

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Appellate Case No. 2020-000533.

The Honorable William A. McKinnon

The State,

Respondent,

v.

Jeffrey Jack Dauer,

Appellant.

RECORD ON APPEAL

Daniel D. D'Agostino
Jacqueline N. Davis
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Attorneys for Appellant

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WITNESSES

YPD

Witnessing Officer: *Stiles*

ARREST WARRANT NUMBER

2017A4620500190

ACTION OF GRAND JURY

TRUE BILL

Eugenia Reardon

Foreperson of Grand Jury

Date: *7/20/17*

VERDICT

Guilty

Anthony D. Zimmerman

Foreperson of Petit Jury
Date: *3/11/2020*

DOCKET NO. 2017-GS-46- 03041

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JULY 20, TERM 2017

THE STATE

VS.

JEFFREY JACK DAUER

INDICTMENT FOR

INDECENT EXPOSURE

SC Code: § 16-15-0130

CDR Code: 0091

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

2021 MAY -3 PM 3:48

INDICTMENT

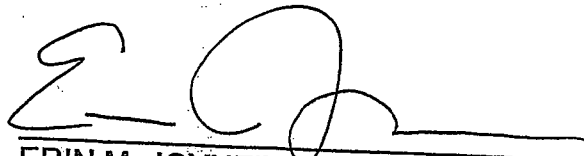
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on July 20, 2017, the Grand Jurors of York County present upon their oath:

INDECENT EXPOSURE

The defendant, Jeffrey Jack Dauer, did on or about April 22, 2017, in York County, South Carolina, willfully, maliciously and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway. All in violation of 16-15-0130, *Code of Laws 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.


ERIN M. JOYNER
ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

JEFFREY JACK DAUER

AKA: _____
Race: White Sex: M Age: 32
DOB: 06/28/1987 SS#: 281-90-7494
Address: 432 Stacy Lane
City, State, Zip: York, SC 29745

DL# 101547691 SID# SC01947710 DAVID HAMILTON
CLERK OF COURT

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Indecent Exposure (NMT 3 years &/or discretionary fine)

In violation of § 16-15-0130 of the S.C. Code of Laws, bearing CDR Code # 0091

INDICTMENT/CASE#: 2017GS4603041
A/W: 2017A4620500190
Date of Offense: 04/22/2017
S.C. Code §: 16-15-0130
CDR Code #: 0091

SENTENCE SHEET

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Amber Brooke Holt 103192 SC Bar # _____
Amber Brooke Holt, Assistant Solicitor
Jeffrey Jack Dauer 65088 SC Bar # _____
Jeffrey Jack Dauer, Defendant
David Hamilton 65088 SC Bar # _____
David Hamilton, Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 SCDOC.
☐ The Defendant is to be placed on 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: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☒
Random Drug/Alcohol Testing ☒
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees _____

Recipient: _____		
*Fine: _____	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso (Public Def/Probation)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</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	\$	\$ <u>125</u>

Clerk of Court/Deputy Clerk: DAVID HAMILTON
Court Reporter: Kymberlee Williams

Presiding Judge: _____
Judge Code: 276
Sentence Date: 03/11/2020

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

YORK COUNTY

2017-GS-46-0341

-----X
The State of South
South Carolina,

Plaintiff,

vs.

Jeffrey Jack Dauer,

Defendants.
-----X

Transcript of Trial
Volume I
Pages 1 - 232

Date: February 9 - 10, 2020
York, South Carolina

B E F O R E:

The Honorable William A. McKinnon, Judge Presiding.

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

ATTORNEYS FOR THE STATE OF SOUTH CAROLINA:

Amber Holt, Solicitor
Erin Joyner, Solicitor
Office of the Sixteenth Circuit Solicitor's Office
Moss Justice Center
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ATTORNEY FOR JEFFREY JACK DAUER:

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Official Circuit Court Reporter
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Pineville, North Carolina 28134

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PROCEEDINGS

* * *

TUESDAY, MARCH 9, 2020.

YORK, SOUTH CAROLINA

(Whereupon, the following proceedings were held in open court. The Defendant was present with her attorney, along with counsel for the State.)

* * *

JURY SELECTION

1 THE COURT: All right, Ladies and Gentlemen, what
2 we are doing now is part two of the process that we
3 had earlier. As I said, we're about to select the 12
4 jurors and two alternates for a trial that we begin
5 tomorrow morning. And the purpose of the two
6 alternate jurors that we choose, in case one of the
7 main jurors has a family emergency or some other
8 issue, they get sick and they can't continue the
9 trial, the alternate jurors step in, that way we don't
10 have to start the trial all over again.

11 So, Ladies and Gentlemen, I'm going to ask the
12 Clerk of Court to swear you in and then we'll get
13 started.

14 (Whereupon, the prospective jury venire was duly
15 sworn.)

16 THE COURT: Ladies and Gentlemen, again, I want
17 to ask you some questions and, again, some of these
18 may be very personal questions. I may ask questions
19 like have you been the victim of a certain kind of
20 crime or something like that, And I will always
21 phrase those questions as you or a member of your
22 family. And I will not follow up. I won't single
23 anyone out.

1 today. She is going to tell you about what happened
2 on April 21st, 2017. She was going to the Walmart to
3 -- in York to pick up some things for her kids for
4 that evening.

5 They had decided that they wanted to cook out
6 that evening and so she was going to pick up hot dogs
7 and marshmallows for roasting. She pulled into the
8 parking lot, and she was going in a little bit
9 hurriedly because she doesn't have a phone with her.
10 All she's got is her wallet and her keys and her ID.
11 She goes into the parking lot.

12 She sees a vehicle that has a -- you'll hear
13 today both testimony that is related to either a canoe
14 or a kayak. It's called both by interchangeably, but
15 it is a small boating device up on the top of the
16 vehicle, the top of the SUV. A Jeep Cherokee to be
17 specific.

18 She sees the vehicle because she thinks it's
19 going to take the spot that is there in the front, a
20 few spaces back from the front of the Walmart. And
21 she thinks it is about to pull in, so she's looking
22 for the next spot. She notices there's a kayak or a
23 canoe on top of the vehicle.

24 The car does not take that spot and continues on.
25 So she takes that spot, the first spot that she came

1 to, and then she goes into Walmart to retrieve the
2 items that she wants to obtain. When she exits
3 Walmart, she exited with her cart and she is going
4 towards her vehicle.

5 As she approaches, she sees the vehicle again
6 come up beside her that is still in the parking lot.
7 It pulls up beside her, and she'll testify she sees
8 the brake lights tapped, and then she looks over at
9 the driver. The window is down, and she sees the
10 driver fully erect, penis out, and his hand is on his
11 penis, on the shaft.

12 She immediately goes to try and get a phone,
13 obviously she doesn't have her phone, so she takes her
14 cart and she pushes it behind her vehicle. She then
15 walks over and sees the first truck that she sees
16 going into the parking lot and she stopped that truck
17 and asks them to use a phone because she wants to call
18 9-1-1. They don't give her the phone, and then she
19 hurriedly puts her groceries in her vehicle.

20 She then gets in her vehicle and she goes to
21 leave. She's a little flustered at this point, and
22 she goes to leave, and she sees the vehicle with the
23 canoe/kayak on top coming around again. So she then
24 pulls back and she sees another car, and she decides
25 to ask another couple of females. She then goes to

1 She then asked those women to use their phone. She
2 then, through the lady who had the phone, called 9-1-1
3 and reported the incident.

4 The Judge told you I do have the burden of proof.
5 You will hear from the victim today testify as to what
6 happened that day. She will tell you what I
7 described, and she will let you know that the phone
8 call that she made was essentially to hold the
9 defendant accountable for what she had to go through.

10 She then leaves and speaks to an officer to
11 describe what occurred. During that time -- and that
12 is one of the officers you will hear from today.
13 During that time, there are two other officers who see
14 the people based upon how it's described on the 9-1-1
15 call.

16 Dispatch then gives them that information in
17 addition to the last three license plate numbers,
18 because as the defendant passed back again by the
19 victim a second time, she was able to get the last
20 three digits of the license plate. So she calls that
21 in as well.

22 After that is called in, he is then pulled over
23 because they see the kayak/canoe on top of the
24 vehicle. They pulled him over and then the
25 investigation began into what occurred that day.

1 Like I said, as the Judge will tell you, we do
2 have the burden of proof. So the State has the burden
3 to prove to you beyond a reasonable doubt that Jeffrey
4 Jack Dauer did commit indecent exposure on April 21st,
5 2017, in front of the victim Stephanie Jarrett.

6 And I believe after you hear all the testimony,
7 you will render a verdict of guilty against Jeffrey
8 Jack Dauer.

9 THE COURT: Mr. D'Agostino?

10 MR. D'AGOSTINO: Thank you, Your Honor.

11 * * *

12 OPENING STATEMENT BY MR. D'AGOSTINO

13 MR. D'AGOSTINO: Ladies and Gentlemen of the
14 jury, my name is Dan D'Agostino. I along with Jacquelin
15 Davis represent Jeff Dauer. Jeff Dauer who stood up
16 for you earlier, Ladies and Gentlemen, is sitting at
17 the table with us.

18 This is my opportunity to give you a road map of
19 what will happen. The State just kind of told you
20 what they expect to present, and that's a good
21 overview. But I want to go into a little more detail
22 of what the trial is and what to look for because many
23 of you probably have never sat on a jury.

