story? And
22 here's the common sense part: The common sense part
23 is you go in a store; according to him, you see an
24 item in another shopping cart and, according to him,
25 it's tied up at the top, it's got stuff in it and

1 you pick it up and you put it in your cart. You
2 never look in it. You never tell a store employee
3 about it. You take it through checkout. You don't
4 offer to put it up on the belt to pay for it. You
5 know it doesn't belong to you. You're not sure what
6 it contains. You don't point out that fact to the
7 cashier. You don't -- and you don't pay for it, but
8 you're going to take it home.

9 And I submit to you, in common sense, that's
10 not the truth, and that doesn't make sense. That's
11 for you to call, that's your determination about the
12 facts in this case. You have to decide what's the
13 truth.

14 **MR. MAULDIN:** Objection, Your Honor; burden
15 shifting.

16 **THE COURT:** That's not. I sustain that -- I
17 overrule that objection. He's arguing proper.

18 **MR. YOUNG:** Now, at the point in time we have
19 to make these calls, Mr. Wallace, sitting over here,
20 Mr. Irving, whose name is apparent, is supposed to
21 have approached Mr. Graham, I believe, in the -- one
22 of the aisles and approached him and had a
23 conversation with him about this bag, and that's
24 where all of this started. That's one version
25 presented by Mr. Graham.

1 He, essentially, at this point, is telling you
2 about the bag, that he doesn't know what it
3 contains. He's having this conversation with
4 Mr. Irving Lewis, not Mr. Wallace, supposedly in the
5 aisle, in the seafood aisle, or near the aisle.

6 This is something that -- this is something
7 that is -- you've got to take in consideration when
8 you consider the fact that he says later, I am
9 confronted in the vestibule area. State's Exhibit 2
10 showing that area through those doors. He has
11 that -- he has that conversation encounter not just
12 with Mr. Irving Lewis, but with Officer Yarborough
13 because they're both there.

14 So, supposedly, the story is, He called the law
15 before I even left through -- got through the
16 cashier line. Okay? There's your common sense
17 question again. Doesn't know anything about it,
18 according to our version, because he's just watched
19 him not pay for it. He doesn't want to approach him
20 until he gets to the vestibule area. That makes a
21 lot more sense than the version you heard from
22 Mr. Graham. And he doesn't call the law because he
23 gives him an opportunity to pay for it. He gives
24 him that opportunity because he wants to know if he
25 does want to pay for it or not. He says, No, I got

1 this over in Garners Ferry.

2 When the bag is opened, he looks in there,
3 there's ice in the bag with the seafood. That's
4 very consistent with something coming out of the
5 cooler just a few minutes before. That's very
6 consistent with having frozen items from a seafood
7 display counter. That's very consistent with what
8 happens later when Officer Yarborough comes in.

9 Officer Yarborough shows up, doesn't know
10 anything about this, hears the version first from
11 this gentleman over here, Mr. Irving Lewis, who
12 says, I saw him do these things, and in fairness,
13 gives him a chance, Mr. Graham, a chance to explain,
14 what's your side of it? That's just -- that's,
15 essentially, what's happening here, given his chance
16 to explain. He did.

17 Now, this man heard him say the same thing that
18 Mr. --

19 **MR. MAULDIN:** Your Honor, at this point, I
20 don't see how this is in reply to any of the
21 arguments that I made.

22 **THE COURT:** Go ahead and wrap things up. This
23 is rebuttal.

24 **MR. YOUNG:** Mr. Irving Lewis' comment is very
25 simple. I heard him say something simple, I'll pay

1 for it then. You heard him say that. But one more
2 thing was said, despite what this gentleman is
3 saying to you, he said, I -- and I don't think
4 Mr. -- I don't think Mr. Irving Lewis heard this; he
5 was a very busy man at that point, a lot of other
6 things going on -- I'm just trying to get one over
7 on him.

8 All of that, ladies and gentlemen, ties back to
9 this topic called intent and what he was really
10 about and what he was trying to do that day. It's
11 your determination to make a conclusion as to what
12 the facts truly are. I very much thank you for your
13 attention.

14 **THE COURT:** All right. Folks, I don't know
15 that I gave y'all a preliminary instruction on the
16 instruction I want to give you, but you saw the
17 lawyers kind of asking questions just then and I'll
18 explain to you what they were doing. December 29th,
19 the Supreme Court issued a case from out of Laurens
20 County, my home circuit, and they changed the way
21 the closing arguments, not the way they were done,
22 but requiring each party to say -- they modified it
23 a little bit.

24 And this is probably the first time either of
25 these lawyers have gone under the new rule. And so

1 the law changes and you've got to adapt to it. And
2 Mr. Mauldin was very kind when he was objecting
3 because everybody's just getting used to the new
4 rule handed down by the Supreme Court.

5 Neither side was doing anything wrong, it's
6 just the way the rules in closings changed, slightly
7 different from the case that came out December 29th.
8 It's something we're all learning to get used to and
9 that's what they were doing. So it's not that they
10 were trying to do anything improper or
11 objectionable, the rules got changed on us, and one
12 of my jobs is to rule on the law as it is.

13 One of my jobs right now is to give you
14 instruction on the law as I currently understand it.
15 So I'm going to start with an explanation that the
16 lawyers were doing that. New rule changed, they're
17 both -- I think -- is this the first trial for each
18 of y'all after Beatty?

19 **MR. YOUNG:** It was, Your Honor.

20 **MR. MAULDIN:** Yes, sir.

21 **THE COURT:** It was making a lot of sense to me,
22 but I want y'all to take notice that there was
23 something odd going on. It's the new rule and
24 that's fine and that's why I gave them both a little
25 bit extra breath of kind of getting used to the new

1 rule. They did fine.

2 I don't want to comment on any of their opening
3 summaries. The summaries are for y'all to take in.
4 Y'all's job, as I told you early on, was to listen
5 closely, take notes, listen to the testimony and
6 evidence.

7 Now, our constitution makes you as a group of
8 12, the fact finders, the judges of the facts. I'm
9 the judge of the law. By being the judge of the law
10 means I've got to make legal rulings, basically
11 called balls and strikes, okay. I make rulings
12 depending on what the rules are, is this allowed or
13 not allowed; testimony, is this allowed evidence or
14 not allowed evidence?

15 And I also get to instruct you on what the law
16 currently is as I understand it. So if you have an
17 understanding of what the law of South Carolina is
18 regarding the offense charged herein that's
19 different from my instruction, you're required under
20 your oath to disregard your misunderstanding and
21 accept as I'm giving it to you because it's my job
22 to give it to you correctly as I understand it.

23 And if I make a mistake in the application and
24 instruction of the law, there's another time and
25 another place that that error can be considered and,

1 if necessary, it can be corrected.

2 For our purposes here today for this trial,
3 we're going to go along with my instructions. It's
4 kind of like a challenge on an instant replay in a
5 ball game or something, we're going to protest this
6 ruling or that ruling and get to play again. You
7 finish the game. So we're going to finish the
8 trial. My replay calls can be decided later by
9 another group.

10 And this is -- the instant replay is what's
11 said. You don't have to look at what happened, you
12 listen to what happened. And that's why we've got a
13 court record, and that's why Ms. Sheppard takes down
14 every single thing that's said.

15 Now, you as a group are the fact finders, the
16 judges of the facts, collectively, all 12 of you.
17 The decision y'all make on the facts will have to be
18 unanimous.

19 Now, I tell you this, that your job as fact
20 finders more or less is considering the
21 believability and credibility of the witnesses who
22 have testified and the evidence received into the
23 case.

24 Now, if you remember, there was very little
25 evidence that was introduced that both sides didn't

1 agree, the pictures and different things.
2 Basically, you've got live testimony. And so it's
3 your job as a group of 12 to evaluate the
4 credibility or the believability of the witnesses
5 who testified in the case. In doing so, you can use
6 anything in your 12 group, collective common
7 experiences and common sense that you do every day
8 when you're determining whether someone is telling
9 you something straight or telling you something
10 that's false, you get to evaluate that. You can
11 consider anything you normally do, such as:

12 How was the witness sitting in the chair? How
13 did they act and appear? Was the witness
14 straightforward in answering? Were they hesitant in
15 answering? Was their testimony consistent with
16 other testimony and other evidence? Would one
17 witness want to have a reason to give help to one
18 side or the other? In other words, were they biased
19 or prejudiced in any way towards one side or the
20 other?

21 You can believe one witness against many, many
22 against one. You can believe part of a witness'
23 testimony and disbelieve the rest. You have to
24 evaluate the believability of all the witnesses'
25 testimony and make a determination on what you

1 believe the facts are. And your decision must be
2 unanimous.