24 First, as the Judge told you, this is opening
25 statements where I get to talk to you for a few

1 minutes, introduce myself, my client, and tell you
2 what's about to come. The next part of the trial is
3 the evidentiary part. That's where the State goes
4 first and the State has to present the evidence. And
5 you'll receive evidence in the form of testimony.
6 You're going to listen and watch videos. You're going
7 to hear people talk about what happened, what didn't
8 happen, but you're going to have videos of the Walmart
9 parking lot. And you're going to receive evidence
10 from the witness stand in this courtroom.
11 And at the end of all the evidence phase -- at
12 the end of the evidence and at the end of the trial,
13 the Judge is going to instruct you on the law. And
14 then we're going to have closing arguments. That's
15 where the attorneys get up and talk about what they
16 believe the evidence showed.
17 Now, the State has talked a little bit about the
18 evidence, talked a little bit about what the people
19 might testify to, but one thing is very important in
20 this age of technology is that we all have video. We
21 have videos on our phones, Walmart has video
22 everywhere. The problem is their video is taken from
23 all different angles and you're going to see videos
24 spliced together. It's going -- and it doesn't --
25 it's not the same quality as videos on your phone.

1 But you're going to have video. And actually that's
2 wonderful in this case. Because you're going to be
3 able to see what happened. You're also going to hear
4 from the witnesses as to what they said happened that
5 day. And see, it's very important, because one thing
6 you're not going to see is you're not going to see
7 inside the car. What you're going to see or hear is
8 one person's perception of what she saw in the car.

9 And what you're going to have to do is you're
10 going to have to look very carefully at this video and
11 watch this video, and you're going to have to make a
12 decision. Because my client, he's not guilty. He's
13 not guilty of this charge. He was not exposing
14 himself, he was not driving around -- he was driving
15 around Walmart, but he was not driving around Walmart
16 exposing himself or doing anything illegal.

17 There's nothing illegal about what my client was
18 doing. He was there in the Walmart parking lot. He
19 had been out with some friends on the river the night
20 before. They had gone kayaking. That's why he had a
21 kayak on his truck. He was in a pair of swim trunks
22 that were loose. He was in a t-shirt, and he felt
23 sick as a dog.

24 His air conditioner wasn't working in his car,
25 and he was trying to decide whether to go inside and

1 try to get something to eat and cool down and then
2 continue on home. If he stops his car, the air
3 conditioner is not going to run because there's
4 something wrong with it. And so that's why he was
5 driving around Walmart. That's actually at the point
6 in time in the video they put together that he's not
7 even in the video for seven minutes because he went
8 and parked somewhere or sat somewhere trying to figure
9 out what to do with his car. The air conditioner
10 wasn't working.

11 So what you're going to see, and this is what I
12 ask you to look at. You all pay close attention to
13 the video. You come in this courtroom with your
14 common sense in life experiences.

15 Now the Solicitor in her opening statement said
16 he tapped his brakes, stopped, testimony is going to
17 be that she said he was pacing her. She said all his
18 windows were open. Look at the videos. Because
19 you're going to have to judge whether what she says is
20 believable, what she says is realistic, what she says
21 is even possible.

22 My client has pled not guilty. You're going to
23 hear the testimony as it comes in. You're going to
24 hear it from the officers, and certainly they weren't
25 there. They just investigated it. You're going to

1 hear from Ms. Jarrett. Oh, he's saying she's lying,
2 but it's her perception. Everybody can look at two
3 different -- the same thing and have a different
4 perception.

5 For the period of time that you'll see on the
6 video that he was going by her was one to two seconds.
7 One to two seconds he drove past her that first time
8 when she rushes and calls someone.

9 You're going to see if you all will pay attention
10 to the cars, you all pay attention to where she was
11 coming from, but all this will be brought out during
12 testimony. I'm not going to lay it all out. That's
13 what the testimony and evidence is for.

14 At the end of this case I get to talk to you
15 again. The Solicitor gets to talk to you. That's
16 closing arguments. And I'll touch more on this. But
17 at the end of this case, after you hear the law, and
18 the attorneys do their arguments, you all are going to
19 be asked to deliberate. And you're going to have to
20 apply the law that the Judge will give you to the
21 facts which you'll receive from the witnesses and the
22 testimony and the evidence.

23 You can watch the videos again and again and
24 again if you want to. But you're going to have to
25 speak a verdict at the end of the trial, and a verdict.

1 that comes from the Latin term "veredicto" which means
2 to speak the truth. At the end of the trial you've
3 got to make a decision as to my client, whether the
4 State has proven beyond a reasonable doubt that my
5 client has committed a criminal offense. At the end
6 of this trial, that verdict should be no, that he did
7 not. And he should be not guilty.

8 The one thing I ask you to do, that we ask you to
9 do, is to pay attention, use your common sense, and
10 give the State and my client a fair trial, which I
11 know you will. Thank you.

12 THE COURT: Ms. Holt, you may call your first
13 witness.

14 MS. HOLT: Sergeant Allen Baker.

15 * * *

16 ALLEN JACKSON BAKER, III,
17 called as a witness by and on behalf of
18 the State to testify, being first duly
19 sworn was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. HOLT:

22 Q Good morning, Sergeant Baker.

23 A Good morning.

24 Q Would you please state your full name for
25 the record?

1 A Allen Jackson Baker, III.

2 Q And how are you employed?

3 A I'm employed as a patrol sergeant with the
4 City of York Police Department.

5 Q And how long have you been with the York
6 Police Department?

7 A Approximately 12 or 13 years.

8 Q And prior to coming to work at York Police
9 Department, did you work in law enforcement?

10 A Yes, ma'am.

11 Q Please tell the Jury about that prior work.

12 A I was first -- first started policing in
13 Pennsylvania where I was certified. I went to the
14 Police Academy. I policed in Pennsylvania for three
15 years before making a life-changing move to South
16 Carolina. I worked for Great Falls Police Department
17 for a year, and then I was with the Chester County
18 Sheriff's Office for seven years, and I've been with
19 the City of York ever since I left Chester County, for
20 a total of 22 years now.

21 Q And what are your responsibilities with the
22 York Police Department?

23 A Shift supervisor. I work directly under the
24 shift lieutenant. I'm responsible for checking off on
25 all reports, supervising the other officers that are

1 on the shift, submitting reports, anything that the
2 Chief, the Captain, needs, and ensuring the safety and
3 security of the citizens of the City of York. I do
4 patrol just like a regular patrol officer also.

5 Q And were you also working on April 21st,
6 2017?

7 A Yes, I was.

8 Q And on that date, were you involved in an
9 investigation to a possible indecent exposure at the
10 York Walmart?

11 A Yes, ma'am.

12 Q Did you have trainee officer when you got
13 there?

14 A Yes, I did. Officer -- now Sergeant Tyler
15 Williams.

16 Q And what is the address of the York Walmart?

17 A 970 East Liberty Street.

18 Q And is that within the city limits of York
19 and York County?

20 A Yes, it is.

21 Q How did you become involved in that
22 investigation?

23 A We were dispatched to the area of Walmart
24 for a Jeep that had a -- it was -- I believe it was
25 dispatched as a kayak on top of it. Dispatch advised

1 that that subject inside, the male subject inside, had
2 exposed himself and --

3 MR. D'AGOSTINO: Your Honor, objection as to
4 hearsay.

5 THE COURT: I'm going to sustain the objection.

6 MR. D'AGOSTINO: Ask it be stricken.

7 BY MS. HOLT:

8 Q Sergeant, what time were you dispatched to
9 the scene?

10 A I would have to refer to my report for that.

11 Q I have that to refresh your recollection.

12 A (Reviews report.) Order dispatched at 3:36
13 in the afternoon. I arrived on scene at -- it shows
14 3:36, which means we were close to Walmart at the time
15 of dispatch.

16 Q And where exactly were you dispatched to?

17 A 970 East Liberty Street.

18 Q And is that where you actually saw the
19 defendant?

20 A No, I observed the vehicle leaving the
21 Walmart parking lot. It was driving up towards Lowe's
22 way. Officer Williams was driving since he was the
23 trainee. I told him to catch up with the vehicle and
24 he initiated the traffic stop as it pulled into
25 Lowe's.

1 Q And so did you have any information
2 regarding his location in either parking lot?

3 A No, I did not.

4 Q Was there any indication as to why -- was he
5 * parked?

6 MR. D'AGOSTINO: Your Honor, I'm going to object.
7 She's asking for hearsay. And the hearsay doesn't --

8 MS. HOLT: I'll withdraw the question.

9 BY MS. HOLT:

10 Q When you arrived at the parking lot, did you
11 locate a vehicle that matched the description?

12 A Yes, I did.

13 Q And what was that -- what was that
14 description account?

15 A A vehicle had been described as a black Jeep
16 bearing a partial registration. They had the last
17 numbers of it. It was 341. And it was described as
18 having a kayak on top of it.

19 Q Were there any other vehicles that you
20 observed in the Walmart or Lowe's parking lot that had
21 a canoe or kayak on top?

22 A No, there was not.

23 Q What did you do then?

24 A We issued a traffic stop on the vehicle. I
25 approached the passenger side. Officer Williams made

1 initial contact on the driver's side.