3 Now, in criminal prosecutions such as this, the
4 State has the burden of proving those facts to you
5 to the standard of proof called beyond a reasonable
6 doubt.

7 Now, if the State fails to meet that burden of
8 proof beyond a reasonable doubt, then the State's
9 proof would have failed and so that person accused
10 would have the ability to be found not guilty. And
11 that's your responsibility. If the State doesn't
12 meet its burden of proof, you must find the
13 defendant, Mr. Graham, not guilty.

14 Now, weighing evidence is entirely a mental
15 process. You don't count witnesses on one side or
16 the other. You consider all of the testimony
17 presented. Discuss it, make a determination on what
18 facts you want to believe. It's evidence and
19 testimony which convinces you of its truth. That's
20 your job is to make those determinations.

21 Now, I tell you on most trials, and it happened
22 here today, there are two types of testimony.
23 There's direct testimony -- or direct evidence and
24 circumstantial evidence. Direct evidence is more or
25 less an eyewitness, I smelled, I saw, I watched, and

1 this is the facts that I do and saw. Circumstantial
2 evidence is a little bit different. It's the proof
3 of other facts or a chain of facts and circumstances
4 that point out yet another fact.

5 Now, I tell you that there's no greater degree
6 of proof required of circumstantial evidence than
7 that of direct evidence. You're to consider all of
8 the evidence presented by the parties here whether
9 it be direct or circumstantial and make a
10 determination on what you believe the facts are.

11 Now, to the extent the State relies upon
12 circumstantial evidence, I tell you that all the
13 circumstances must point conclusively to the
14 defendant's guilt and they must fit together
15 logically. So I tell you, again, no matter whether
16 direct or circumstantial evidence, you consider all
17 the evidence and make your determinations
18 unanimously on determining whether or not the State
19 met its burden of proof beyond a reasonable doubt.

20 Now, what's a reasonable doubt? Reasonable
21 doubt is the kind of doubt which would cause a
22 reasonable person to hesitate to act. It's a doubt
23 which can arise from evidence which is in this case
24 or from a lack or absence of evidence in the case.

25 Proof beyond a reasonable doubt leaves you

1 firmly convinced of the defendant's guilt. It's a
2 doubt which you can assign a reason if that reason
3 can be assigned reasonably and convincingly.

4 Now, I tell you that the defendant is in charge
5 -- I mean, is entitled to every reasonable doubt.
6 Thus, if you have a doubt during any part of the
7 proof the State has offered, then you have a
8 responsibility to resolve that doubt in Mr. Graham's
9 favor.

10 Now, the very fact that y'all have a full and
11 free discussion of guilt or innocence does not
12 automatically create a reasonable doubt. A
13 reasonable doubt would cause a reasonable person to
14 hesitate to act.

15 Now, criminal intent's a necessary element of
16 each crime that the State must prove beyond a
17 reasonable doubt. And an intent is always a matter
18 to be determined from the circumstances surrounding
19 the situation. Mathematical calculations can't be
20 used to determine criminal intent nor can a person's
21 brain be dissected to determine what he had in mind.

22 You as a group have to make a determination
23 whether or not the element requiring intent was
24 present. And I tell you that criminal intent is a
25 state of mind that operates jointly in the act or an

1 omission in the commission of a crime. It is a
2 mental state of conscious wrongdoing. So you must
3 determine what the defendant intended to do based
4 upon the circumstances shown to have existed at the
5 time of the act. The State must prove that element
6 beyond a reasonable doubt.

7 And specifics of shoplifting are as follows,
8 and some of this is going to be from the statutory
9 book, which are the criminal codes behind me, some
10 of it is part of my instructions, I'll give it to
11 you this way:

12 Mr. Graham's charged with shoplifting. In
13 order to sustain a conviction for shoplifting, the
14 State must prove the following elements beyond a
15 reasonable doubt: One, that he took possession of,
16 carried away, transferred from one person to another
17 or from one area of a store to another area or
18 caused to be carried away or transferred merchandise
19 with the intent to deprive the merchant of the
20 possession or benefit of the merchandise without
21 paying the full retail value.

22 Also, the State must prove either that one or
23 the State must prove that the merchandise was
24 transferred from one container in which it was
25 displayed to any other container with the intent to

1 deprive that merchandise and the merchant of the
2 full retail value of the merchandise.

3 Full retail value is defined as the merchant's
4 stated or advertised price. Merchandise means any
5 goods, foodstuffs or wares or chattels of any type
6 or description regardless of value. A merchant is
7 defined as the owner or operator of a store or an
8 employee, officer or independent contractor of the
9 owner or the operator.

10 Intent means the willful, intending the result
11 which actually occurs not accidentally nor
12 involuntarily. Intent may be shown by the acts and
13 conduct of the defendant and other circumstances
14 from which you may naturally and reasonably infer
15 intent.

16 If the defendant willfully concealed
17 unpurchased goods or merchandise on the premises or
18 outside the premises of the store or on the
19 defendant's person or among his belongings on the
20 person of another or among the belongings of
21 another, you may consider this as evidence that the
22 defendant concealed the merchandise with the intent
23 to convert it to his own use without paying for it.

24 Conceal means to hide merchandise on the person
25 or among belongings of a person so that although

1 there may be some notice of its presence, it is not
2 visible to ordinary observation.

3 The State must prove those elements beyond a
4 reasonable doubt in order to sustain a conviction on
5 this offense.

6 Now, I allowed some of you to take -- I allowed
7 any of you to take notes. Some of you did, some of
8 you didn't. Every jury must resolve the questions
9 of fact unanimously. So I tell you this:

10 The fact that my Foreperson did not take as
11 many notes as someone else does not trump someone
12 who takes copious notes. You're all on equal
13 footing whether a note taker or a good listener. A
14 good listener doesn't trump notes, notes don't trump
15 good listener. You must resolve the facts based
16 upon the evidence and testimony that you've got and
17 so do not take some person's notes as the fact over
18 another person's notes or another person's memory.
19 You're all on equal footing when you're deliberating
20 this case.

21 Now, Ms. Rhoden, she was my Foreperson
22 yesterday. And I give very similar instructions in
23 each case, but I tell you you're not called on very
24 often to sit as jurors. It's an important duty and
25 responsibility you have. It is your responsibility

1 to make certain that your verdict is true and just.
2 It's been my responsibility to make certain I make
3 proper rulings on the law, give proper instructions
4 and conduct a fair and impartial trial.

5 I'm very confident you will go in the jury room
6 and remember your oath was to decide the case based
7 upon the facts, evidence and testimony presented in
8 the trial reaching a unanimous verdict and following
9 my instructions on the law, and I'm confident y'all
10 will do just that.

11 What I'm going to do now is I'm going to send
12 you to the jury room and y'all will wait there until
13 you get the indictment and the photographs and the
14 evidence which was introduced. Once you get that,
15 then you can begin your deliberations. Until then,
16 don't discuss the case because what I've got to do
17 momentarily is ask the lawyers, were my instructions
18 complete or did I gloss over some aspect of the law
19 that they thought I should have done a little more
20 in depth? Perhaps I did, perhaps I didn't, but they
21 get to make those comments as soon as y'all leave
22 the courtroom.

23 Ms. Rhoden, if y'all have any questions, you
24 can write me a note. If you need further
25 instructions of the law, write down what you want to

1 hear. I may hand you my written instructions at
2 that time.

3 An improper question, I don't think I told
4 y'all this yesterday in the first trial, but you're
5 not allowed to ask, why didn't so and so call so and
6 so witness or thus and so? That's their decision.
7 You can't find out why. I don't know why or it
8 doesn't matter. You decide the case based upon
9 what's been presented to you, not wonder why someone
10 else wasn't called or some other piece of evidence
11 wasn't introduced. That's not allowed. That's not
12 a proper question. We can't go get anymore for you.
13 The record will be closed when I finish these
14 instructions and that's what you get.

15 Thus, step in the jury room. As soon as y'all
16 get the stuff to start deliberations, y'all begin
17 your deliberations there. Remember, you're on your
18 own time once you start deliberations. If y'all
19 need a break, you can. If someone wants to step out
20 or step in the bathroom, that's when you stop
21 deliberations and then resume when you've got all 12
22 back in there. Y'all step in the jury room.

23 (The jury retires to the jury room.)

24 **THE COURT:** Any exceptions to the charge given?

25 **MR. MAULDIN:** Your Honor, again, I take

1 exception to 16-13-120 about the concealment of the
2 items and the inference being charged.

3 **THE COURT:** And that objection is noted, but
4 I'd already made that ruling. So your objection is
5 protected in me giving that instruction, but it was
6 consistent with my ruling before I gave the
7 instruction.