2 Q And who was the driver of the vehicle?

3 A The driver of the vehicle was identified as
4 Jeffrey Jack Dauer.

5 Q And did you request his driver's license and
6 registration?

7 A I requested his driver's license,
8 registration, and proof of insurance.

9 Q And do you see the person that you stopped
10 in the Lowe's parking lot today in the courtroom?

11 A Yes, I do.

12 Q Can you please point him out for the Jury?

13 A He's seated over here (indicating).

14 MS. HOLT: I'd note for the record that Sergeant
15 Baker identified the defendant as the person that he
16 saw in the parking lot on April 21st at the Lowe's
17 parking lot.

18 THE COURT: The record will so reflect.

19 MS. HOLT: The Court's indulgence?

20 THE COURT: Yes, ma'am.

21 BY MS. HOLT:

22 Q I'm showing you what has been previously
23 marked as Exhibit 1, State's Exhibit 1 for exhibit
24 purposes.

25 A Yes, ma'am.

1 Q Do you recognize that item?

2 A Yes, I do.

3 Q And are those your initials that are on that
4 DVD?

5 A Yes, they are.

6 Q Have you viewed this DVD?

7 A Yes, I have.

8 Q What is this DVD?

9 A It is a copy of the bodycam footage from the
10 traffic stop that day.

11 Q And are you familiar with the body camera
12 equipment?

13 A Yes, I am.

14 Q What type of unit is your body camera?

15 A It's an Axon.

16 Q Are you able to alter or modify the
17 equipment in any way?

18 A No, we are not. This server is off site.

19 Q Are you able to alter or modify the video
20 itself in any way?

21 A No, we are not.

22 Q How did you initiate or start your recording
23 that day?

24 A It can either be initiated by the activating
25 the blue lights or by -- it has a large button in the

1 center that you double-tap to get it to start. I
2 double tapped it.

3 Q And you said you have viewed this video?

4 A Yes, I have.

5 Q When was the most recent time that you
6 viewed this video?

7 A This morning prior to court.

8 Q And that's the date that's on this list?

9 A Yes, it is.

10 Q Is it a truthful, fair and accurate
11 description of your body camera as it was on April
12 21st, 2017?

13 A It's true video.

14 MS. HOLT: Your Honor, I'd like to admit this
15 into evidence as Exhibit Number 1.

16 THE COURT: It's the redacted one?

17 MS. HOLT: Correct.

18 THE COURT: Any objection?

19 MR. D'AGOSTINO: No, Your Honor.

20 THE COURT: Into evidence without objection.

21 (Whereupon, State's Exhibit Number 1 is in evidence
22 without objection.)

23 THE COURT: Ladies and Gentlemen, some of the
24 videos and audio you may hear in this case you may
25 notice that parts of the audio or video were redacted

1 or edited out, may be silent parts of the video. This
2 is required by the rules of the Court, and that's a
3 decision that I made, so I'm just going to ask you.
4 please don't try to speculate or guess as to what
5 might have been on the parts of the video that you
6 didn't hear or didn't see, and please don't hold that
7 against either attorney. That's a decision I made as
8 a judge.

9 MS. HOLT: And, Your Honor, I would like to
10 publish this to the Jury.

11 THE COURT: May publish.
12 (Whereupon, State's Exhibit Number 1 video is
13 published for the Jury.)

14 THE COURT: And Ladies and Gentlemen, one more
15 thing. You have TV screens in front of all of you.
16 If they're not turned on, turn them on and you'll be
17 able to watch. And you can watch the big screen if
18 you want, but it will also be on the screens in front
19 of you in the Jury box.

20 BY MS. HOLT:

21 Q Sergeant Baker, I'm just going to show you
22 your initial stop here to identify the vehicle that
23 you see. So Sergeant, what are you passing right
24 there?

25 A Lowe's.

1 Q And what are you doing in that portion?

2 A Right now we are initiating a traffic stop
3 on the vehicle that was driven by Mr. Dauer.

4 Q And again, how did you identify that
5 vehicle?

6 A It had a canoe or kayak on top of it.

7 Q Is it standard procedure to obtain
8 identification from the defendant -- or to get a copy
9 of the defendant's address?

10 A Yes, it is.

11 Q And do you know what that address is?

12 A His address is -- at the time was 432 Stacy
13 Lane, York, South Carolina.

14 Q Approximately how far is that from the York
15 Walmart?

16 A It's approximately seven miles, give or take
17 a little.

18 Q How do you know that?

19 A I'm familiar with the area.

20 Q What was the demeanor of the defendant when
21 you approached the vehicle?

22 A He wanted to know why we had stopped him. I
23 told him I would explain that to him as soon as I got
24 his driver's license, registration, and insurance.

25 Q And how was the defendant dressed?

1 A He was dressed in like -- I believe like
2 swim trunks, a t-shirt, and I believe he had a ball
3 hat on.

4 Q Were the swim trunks tied or untied?

5 A They were untied.

6 Q And you could see that from the passenger
7 side?

8 A Yes, I could.

9 Q At any point, did you ask him out of the
10 vehicle?

11 A Yes, I did.

12 Q And why did you ask him out of the vehicle?

13 A We had observed in the backseat that he had
14 some large knives.

15 Q And at the time that you were approaching
16 the passenger's side or at the time that you asked him
17 to step out of the vehicle, did you see any clothing
18 that could -- that is basically not on his person that
19 is within the confines of that vehicle?

20 A No, I did not.

21 Q On the passenger seat or in the floorboard?

22 A No, I did not.

23 Q And did he try and gain access to any of the
24 weapons that you saw?

25 A No, he did not.

1 Q And when he stepped out of the vehicle, what
2 observations, if any, did you make about his clothing?

3 A I observed it -- as he got out of the
4 vehicle, he had to pull up his swim trunks. I
5 describe them as swim trunks, it could have been
6 shorts that -- with a tie, but he had to pull them up
7 some to keep them from falling down, because they were
8 so loose.

9 Q And then after patting him down, what did
10 you do?

11 A I placed him in investigative detention.

12 Q And at this point, were you aware if there
13 was any other officer speaking with the complainant or
14 victim?

15 A I was. Officer Hawkins was speaking to the
16 victim/complainant.

17 Q And at some point then, Sergeant Hawkins
18 arrived on the scene?

19 A He did.

20 Q Do you recall about how long that was, the
21 traffic stop?

22 A I do not.

23 Q Do you recall how long the entire stop was?

24 A Approximately 13 of 14 minutes.

25 Q And at that point, did Deputy Hawkins place

1 the defendant under arrest?

2 A He did after he -- and then he Mirandized
3 him.

4 Q Were there any decisions made about what to
5 do with his vehicle?

6 A Yes. We spoke -- Officer Hawkins and I
7 spoke back and forth, and he decided -- since he was
8 shift supervisor at the time, he decided we were going
9 to let Mr. Dauer attempt to call a family member to
10 come pick up the vehicle to try to help him out. We
11 do that from time to time.

12 Q Was that successful?

13 A No, it was not.

14 Q What ultimately happened with that vehicle?

15 A The vehicle was towed by one of our wreckers
16 on rotation. I cannot recall who towed it.

17 Q And who transported the defendant back to
18 the jail?

19 A Myself and Officer Williams.

20 MS. HOLT: Thank you, Sergeant. I have no
21 further questions at this time. Please answer any
22 questions the Defense may have.

23 THE WITNESS: Thank you.

24 THE COURT: Mr. D'Agostino?

25 MR. D'AGOSTINO: Thank you.

CROSS-EXAMINATION

BY MR. D'AGOSTINO:

Q When you walked up to the side of Mr. Dauer's vehicle, there was a white bag in the passenger seat, wasn't there, a plastic bag?

A I cannot recall, sir.

Q You don't recall?

A I cannot recall, no, sir.

Q Did you watch the videos?

A I did.

Q Did you watch them today?

A I did.

Q You watched them before this as well, haven't you?

A From time to time, I observed it, yes, sir.

Q And you watched more than just your video, haven't you?

A No, I didn't watch the other guy's video. I was not a supervisor at the time, so I didn't have access to the other officers' videos.

Q Okay. You're a supervisor now though?

A Yes, sir, I'm a supervisor now.

Q Okay. In addition to his swim trunks and t-shirt and hat, he had on glasses, too, didn't he?

A I cannot recall.

1 Q You don't recall?

2 A I cannot recall if he had glasses on.

3 Q Boxers, he had boxers on underneath the swim
4 trunks, didn't he?

5 A I couldn't see those. If he had them on, I
6 couldn't see them.

7 Q Well, you watched that video before today,
8 didn't you?

9 A Yes, sir.

10 Q When he pulled up his britches a little bit,
11 his swim trunks, there's a pair of boxers underneath,
12 wasn't there?

13 A It looked like his t-shirt was covering down
14 his -- over his swim trunks. I can't recall if he had
15 boxers on or not.

16 Q You told us everything you know about this,
17 haven't you?

18 A Yes, sir.

19 MR. D'AGOSTINO: Those are all the questions I
20 have.

21 THE COURT: Any redirect, Ms. Holt?

22 MR. D'AGOSTINO: May I just go over one more
23 thing, briefly, Your Honor?

24 THE COURT: Any objection?

25 MS. HOLT: No objection.

1 THE COURT: Yes, sir.

2 BY MR. D'AGOSTINO:

3 Q As it relates to his swim trunks, you said
4 they were untied. You couldn't tell whether untied or
5 just tied in a knot loose, could you?