8 **MR. YOUNG:** Your Honor, I actually was trying
9 to -- I thought I did not hear that actual
10 instruction, but if you did give it --

11 **THE COURT:** I think it was woven in there.
12 Jacob hid it well. It was woven in so smoothly.

13 **MR. MAULDIN:** It was after he was talking about
14 intent.

15 **MR. YOUNG:** Right after the intent, that's
16 right. I do remember now. Thank you. No further
17 objection.

18 **THE COURT:** All right. All we've got is the
19 three photographs?

20 **MR. YOUNG:** That's all I have, Your Honor.

21 **THE COURT:** Ms. Frick, you've got the
22 indictment ready, the redacted one?

23 **THE CLERK:** It's right here.

24 (The jury commenced its deliberations at
25 2:43 P.M.)

1 (A recess transpired.)

2 (The following occurred during jury
3 deliberations at 2:58 P.M.)

4 **THE COURT:** The jury sent a note asking for a
5 definition of shoplifting. The Court inquired with
6 the lawyers that they had no objection to the Court
7 sending the entire jury instruction in writing back
8 to the jury, which was done subject to the objection
9 for the inference charge made by defense counsel.

10 (Court's Exhibit Number 1, jury note, marked
11 for identification.)

12 (A recess transpired.)

13 (The jury returns to open court to report
14 its verdict at 4:06 P.M.)

15 **THE COURT:** All right. Ms. Rhoden, have y'all
16 reached a verdict?

17 **FORELADY:** Yes, sir.

18 **THE COURT:** And was it unanimous?

19 **FORELADY:** Yes, sir.

20 **THE COURT:** Excellent. Hand it to Mr. Mills.

21 (The clerk hands the verdict to the Judge.)

22 **THE COURT:** You may publish the verdict,
23 Ms. Frick.

24 VERDICT OF THE JURY

25 **THE CLERK:** Indictment 2015-GS-32-1952, the

1 State versus Yul Graham, indicted for shoplifting.

2 Verdict: Guilty as charged. Signed Amy Rhoden,

3 Foreperson, January 25th, 2017.

4 Madame Forelady, ladies and gentlemen of the
5 jury, if this is your verdict, please indicate each
6 of you by raising your right hand.

7 All hands raised, Your Honor.

8 **THE COURT:** Very well.

9 All right. Mr. Mauldin, any further issues for
10 the jury?

11 **MR. MAULDIN:** No, Your Honor.

12 **THE COURT:** All right. Very well.

13 Are y'all ready to go forward with sentencing,
14 Mr. Young?

15 **MR. YOUNG:** We are, Your Honor.

16 (Mr. Young hands document to the Judge.)

17 **THE COURT:** All right. Go ahead.

18 **MR. YOUNG:** You want me to summarize that for
19 the record?

20 **THE COURT:** I do.

21 **MR. YOUNG:** Your Honor, before you is a packet
22 of information, copies of which had been provided
23 previously to counsel for the defendant.

24 In summary, Your Honor, you have before you
25 offenses under Title 18 of the Pennsylvania code,

1 criminal code, which attests to convictions of this
2 gentleman by trial in which he was represented by
3 counsel and which include 1994 theft of services, a
4 '95 retail theft from a Sam Goody, a retail theft in
5 1995 from a place called Strawberries, and receiving
6 stolen property -- a theft by receiving stolen
7 property in 1989. All of these occurred in
8 Pennsylvania. Those of which I have certified
9 copies for purpose of establishing jurisdiction for
10 enhancement provisions under title 16-1-57.

11 In addition to those, Your Honor, I have -- I
12 have a retail theft recorded by NCIC on a rap sheet
13 for a felony retail theft in 1994 and a violation of
14 controlled substance or other -- I think they call
15 it a Cosmetic Act that would accompany the 1995
16 convictions that are recorded there for you that was
17 also included in the packet, and in Maryland, a
18 misdemeanor theft in 1993 out of Baltimore. In
19 South Carolina, he had shoplifting offenses in 1990,
20 and in 2007, disorderly conduct and discharging a
21 firearm.

22 Your Honor, there's only one other matter I'd
23 like to bring to the Court's attention. There is a
24 endangering or terroristic threats, intimidating a
25 witness, associated with a conviction he had in

1 December of 1989. This was also in relation to,
2 apparently, a shoplifting offense. Within the
3 indictment itself, it indicated that he had come
4 after a person who had -- and threatened to -- this
5 person had actually reported him as engaging in some
6 form of retail theft.