6 A They were untied because the strings were
7 going different ways. It's possible he could have had
8 it tied in a knot, but whenever he got out of the
9 vehicle, they were so loose they were falling off.

10 Q No, they were down around his waist, they
11 were low, weren't they?

12 A No, they were fallen below his waist.

13 Q We'll see that in the video how far down
14 they were?

15 A Yes, sir, you'll see.

16 THE COURT: Any redirect, Ms. Holt?

17 MS. HOLT: Your Honor, no redirect. We would ask
18 that he not be released yet. He may need to be
19 recalled at another time.

20 THE COURT: All right. Thank you, sir, you can
21 step down.

22 (Whereupon, the witness exited the witness
23 stand.)

24 MS. HOLT: The next witness is Officer Tyler
25 Williams.

1 THE COURT: Officer Williams, will you just step
2 up here and the Clerk will swear you in?

3 * * *

4 TYLER WILLIAMS,
5 called as a witness by and on behalf of
6 the State to testify, being first duly
7 sworn was examined and testified as follows:

8 * * *

9 DIRECT EXAMINATION

10 BY MS. HOLT:

11 Q Good morning, Officer Williams.

12 A Good morning.

13 Q Please state your full name for the
14 record.

15 A Tyler Williams.

16 Q How are you employed?

17 A Sergeant on patrol with the York City
18 Police Department.

19 Q How long have you been with the York
20 Police Department?

21 A I have been with the York Police
22 Department for approximately three years.

23 Q Prior to working at the York Police
24 Department, did you work in law enforcement?

25 A I did.

1 Q Can you please tell the Jury about that
2 prior work?

3 A I worked as a corrections officer for
4 the Lancaster County Sherriff's Office Detention
5 Center.

6 Q What are your responsibilities
7 currently with the York Police Department?

8 A I run general calls for service. In my
9 duties as a patrol officer, also, I check
10 incident reports, collision reports and sign off
11 on them as well as responding to calls for
12 service and calling on crime investigations as
13 needed.

14 Q Were you working on April 21st, 2017?

15 A I was.

16 Q On that date, were you involved in an
17 investigation to a possible indecent exposure at
18 the York Walmart?

19 A I was.

20 Q Did you have an officer with you that
21 day?

22 A Yes.

23 Q Who was that officer?

24 A Sergeant Allen Baker.

25 Q Do you recall the address of the York

1 Walmart?

2 A I do.

3 Q What's that address?

4 A 970 East Liberty Street.

5 Q And that's within the city limits of
6 York in York County?

7 A Yes.

8 Q How did you become involved in that
9 investigation?

10 A I was in training at the time. We were
11 dispatched to Walmart in reference to a possible
12 indecent exposure.

13 Q Did you go to the Walmart parking lot?

14 A I did.

15 Q Did you actually stop the vehicle in
16 the Walmart parking lot?

17 A In the vicinity; Lowes.

18 Q Do you recall the time that you arrived
19 on the scene?

20 A I do not.

21 Q If I showed you a copy of the report,
22 would you recall?

23 A I would.

24 Q So, Officer Williams, when were you
25 dispatched?

1 A 3:36 in the evening.

2 Q What information did you have regarding
3 the suspect and the suspect vehicle?

4 A It had a white male in a black jeep
5 with a kayak on top.

6 Q Did you locate that vehicle when you
7 were in the Lowes parking lot or the Walmart
8 parking lot?

9 A Yes.

10 Q Were there any other vehicles that you
11 observed that had a kayak or canoe on top?

12 A No.

13 Q What did you do next?

14 A I initiated a traffic stop.

15 Q Which side of the vehicle did you
16 approach?

17 A The driver's side.

18 Q I'm going to show you what's been
19 previously marked as State's Exhibit 3.

20 Officer, do you recognize that disk?

21 A I do.

22 Q Are those your initials on the disk?

23 A They are.

24 Q Have you viewed this disk?

25 A I have.

1 Q What is on this disk?

2 A My bodycam.

3 Q Are you familiar with your body camera
4 equipment?

5 A I am.

6 Q What type of unit is it?

7 A It's an Axon.

8 Q Can you alter or modify the equipment
9 in any way?

10 A I cannot.

11 Q Did you -- can you alter or modify the
12 video in any way?

13 A I did not.

14 Q How did you initiate recording that
15 day?

16 A I self-initiated by tapping twice.

17 Q Do you recall how long your camera was
18 engaged?

19 A I do not. For the duration of it.

20 Q Do you recall the duration of the stop?

21 A No.

22 Q If I showed you the video again, would
23 you recall the duration?

24 A I would.

25 Q The date on this that you last viewed

1 it was today's date that is on the disk?

2 A Yes.

3 Q And it's still a truthful, fair,
4 accurate depiction of your body camera as it was
5 on April 21st, 2017?

6 A Yes.

7 MS. HOLT: Your Honor, I'd like to move to
8 admit Exhibit Number 3 into evidence.

9 THE COURT: Any objection?

10 MR. D'AGOSTINO: No objection, Your Honor.

11 THE COURT: It's admitted into evidence.
12 That was State's 3, Ms. Holt?

13 MS. HOLT: Yes, State's Exhibit 3.

14 THE COURT: Admitted into evidence without
15 objection.

16 MS. HOLT: And I would like to publish it
17 to the Jury.

18 THE COURT: You may publish.

19 (Video played for Jury)

20 (Court Reporter marks State's Exhibit
21 Number 3, Disk, attached hereto.)

22 BY MS. HOLT:

23 Q Officer, did you see the duration of
24 the video when I first put it on there?

25 A I did.

1 Q How long was that duration?

2 A 14 minutes and 7 seconds.

3 Q Do you see the driver of the vehicle in
4 the courtroom today?

5 A I do.

6 Q Can you please describe what he is
7 wearing to the Jury?

8 A White shirt with blue stripes sitting
9 over there.

10 MS. HOLT: I'd like the record to reflect
11 that Officer Williams has pointed out the
12 Defendant.

13 THE COURT: The record will so reflect.

14 BY MS. HOLT:

15 Q What did you immediately observe about
16 the Defendant's clothing whenever you approached
17 the driver's side window?

18 A His shorts were pulled down and they
19 were untied.

20 Q I don't have any additional questions
21 at this time. Please answer any questions that
22 the Defense attorney may have.

23 THE COURT: Mr. D'Agostino?

24 MR. D'AGOSTINO: Thank you, Your Honor.

25

1 CROSS EXAMINATION

2 BY MR. D'AGOSTINO:

3 Q That video that we've introduced, when
4 was the last time you looked at it?

5 A This morning.

6 Q You watched the whole thing this
7 morning?

8 A Yes, sir.

9 Q Do you recall if my client was wearing
10 glasses that morning? The day of the incident,
11 that April 21st?

12 A I believe he was.

13 Q Do you know whether he was or not?

14 A Yes, sir.

15 Q Was he?

16 A Yes, sir.

17 Q What kind of glasses were they,
18 sunglasses? Regular glasses?

19 What were they?

20 A Eyeglasses.

21 Q Eyeglasses? Did you notice anything on
22 the passenger's side of the seat of that car?

23 A I don't recall.

24 Q You don't recall anything? You looked
25 at it, you watched the videos today, did you

1 not?

2 A Yes.

3 Q And you watched the videos previously.

4 Correct?

5 A Yes.

6 Q As it relates to Mr. Dauer, you said
7 his shorts were untied? Tell me what you said.

8 A They were untied and sagging, pulled
9 down.

10 Q When you say untied, did you actually
11 look to see if they were untied or just tied in
12 a knot real loosely?

13 A You could see the two separate strings
14 on the seat.

15 Q Well, I understand there are separate
16 strings, but were they tied and flowing down?

17 A They were untied.

18 Q Untied? They weren't tied in a knot?

19 A No, sir.

20 Q Do you know if they were - now, did you
21 notice that while he was sitting in the car or
22 when he got out of the vehicle?

23 A Both.

24 Q So, you noticed they were untied while
25 he was sitting in the car?

1 A Yes.

2 Q At what point did you notice it?

3 A Upon initial approach. They were red
4 strings.

5 Q In this picture, you had already
6 realized his swim trunks were untied?

7 A Yes.

8 Q And you noticed his pants were sagging?

9 A Yes.

10 Q In this picture? Before he got out of
11 the car?

12 A Yes.

13 Q Not after he got out of the car?

14 A I said that before he got out of the
15 car, I could see that they were sagging.

16 Q At the time that this happened, you had
17 been in law enforcement.

18 You worked as a correction officer, but how
19 long had you been on the patrol at the City of
20 York?

21 A I don't recall.

22 Q Well, how long were you on -- you were
23 a trainee at the time. How long were you a
24 trainee?

25 A Several months.

1 Q Was this your first month or last month
2 of being a trainee?

3 A I don't recall.

4 Q You don't recall that?

5 A No.

6 Q Well, this was April 2017, April 21st,
7 2017. Do you remember when you started with the
8 York City Police?

9 A I do not.

10 Q Anything you've told us today, is it
11 based solely upon your memory as it happened
12 that day or has it been influenced from watching
13 these videos several times?

14 A Can you repeat the question?

15 Q What you've testified to today, is that
16 based upon your memory as it happened that day
17 or has it been influenced from watching these
18 videos? How many times have you watched these
19 videos?

20 A I don't recall. Several.

21 Q You've got it right now in front of you
22 too, right?

23 A I do.

24 Q So, you've watched it more than once.
25 Has your testimony been influenced by previously

1 watching this?

2 A No.

3 Q When you guys drove up, the back window
4 was closed like this, wasn't it, when you pulled
5 him over?

6 A Closed?

7 Q Like this. Like you see in the video.
8 Partially closed, partially opened. Correct?

9 A Correct.

10 Q His front window was closed, wasn't it,
11 when you pulled him over to begin with?

12 A It's down now.

13 Q My question is, based upon your memory
14 that day, was his window, driver's window, up or
15 down?

16 A I don't recall.

17 Q How about the passenger window? When
18 you all pulled him over, was the passenger
19 window up or down?

20 A I didn't make a passenger side
21 approach. I don't recall.

22 Q You're looking through it. You were
23 there that day. You observed the vehicle. You
24 don't recall whether the window was up or down?

25 MR. HOLT: Objection. He's already asked

1 and answered.

2 THE COURT: I'm going to overrule the
3 objection. He can ask it.

4 BY MR. D'AGOSTINO:

5 Q You don't recall?

6 A My priority is to keep eyes on the
7 suspect, not to look at his windows.

8 Q Have you watched Baker's videos?

9 A I have not.

10 Q You have never watched Baker's videos?

11 A Not that I recall.

12 Q These windows weren't exactly tinted,
13 were there?

14 A They don't appear so.

15 Q Of course, if they are tinted or
16 slightly tinted, that affects what you could see
17 inside the car, doesn't it?

18 A I guess it would.

19 Q I mean, it does, doesn't it? You've
20 been a police officer for at least three years
21 on the street and a corrections officer before
22 that.

23 It's okay to say it. It affects it,
24 doesn't it?

25 A I can't say one way or the other. I'm

1 not a tint expert.

2 Q You're telling us your testimony today
3 based is upon your perception and your memory of
4 what you might have seen that day.

5 Correct?

6 A Yes.

7 Q If you would, when you were describing
8 my client a few minutes ago, was that based upon
9 your memory of that day or was that based upon
10 the fact that he's sitting at the table with me?

11 A I remember what he looked like.

12 Q You remember what he looked like.

13 Did he look any different that day than he
14 does today?

15 A He had a ball cap on that day.

16 Q Other than that? Based upon your
17 memory? You've watched a video this morning.
18 Based upon your memory, does he look any
19 different today than he did three years ago?

20 A He looks like Jeffrey Jack Dauer.

21 Q I understand his name is Jeffrey Jack
22 Dauer. My name is Dan D'Agostino. But does he
23 look different to you? Heavier, lighter? Your
24 perception, that's what I want to know -- your
25 perception.

1 A He looks the same.

2 Q The same? Okay. You said -- without
3 looking at him again right now, what's he
4 wearing today?

5 A A white shirt with blue stripes.

6 Q Blue stripes?

7 A Yes.

8 Q That's all the questions I have, Your
9 Honor. Thank you.

10 THE COURT: Any re-direct, Ms. Holt?

11 MS. HOLT: I'll be brief.

12 THE COURT: Continue.

13 * * *

14 RE-DIRECT EXAMINATION

15 BY MS. HOLT:

16 Q Going back to the vehicle. I'm going
17 to clear that up for Jury. Officer Williams,

18 MR. D'AGOSTINO: Is there a question, Your
19 Honor?

20 THE COURT: Ms. Holt?

21 BY MS. HOLT:

22 Q Officer Williams --

23 THE COURT: I'm letting -- she can publish
24 it again.

25 BY MS. HOLT:

1 Q You are here on the driver's side? Is
2 that correct?

3 A Yes.

4 Q When you first approached? Is that
5 window up or down?

6 A It's down.

7 Q Officer Williams, you were asked if you
8 observed at this point, were the pants down and
9 sagging? Could you observe that at the time?

10 A Yes.

11 Q You can also observe the strings?

12 A Yes.

13 Q What color did you say the strings
14 were?

15 A The strings were red.

16 Q Did you observe anything done with the
17 strings, when the Defendant exited the vehicle?

18 A I did not.

19 Q I have no further questions.

20 MR. D'AGOSTINO: May I follow up that for a
21 minute?

22 * * *

23 RE-CROSS EXAMINATION

24 BY MR. D'AGOSTINO:

25 Q You also observed, did you not, that

1 when he pulls up his swim trunks that were
2 sagging -- there were a pair of boxers under
3 there, weren't there? A pair of grey shorts?

4 A Yes.

5 Q And you weren't -- and Officer Baker
6 was there as well, correct?

7 A Yes.

8 Q All right. And he didn't pull those
9 drawstrings or tie them. Correct?

10 A Correct.

11 Q Looking at that photograph, you can't
12 tell whether those are tied or untied, can you?

13 A They were untied.

14 Q No. I said looking at the photograph,
15 can you sit here and tell the Jury you can tell
16 at that photograph, whether they're tied or
17 untied?

18 A They are untied.

19 Q Based on that?

20 A Based upon that.

21 Q All the questions I have. Thank you,
22 Your Honor.

23 THE COURT: Any re-direct, Ms. Holt?

24 MS. HOLT: No, Your Honor.

25 I would ask that Officer Williams be

1 released from any further questioning.

2 THE COURT: Any objection?

3 MR. D'AGOSTINO: I object. We may recall
4 him.

5 THE COURT: Officer Williams, I'm sorry.

6 You can step down but you're still under
7 subpoena.

8 Ms. Holt, you may call your next witness.

9 MS. HOLT: The State's next witness is
10 Sergeant Michael Hawkins.

11 * * *

12 MICHAEL HAWKINS,

13 called as a witness by and on behalf of

14 the State to testify, being first duly

15 sworn was examined and testified as follows:

16 * * *

17 DIRECT EXAMINATION

18 BY MS. HOLT:

19 Q Good morning, Sergeant Hawkins.

20 A Good morning.

21 Q Please state your full name for the
22 record.

23 A Michael Allen Hawkins.

24 Q Where are you employed?

25 A York County Sheriff's Office.

1 Q How long have you been with York County
2 Sheriff's Office?

3 A Approximately two years.

4 Q Prior to working at the York County
5 Sheriff's Office, you worked in a different
6 division of law enforcement, correct?

7 A I worked at York Police Department.

8 Q Tell the Jury about that prior
9 experience?

10 A I worked at York Police Department for
11 approximately six years before being hired with
12 the York County Sheriff's Office.

13 Q Is that where you were working on April
14 21st, 2017?

15 A It is.

16 Q What were your responsibilities with
17 the York Police Department?

18 A At that time I was a patrol sergeant.

19 THE COURT: If you don't mind speaking up
20 just a little bit. Okay?

21 BY MS. HOLT:

22 Q On April 21st, 2017, were you involved
23 with an investigation into a possible indecent
24 exposure at the York Walmart?

25 A I was.

1 Q Do you recall the address of the York
2 Walmart?

3 A 970 East Liberty Street.

4 Q Is that within the City Limits of York
5 in York County?

6 A It is.

7 Q How did you become involved in that
8 investigation?

9 A We were dispatched for a possible
10 indecent exposure.

11 Q Do you recall the time that you were
12 dispatched?

13 A Not exactly.

14 Q If I show you a copy of the report,
15 would you recall?

16 A Yes, ma'am. Dispatched at 3:36 p.m.

17 Q Where were you dispatched to?

18 A Walmart.

19 Q What's the first thing you did to begin
20 the investigation?

21 A Met with the caller/victim.

22 Q Where was that?

23 A I believe she was at the -- there's a
24 car wash located in between Walmart and Lowes.
25 I met with her there.

1 Q Were you aware that there were other
2 officers that were responding to the complaint?

3 A Yes.

4 Q After speaking with the victim, did you
5 go to the Lowes parking lot?

6 A I did.

7 Q What did you do upon arrival?

8 A Read the Defendant Miranda and advised
9 him he was under arrest.

10 Q What did you do next?

11 A We attempted to allow him to call
12 someone to pick up his vehicle.

13 Q Was that successful?

14 A It was not.

15 Q So the vehicle was towed?

16 A It was.

17 Q Officer, I'm going to show you what's
18 been marked as an Exhibit, State's Exhibit 4 for
19 exhibit purposes. Do you recognize this disk?

20 A I do.

21 Q Are those your initials on the disk?

22 A They are.

23 Q What's that date that's on there?

24 A Today's date.

25 Q What does that date reflect?

1 A March 10th.

2 Q Is that the last date that you viewed
3 this video?

4 A It is.

5 Q What's on this disk?

6 A Bodycam.

7 Q Are you familiar with your body camera
8 equipment?

9 A I am.

10 Q What type of unit is your body camera?

11 A Axon.

12 Q Are you able to alter or modify that
13 equipment in any way?

14 A No.

15 Q Are you able to alter or modify the
16 video in any way?

17 A No.

18 Q How did you initiate recording that
19 day?

20 A I believe it was self-initiated. A
21 double tap.

22 Q When you viewed this video today, was
23 this a truthful, fair and accurate depiction of
24 your body camera as it was on April 21st, 2017?