7 **THE COURT:** All right. Mr. Mauldin, let me
8 hear from you and from Mr. Graham.

9 **MR. MAULDIN:** Thank you, Your Honor.
10 Mr. Graham is 48. He is from Philadelphia. He grew
11 up there. He's been in South Carolina since 1997.
12 His mom and dad are originally from the Low Country.
13 And he came back down here to be with family, ended
14 up in the Lexington area.

15 Present with him is his wife, Sabrina. They've
16 been married since 2002. They have no children,
17 Your Honor.

18 He did graduate high school. He had a
19 certificate in nursing. And he -- at one point in
20 time, he did have a CDL license. He had worked in
21 the nursing field and then he was a truck driver, I
22 think, from '98 to 2004 and then became a barber
23 since 2004, had been doing that work off and on.

24 Some time near or around the incident in this
25 case, Mr. Graham had congestive heart failure and

1 was out of work for a period of time. He's recently
2 been reemployed doing barber work again about two
3 weeks ago.

4 The solicitor has read his prior record, Your
5 Honor. If you note, I think the last offense he had
6 with the law there was in 2007, which was about nine
7 years ago. So he's been out of trouble for a good
8 bit of time.

9 He did spend two days in jail here, as far as
10 credit is concerned. We hope you'd take into
11 consideration, obviously with the two property crime
12 priors and the retail thefts that qualify because
13 the punishment's based on a dollar amount, he can be
14 looking up to ten years for this 50 dollars worth of
15 food that the jury's convicted him of. We would
16 hope you wouldn't impose such a steep sentence, Your
17 Honor.

18 As I said, he's had the congestive heart
19 failure. As he testified on the stand, he's had
20 diabetes and that kind of thing. We would hope Your
21 Honor would perhaps grant him a probationary
22 sentence. If not, if you're thinking of some kind
23 of incarceration, perhaps something that would keep
24 him in the county instead of sending him to the
25 department of corrections.

1 He said that if anything is long term, Your
2 Honor, he would appreciate the opportunity to report
3 next Monday as he has a cardiologist appointment
4 tomorrow and there's some affairs as far as his
5 wife, the financial affairs that he'd have to get in
6 order to do that.

7 **THE COURT:** All right. Anything from him?

8 **MR. MAULDIN:** No, Your Honor. He does not wish
9 to address the Court.

10 **THE COURT:** All right. I'm scheduled to be in
11 court here Monday, all next week actually, so I'm
12 going to let him report by five o'clock Monday,
13 January 30th. Is that the correct date? Is that
14 Monday?

15 **THE CLERK:** Yes, sir, that's Monday.

16 **THE COURT:** By five o'clock to the Lexington
17 County Detention Center.

18 SENTENCE OF THE COURT

19 **THE COURT:** The sentence of the Court is he be
20 confined for seven years. That's suspended upon the
21 service of three years, costs and assessments
22 imposed, three years probation.

23 Based upon his prior record, I think he
24 deserves to do some time, but I'm going to let --
25 acknowledge his cardiologist appointment tomorrow,

1 but let him report Monday at 5:00, or before, I
2 mean, if he wants to come in before 5:00, but by
3 5:00.

4 Now, if he does not report, I'm going to
5 preserve this Court's own motion to reconsider the
6 sentencing and I would impose probably a
7 straight-time sentence at that time, all right. So
8 you understand what that means?

9 **MR. MAULDIN:** I'll explain it to him, Your
10 Honor.

11 **THE COURT:** All right. That means he gets
12 seven years straight and I'll take off the suspended
13 portion of it. Good luck.

14 All right. Y'all are done for the week. The
15 trial that was supposed to go tomorrow pled while
16 y'all were deliberating. And believe it or not, it
17 was two witnesses. So we had a four-witness case, a
18 three-witness case and a two-witness case.

19 Now, oddly enough, I've had six straight court
20 terms with week-long trials. These smaller trials
21 kind of have to get pushed together, and they did
22 them well. They got them done. There was a longer
23 one that worked itself out earlier in the week, too.
24 So there was actually five trials and four of them
25 have now been moved this week, which is what you

1 want when the big trials kind of are a little more
2 cumbersome to move.