25 A Yes.

1 MS. HOLT: Your Honor, at this time the
2 State would like to admit Exhibit 4 into
3 evidence and publish to the Jury.

4 MS. D'AGOSTINO: Without objection, Your
5 Honor.

6 THE COURT: Into evidence without
7 objection. This is State's 4, Ms. Holt?

8 MS. HOLT: Yes, Your Honor.

9 THE COURT: You may publish and that is
10 without objection.

11 (Court Reporter marks State's Exhibit
12 Number 4, Bodycam Disk, attached hereto.)

13 (VIDEO IS PLAYED)

14 BY MS. HOLT:

15 Q Did you just read the Defendant his
16 rights?

17 A I did.

18 Q You mentioned at some point you allowed
19 the Defendant to make a phone call. Is that
20 correct?

21 A Yes.

22 Q To pick up his vehicle?

23 A Yes, ma'am.

24 Q Is that what's happening right now?
25 You are about to have the Defendant exit the

1 vehicle?

2 A Yes.

3 Q You did allow the Defendant to make
4 that call to have the vehicle picked up?

5 A Yes.

6 Q He's not able to reach anyone, correct?

7 A Correct.

8 Q Do you recall the towing company that
9 eventually comes to pick up the vehicle?

10 A I believe it was Steve's. The report
11 doesn't say, I don't think.

12 Q Can you explain, * reported that it is
13 three *, that begins. What time were you
14 dispatched?

15 A 3:36 p.m.

16 Q Can you explain the time stamp on that
17 camera?

18 A All the cameras have a time stamp of,
19 what they call, zulu time. It's approximately
20 four hours ahead of our time and it's just a
21 time stamp that's on the body camera. We can't
22 change it, we can't alter it. It's the way it
23 is from Axon.

24 Q So, what time does that actually read
25 on there?

1 A That says 19:44, which would be 7:44
2 p.m. minus four hours for our time, so about
3 3:44 p.m.

4 Q And you can see the sunlight outside,
5 so you know it's in the middle of the day?

6 A Yes.

7 Q 3:44 in the afternoon?

8 A Yes.

9 Q Did you locate any weapons whenever you
10 did an inventory search of the vehicle?

11 A There were a couple of light machete or
12 large type knives in the back of the vehicle.

13 Q Did you collect them and put them into
14 evidence?

15 A I did not.

16 Q Did you find any items of Walmart bags
17 or Lowes bags, Subway bags, Wendy's bags, any
18 type of bags in the vehicle when you did your
19 search?

20 A No.

21 Q Was there any clothing in the front
22 seat, in the passenger's seat when you did that
23 search?

24 A No.

25 Q I have no further questions at this

1 time. Please answer any questions the Defense
2 attorney may have.

3 THE COURT: Mr. D'Agostino?

4 ***

5 CROSS EXAMINATION

6 BY MR. D'AGOSTINO:

7 Q You were with the York City Police for
8 a time, right?

9 A Yes, sir.

10 Q You were the Sergeant?

11 A Yes, sir.

12 Q And you've since gone to the Sheriff's
13 Department?

14 A Yes, sir.

15 Q Now, as it relates to your look through
16 the vehicle, those machetes, the kind -- have
17 you ever been camping before?

18 A Yes, sir.

19 Q So, that's the kind of stuff you use
20 when you go camping, isn't it?

21 A Right.

22 Q Especially if you're kayaking and
23 spending the night on an island somewhere, you
24 have that kind of stuff with you, don't you?

25 A Yes, I suppose.

1 Q Is camping something you do often?

2 A No, sir... I haven't been in years.

3 Q Have you ever gotten chigger bites when
4 you went camping?

5 A No, sir.

6 Q No? As it relates to the inventory or
7 the look through the vehicle, he had on the
8 front seat of the passenger car a plastic bag
9 with clothes in it, didn't he?

10 A I don't recall that.

11 Q Do you recall a plastic bag on the
12 front seat of the car?

13 A No, sir.

14 Q You don't recall that at all?

15 A No, sir.

16 Q Have you watched the full video, your
17 full video, previous to today?

18 A I'm sure I have.

19 Q You've watched the video this morning,
20 the one that's introduced into evidence?

21 A Yes, sir.

22 Q And you're telling the Jury you don't
23 recall -- you recall looking through his
24 vehicle, right?

25 A Yes, sir.

1 Q Sitting here today, you don't recall a
2 plastic bag sitting on the passenger side of his
3 car or anything sitting on the passenger side in
4 the front seat of the vehicle?

5 A I don't think the video today has the
6 inventory on it.

7 Q I understand that. From your memory,
8 your recollection, your perception, do you
9 recall a plastic bag sitting on the front
10 passenger vehicle, the seat of the vehicle?

11
12 A No, sir.

13 Q Was there anything sitting on the
14 passenger seat of the vehicle, based upon your
15 recollection?

16 A I don't recall.

17 Q Do you recall one way or another or
18 just say no?

19 A I don't recall one way or the other.

20 Q I understand, for evidentiary rules
21 that the inventory's not, but you have watched
22 the entire video, haven't you, previous to
23 today?

24 A It's been a while.

25 Q It's been a while? Do you not recall

1 seeing yourself in that video picking up
2 plastic bag, looking in it and seeing clo
3 it and putting it back down?

4 A I don't recall, sir.

5 Q You said, based upon your
6 investigation, you made the decision to arrest
7 Mr. Dauer. Correct?

8 A Yes.

9 Q You're the one who conducted the
10 investigation, correct?

11 A I believe Sergeant Baker's the one that
12 got the warrant.

13 Q I understand that, but you're the one
14 that made the decision that day to put him under
15 arrest, correct?

16 A Yes, sir.

17 Q That wasn't based upon any first-hand
18 observation, that was based solely upon a three-
19 minute conversation, three-and-a-half-minute
20 conversation you had with Ms. Jarrett, right?

21 A Yes, sir.

22 Q Everything that she told you, you used
23 in processing or making a decision as to whether
24 to put him under arrest. Correct?

25 A Correct.

1 Q Did you know Ms. Jarrett before this
2 date?
3 A I knew of her.
4 Q Had you ever met her?
5 A Yes, sir.
6 Q You knew her, didn't you?
7 A Yes, sir.
8 Q You knew her name?
9 A Yes.
10 Q She's on the City Council in the City
11 of York?
12 A Not at that time, she wasn't.
13 Q She was running for it?
14 A No, sir.
15 Q She wasn't?
16 A Not that I'm aware of.
17 Q But you'd had contact with her, hadn't
18 you?
19 A Yes, sir.
20 Q On prior occasions?
21 A Yes, sir.
22 Q So, she wasn't a stranger to you?
23 A No, sir.
24 Q How many times prior had you had
25 contact with her?

1 A I can't tell you an exact number.

2 Q Do you know why you were having so much
3 contact with her?

4 A I was a school resource officer.

5 Q And she came to the school often?

6 A Her daughter went to the school.

7 Q Had she been involved in any other
8 investigations that you were involved in?

9 A Not that I'm aware of.

10 Q Well, the reason I'm asking is, didn't
11 she say when you drove up --

12 MS. HOLT: Objection. Hearsay.

13 THE COURT: Approach the bench, please.
14 Objection sustained.

15 BY MR. D'AGOSTINO:

16 Q Anything -- your full investigation,
17 your decision to arrest Mr. Dauer was based on
18 about a three-and-a-half-minute conversation you
19 had with Ms. Jarrett, right?

20 A Yes, sir.

21 Q At the time you made that decision, you
22 hadn't looked at that any videos?

23 A No.

24 Q You hadn't seen any of the videos, had
25 you?

1 A No, sir.

2 Q Based upon your investigation, did you
3 not -- was it your understanding at the time you
4 spoke with Ms. Jarrett, that she had witnessed
5 Mr. Dauer driving around Walmart prior to her
6 going into Walmart?

7 A I believe that's what she said.

8 Q So, she had told you she had witnessed
9 him driving around before she went into Walmart,
10 right?

11 A I believe so.

12 Q You used that in making your decision
13 to place him under arrest. Did you not?

14 A I used her entire --

15 Q I understand, but that was part of it, it
16 wasn't it?

17 A Sure.

18 Q And if that wasn't accurate, that would
19 have affected your decision, correct? Wouldn't
20 it?

21 A If what wasn't accurate?

22 Q If she hadn't been -- if she hadn't
23 observed him driving around Walmart before she
24 went in?

25 A I don't really think that would play

1 decision.

2 A I don't think it mattered whether the
3 windows were up or whether it was down. She
4 seen it.

5 Q So, as long as she said she'd seen it,
6 you're going to put him under arrest? It didn't
7 matter, right?

8 A It doesn't matter whether the windows
9 are up or down if she saw it.

10 Q Well, if she saw what she says she saw.
11 So, don't you -- so, as long as she said she saw
12 what she saw, you were going to place him under
13 arrest?

14 A Yes, sir.

15 Q When you decided to place him under
16 arrest, you hadn't seen him?

17 A No, sir.

18 Q You hadn't seen what he was wearing?
19 No? You hadn't seen the shorts?

20 A No, sir.

21 Q You hadn't seen his ball cap?

22 A No, sir.

23 Q Wouldn't know him from Adam's house
24 cat, would you?

25 A No, sir.

1 into the part of it.

2 Q But you understood it wasn't just that
3 she saw him before she went in, she told you he
4 had been driving around Walmart? Correct?

5 A Yes, sir.

6 Q Did you not use the fact -- did you not
7 believe that when he went by her, all of his car
8 windows were open?

9 A I don't know.

10 Q Isn't that what she told you? That all
11 his car windows were open?

12 MS. HOLT: Objection. Hearsay.

13 MR. D'AGOSTINO: It's part of the
14 investigation, Your Honor, when he placed him
15 under arrest.

16 THE COURT: I'm going to sustain the
17 objection. You know what, I'm actually not.
18 I'm going to overrule the objection.

19 BY MR. D'AGOSTINO:

20 Q Did you not use her statement that all
21 his windows were open in your decision to place
22 him under arrest?

23 A That wasn't the sole basis of why I
24 arrested him, no.

25 Q But that would have affected your

1 Q So, when she said she saw something,
2 you made that decision to place him under
3 arrest, regardless of the surrounding
4 circumstances?

5 A I wouldn't say regardless, no.

6 Q You didn't consider -- whether the
7 windows were up or down didn't matter to you.
8 What happens if they're tinted?

9 A It doesn't matter if they're down.

10 Q So, them being down is important?
11 Right.

12 A Sir, I'm not sure what you're looking
13 for here.

14 Q I'm just asking questions. Just trying
15 to understand what you made your decision to
16 arrest my client on that day by having never
17 seen him, talked to him, viewed him, not knowing
18 whether the windows were really up or down, not
19 knowing whether she was really following him.
20 That's what I'm trying to find out. Just what
21 happened that day, okay?

22 MR. D'AGOSTINO: Your Honor, I'm going to
23 put a piece of video. This is going to take me
24 a few minutes. Do you want to take a break?

25 THE COURT: Ladies and Gentlemen, we've

1 been going quite a bit of time. Would you raise
2 your hand if you'd like to go and take about a
3 15-minute break right now? Okay. We'll take a
4 15-minute recess.

5 MR. D'AGOSTINO: I'm sorry. Thank you,
6 Your Honor.

7 (OFF RECORD)

8 THE COURT: Ms. Holt, are you ready to
9 proceed?

10 MS. HOLT: Yes, Your Honor. If I could
11 just play a short clip of the video as well, of
12 the inventory?

13 THE COURT: It is technically Mr.
14 D'Agostino's cross-examination, but do you want
15 to continue your direct examination of the
16 witness and then complete your re-direct?

17 MS. HOLT: Yes, Your Honor.

18 THE COURT: Any objection, Mr. D'Agostino,
19 in letting her play an additional clip?

20 MR. D'AGOSTINO: That's fine. Do it now so
21 we can save time.

22 THE COURT: Thank you.

23 MR. D'AGOSTINO: Can she do it on the
24 screen so I can see it?

25 (Video is played)

1 MR. D'AGOSTINO: My question isn't on the
2 rest of the car or anything else that the car is
3 on. On re-direct, I'm not sure what this --

4 THE COURT: I'll let her refresh his
5 memory, but again, we're not making any rulings
6 on the questions.

7 BY MS. HOLT: Thank you, Your Honor.

8 THE COURT: Anything else, Counsel, before I
9 bring the Jury back in?

10 MR. D'AGOSTINO: No. Thank you, Your
11 Honor.

12 THE COURT: From the State?

13 MS. HOLT: No, Your Honor.

14 THE COURT: Bring the Jury back in. Ladies
15 and Gentlemen, I understand you've elected Mr.
16 Zimmerman as your Foreperson. Is that correct?
17 Raise your hand, sir. Thank you, sir. Ms.
18 D'Agostino, your witness.

19 MR. D'AGOSTINO: Thank you, Your Honor.

20 RE-CROSS EXAMINATION

21 BY MR. D'AGOSTINO:

22 Q Let me go back a minute. At the time
23 you decided to place Mr. Dauer under arrest, you
24 did that after talking to Ms. Jarrett for about
25 three to three and a half minutes, right?

1 A Yes, sir.

2 Q During that three to three and a half
3 minutes, you did not know how long she had
4 allegedly seen what she says she told you she
5 saw, did you? How long she actually observed
6 him? Minutes, seconds? Do you not know?

7 A No, sir.

8 Q You didn't consider that in making your
9 decision, did you -- to arrest him?

10 A No.

11 Q No? You didn't consider, according to
12 your testimony, did or did you not consider
13 whether the windows were opened or closed?

14 A No.

15 Q So, it didn't matter to you whether the
16 windows were opened or closed?

17 A No.

18 Q If she told you the windows were all
19 opened, would that -- doesn't that affect your
20 decision?

21 A No, sir.

22 Q If she told you the windows were closed
23 and you saw they were tinted wouldn't that
24 affect your decision?

25 A I don't think the front windows were

1 tinted.

2 Q The back windows were tinted, weren't
3 they?

4 A He wasn't in the back seat.

5 Q Did she tell you how long she had to
6 observe him or how many times she had to observe
7 him before she made the decision to call 911?

8 A I don't recall her saying an exact
9 amount of times that he drove by her, no.

10 Q Was it more than one, before she
11 decided to call 911?

12 A I don't recall how many times she said
13 that he drove by her or --

14 Q But it was more than one, wasn't it?

15 A I believe so.

16 Q Before she decided to call 911, it's
17 your understanding she had seen him more than
18 one time; observed him indecently more than one
19 time?

20 A I don't know if she said it that way.
21 She didn't have a phone either, so she couldn't
22 call immediately.

23 Q What I'm trying to find out is how you
24 came to your conclusion --

25 A Because she said she saw him expose

1 himself..

2 Q Okay. So, it came down to,
3 specifically, her statement that she said she'd
4 seen him expose himself? Correct?

5 A Yes, sir.

6 Q Anything else, other than the fact that
7 she said she'd seen him? As long as she said
8 she'd seen him, that's what mattered. Correct?

9 A Yes, sir.

10 Q Now, as it relates to Mr. Dauer, you
11 had a chance during our break to look at some
12 video. He did have a bag of clothes in the
13 front passenger seat of his car, didn't he?

14 A I believe he did.

15 Q And that was inside of a -- watching
16 that video today -- you've seen that video
17 before, the entire thing, haven't you?

18 A It's been a while.

19 Q But you have seen it before?

20 A Yes, sir.

21 Q In fact, you saw it before back in, I
22 think, October or November most recently,
23 correct?

24 A I believe so. I don't recall the exact
25 date.

1 Q But you've seen it before?

2 A Yes, sir.

3 Q At that time, you saw that there was a
4 bag of clothing in the front passenger's seat,
5 correct?

6 A Yes, sir..

7 Q It's just your perception or your
8 memory today is different than what is was, than
9 what you saw, correct?

10 A Sure.

11 Q In fact, you -- when you impound the
12 vehicle, you write up a City of York Police
13 Department vehicle tow inventory report, right?

14 A Yes, sir.

15 Q Is this your report that you wrote?

16 A Yes, sir..

17 Q You actually wrote that that day when
18 you were there, correct?

19 A Yes, sir.

20 Q It's part of your case file, isn't it?

21 A It is.

22 Q You reviewed the case file before
23 today, didn't you?

24 A Not the entire file, no.

25 Q But on there you also note that there

1 was clothing, correct?

2 A Yeah, but it doesn't say where they
3 were at in the vehicle, just that they were in
4 the vehicle.

5 Q Okay. But you know that there was
6 clothing.

7 A There was a bunch of stuff in there.

8 Q When you went up and Mirandized Mr.
9 Dauer, did you tell him who had seen him?

10 A I don't think I did.

11 Q Did you ever tell him where he'd been
12 seen inside the Walmart parking lot?

13 A I don't believe so.

14 Q Did you tell him how somebody had seen
15 him?

16 A No, sir.

17 Q So, when you were there and he was
18 under arrest for indecent exposure, all he knew
19 sitting there talking to you at that time until
20 sometime later when he got the videos in
21 discovery, until that time, the only thing he
22 knew is that he was charged with indecent
23 exposure? He didn't know who said he did it,
24 didn't know where on the property, didn't know
25 when exactly, correct?

1 A I don't know what the other officers
2 may have told him, but I didn't tell him any of
3 that information.

4 Q But the other officers didn't know
5 anything about it until you got on the scene.

6 A We obviously had someone call it in.

7 Q I understand that, but as far as Mr.
8 Dauer knowing where or who, you're the only one
9 who spoke with Ms. Jarrett, right?

10 A Yes, sir.

11 Q So, you would have been the only one to
12 know who and where?

13 A Yes, sir.

14 Q You didn't tell anybody else who and
15 where before you arrested him, did you?

16 A No, sir.

17 Q So, when he was there at the scene,
18 placed under arrest, taken to the police
19 department, he never knew who, where, what
20 someone was accusing him of, correct? Other
21 than indecent exposure, is what you all told
22 him, "You've been charged with indecent
23 exposure." Right?

24 A Yes, sir.

25 Q All the questions I have. Thank you,

1 Your Honor. Thank you, Officer Hawkins.

2 THE COURT: Any re-direct, Ms. Holt?

3 MS. HOLT: Yes, briefly, Your Honor.

4 ***

5 FURTHER REDIRECT EXAMINATION

6 BY MS. HOLT:

7 Q Sergeant Hawkins, there's been a lot of
8 talk about bags. Specifically, I asked you were
9 there any Walmart bags, Lowes bags, food bags
10 like Subway and your response was?

11 A No.

12 Q There was a bag in the front seat and
13 when you observed the video could you tell
14 whether it was sealed or not sealed? The bag
15 sitting on the front seat?