3 Anyway, thank you for your service. Y'all got
4 any questions before you leave? I appreciate
5 y'all's help, attention and hard work.

6 Thank you for being my Foreperson twice. See
7 y'all later.

8 (The jury was excused.)

9 (The proceedings were concluded for January
10 25, 2017.)

11 (The following proceedings were held on
12 January 26, 2017.)

13 **MR. MAULDIN:** This is in regard to the case of
14 State versus Yul Graham, indictment 2015-GS-32-1952.
15 This is David Mauldin, attorney for the defendant.
16 Present is Solicitor Frank Young. My client is not
17 present. I spoke with him on the phone yesterday,
18 Your Honor. He is fine with me waiving his
19 presence, so I am waiving his presence.

20 I'm making a motion for a new trial in this
21 case, and I base that motion on all of my prior
22 motions and objections, Your Honor.

23 **THE COURT:** All right. The record is
24 protected. You're making a motion for a new trial.
25 The Court respectfully denies it. There was ample

1 evidence to submit the issues to the jury. The jury
2 reached a verdict and the Court's not going to stand
3 that verdict aside. But you are protected all the
4 way from the close of the State's case, the close of
5 your case and close of the rebuttal case and
6 post-jury verdict.

7 **MR. MAULDIN:** Yes, sir, Your Honor.

8 **MR. YOUNG:** Thank you, Your Honor.

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10 END OF PROCEEDINGS

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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 trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 25th and 26th of January, 2017.

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

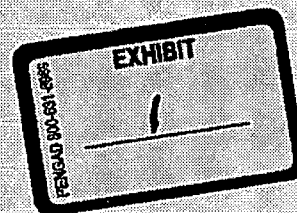
March 12, 2017

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

① Would like to have
the written definition of
shoplifting

② Amy Rhodes



WITNESSES

West Columbia Police Department

C. Yarborough

Law Enforcement Case #: 1513366

HFY

ARREST WARRANT NUMBER

2015A3221101991

ACTION OF GRAND JURY

TRUE BILL

Parvella B. Baker

Foreperson of Grand Jury

Date: 8/10/2015

VERDICT

Guilty as charged

Amy Rhoden

Foreperson of Petit Jury

Date: 01-25-17

DOCKET NO. 2015GS3201952

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2015

THE STATE

vs.

Yul Graham

CDR #: 2877

Indictment for

SHOPLIFTING WITH PROPERTY
ENHANCEMENT

§ 16-13-0110(A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

RECEIVED

FEB 03 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
SHOPLIFTING WITH PROPERTY
ENHANCEMENT

§ 16-13-0110(A)

At a Court of General Sessions, convened on AUGUST 2015, the Grand Jurors of Lexington County present upon their oath:

That **Yul Graham** in Lexington County, South Carolina, on or about June 21, 2015, 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; did alter, transfer, or remove the price label or tag; or did transfer from its container to another container or conceal merchandise displayed, 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: frozen foods and trail mix with an estimated value of \$2000 or less from Bi-Lo, located at 2349 Augusta Road, West Columbia, South Carolina, (BI-LO); all in violation of Section 16-13-110 and Section 16-1-57 of the Codes of Law of South Carolina, (1976, as amended)

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

161

COUNTY OF Lexington
 STATE VS.
Yul Graham

AKA:

Race: Black Sex: M Age: 48

DOB: [REDACTED] SS# [REDACTED]

Address:

City, State, Zip: West Columbia, SC 29169DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
 TO: Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

INDICTMENT/CASE#: 2015GS3201952A/W#: 2015A3221101991Date of Offense: 6/21/2015S.C. Code §: 16-13-0110(A)CDR Code #: 2877**RECEIVED**

FEB 03 2017

SENTENCE SHEET

SC Court of Appeals

☒ CONVICTED OF or ☒ PLEADS

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ 3; provided that upon the service of 3 days/months/years and/or payment
 of \$ 3; plus costs and assessments as applicable*; the balance is suspended with probation for 3

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections. 2 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$ 125.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

 days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning

Substance Abuse Counseling ☐
 Random Drug/Alcohol testing C.C.G.P., G.S. & F.C. ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

May report by 5:00 pm
Monday Jan 30 at L.C.D.C.

☐ Appointed PD or appointed other counsel,
 §Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code:

Sentence Date:

1-25-17

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,


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 2nd day of February, 2018.

RECEIVED
FEB 02 2018
SC Court of Appeals