16 A It was -- it had some type of clip on
17 it and it was rolled up and tied up, however you
18 want to say it.

19 Q So, it was sealed?

20 A It was.

21 MR. D'AGOSTINO: I'm going to object to the
22 form of the question. Sealed implies one thing.
23 That's not what he said and it's leading.

24 MS. HOLT: I'll withdraw the question.

25 BY MS. HOLT:

1 Q Do you know what type of bag that it
2 was?

3 A I think there were two in the video.
4 There was a small one and a larger one.

5 Q Can you describe the two bags?

6 A One was like a -- I guess a bag like
7 you would use for camping or something of that
8 nature that you would put clothing or other
9 types of items in, but it was tied up and
10 another one was like a smaller bag that you
11 would get from a convenience store or something
12 of that nature.

13 Q If I'm watching the video, could you
14 ascertain whether it was clothes or some other
15 type of cloth material in that bag?

16 A It appeared to be.

17 Q Did you ever pull it out on the video
18 to where it was visible on the video?

19 A No, I didn't.

20 Q The video that you observed for today,
21 as we had already discussed, the inventory
22 search was not on the video that you observed to
23 watch for today? Correct?

24 A No, it was not.

25 Q That was removed for evidentiary

1 purposes, correct?

2 A Correct.

3 Q On the remainder of the video that you
4 watched on the inventory search, is there
5 clothing in the back seat that you can see?

6 MR. D'AGOSTINO: I'm going to object. I
7 didn't say anything about the back seat or any
8 other part of the car.

9 MR. HOLT: Your Honor, may we approach?

10 THE COURT: You may.

11 BY MS. HOLT:

12 Q So, Officer, there was a jacket in the
13 back seat of the vehicle. Is that correct?

14 A I believe so.

15 Q And the report that was shown to you to
16 refresh your recollection, was that the clothing
17 that you were indicating that was in the
18 vehicle?

19 A Yes.

20 Q As to when you spoke to Ms. Jarrett,
21 you did the statement from Ms. Jarrett, correct?

22 A I did.

23 Q And you knew her previous to this,
24 correct?

25 A I did.

1 Q What was the nature of your
2 relationship with her previous to this?

3 A I was a school resource officer,
4 previously, not then, and her daughter went to
5 the school that I was assigned to.

6 Q Did you have any other type of
7 relationship with her outside of that?

8 A No.

9 Q Did you have any other interactions
10 related to any other kinds of investigations or
11 police reports?

12 A Not that I'm aware of.

13 Q When you spoke to her, she did give you
14 a vehicle description.

15 Is that right?

16 A Yes.

17 Q Did that match the vehicle description
18 when you arrived on the scene to arrest Mr.
19 Dauer?

20 A It did.

21 Q I have no further questions.

22 THE COURT: Any re-cross?

23 MS. D'AGOSTINO: Just briefly, Your Honor.

24 ***

25 FURTHER-CROSS EXAMINATION

1 BY MR. D'AGOSTINO:

2 Q You were asked some questions just now
3 by Ms. Holt about the bag in the front seat.

4 The bag in the front seat, white bag, that was a
5 camping bag, correct?

6 A The bigger one?

7 Q The bigger one, the white one. The one
8 you pulled off the seat and opened up and looked
9 in, all right?

10 A I'm not sure what it's used for, but I
11 guess you could use it for that.

12 Q Well, it had a Velcro top, right?

13 A Yes.

14 Q That's what you were trying to say. A
15 Velcro top?

16 A Yeah.

17 Q It wasn't sealed, it was just Velcro'd
18 shut and you pulled it opened easily and put it
19 back closed after you got done looking at it,
20 right?

21 A I think it had a plastic clip on it
22 too. I believe.

23 Q But you opened it up?

24 A Yeah.

25 Q In fact, when you opened it up, you put

1 your hand over your bodycam or something. I
2 guess you were answering a call or something,
3 but when you were looking inside of it -- you
4 did look inside of it? Part of your job and
5 duty is to look at what's in the car, right?

6 A Yes, sir.

7 Q There were clothes in there, right?

8 A Some kind, yes.

9 Q Best you can remember?

10 A Sure.

11 Q Clothes that someone would change into,
12 other shorts, t-shirt?

13 A I didn't look to see what type of
14 clothing it was.

15 Q All right. All the questions I have.
16 Thank you, Your Honor.

17 THE COURT: Any re-direct?

18 MS. HOLT: Just briefly.

19 ***

20 FURTHER REDIRECT EXAMINATION

21 BY MS. HOLT:

22 Q The clothing that you indicated on your
23 report that you were shown, was that the jacket
24 that was in the back seat?

25 MR. D'AGOSTINO: Your Honor, I didn't

1 anything about the jacket. I object.

2 THE COURT: I'm going to sustain your
3 objection, Mr. D'Agostino.

4 MS. HOLT: No further questions, Your
5 Honor.

6 THE COURT: You can step down, officer.

7 (Whereupon, the witness exited the witness
8 stand.)

9 MR. D'AGOSTINO: We may need to recall him,
10 so I'd ask that he not be excused.

11 THE COURT: Officer, you are still under
12 subpoena.

13 THE WITNESS: Yes, sir.

14 THE COURT: Counsel, may I see you all
15 briefly about scheduling?

16 (Bench conference)

17 Ladies and Gentlemen, if you're wondering
18 what I was discussing with the lawyers, we
19 decided on when we were going to take the lunch
20 break and we are going to have one more witness
21 before the lunch break.

22 Ms. Holt?

23 MS. HOLT: Your Honor, the State calls
24 Kasie Edge Parker.

25

1 KASIE EDGE PARKER,
2 called as a witness by and on behalf of
3 the State to testify, being first duly
4 sworn was examined and testified as
5 follows:

6 ***

7 DIRECT EXAMINATION

8 BY MS. HOLT:

9 Q Good morning, Ms. Parker.

10 A Good morning.

11 Q If you could, please state your full
12 name for the record?

13 A Kasie Parker.

14 Q How are you employed?

15 A With Walmart in York, South Carolina.

16 Q How long have you been with Walmart?

17 A 18 years.

18 Q Specifically, which department do you
19 work in?

20 A I work for asset protection.

21 Q What does it mean to be an asset
22 protection officer?

23 A We're responsible for the safety of the
24 store. We focus on shoplifting. That is our
25 primary goal. We also look at things to keep

1 our customers and associates safe. We focus on
2 goods coming into the store and making sure
3 we're identified everything correctly and all of
4 that.

5 Q Do you work out of only one Walmart or
6 multiple Walmart's?

7 A My home store is the York store. I do
8 travel to about 11 other stores several times a
9 year.

10 Q Where is your home store, the York
11 Walmart located?

12 A 970 East Liberty Street.

13 Q And you know that to be within the city
14 limits of York County?

15 A Yes, ma'am.

16 Q Does that York Walmart have
17 surveillance?

18 A Yes.

19 Q There's video surveillance of the
20 parking lot?

21 A Yes.

22 Q Do you recall how many cameras are in
23 the parking lot?

24 A Eight.

25 Q Was that also true back on April 21st

1 of 2017?

2 A Yes.

3 Q Are you familiar with the layout of the
4 parking lot?

5 A Yes.

6 Q I'm going to show you what's been
7 previously marked as Exhibit 6, State's Exhibit
8 6. That is an aerial photograph of the Walmart
9 parking lot.

10 Is that an aerial photograph of the Walmart
11 parking lot located at 970 East Liberty Street?

12 A Yes.

13 Q Was it the layout at the time of the
14 event, which was April 21st, 2017?

15 A Yes, ma'am.

16 Q Is that a truthful and accurate
17 photograph of the layout of the Walmart as it
18 would have been on April 21st, 2017?

19 A Yes, ma'am.

20 MS. HOLT: Your Honor, at this time, I
21 would like to move Exhibit 6 into evidence and
22 publish to the Jury.

23 THE COURT: Any objection?

24 MR. D'AGOSTINO: Without objection.

25 THE COURT: Into evidence without

1 objection.

2 (Court Reporter marks State's Exhibit
3 Number 6, Photograph, attached hereto.)

4 MS. HOLT: Your Honor, bear with me a
5 moment. It's a little tricky.

6 BY MS. HOLT:

7 Q I apologize, this part looks a little
8 blurry, but is that the aerial photograph that I
9 just showed you?

10 A Yes, ma'am.

11 Q How many rows are there that you see in
12 the parking lot?

13 A I believe there's ten.

14 Q Are those indicated in any way in the
15 parking lot?

16 A Yes, ma'am. There are signs on the
17 flower bed that you see closest to the store,
18 that indicate row 1, 2, 3 and so on.

19 THE COURT: It's a touch screen, so you can
20 mark, indicate things to the screen -- you can
21 mark it up.

22 A Okay. These flower beds here at the
23 top show that there's a sign posted in each one
24 of those that tell you rows 1 through 10.

25 Q So, it's a visible sign that you can

1 see and it was in the Walmart parking lot on
2 April 21st, 2017?

3 A Yes, yes.

4 Q I'd like to show you what's been marked
5 for exhibit purposes as State's Exhibit 7. Ms.
6 Parker, the pair of photographs I just handed
7 you just now, does that indicate the rows that
8 you just told me about of one through ten marked
9 in the flower bed, does that indicate that on
10 that sheet of paper?

11 A Yes.

12 Q Other than a label that had been added
13 that had those rows marked and where the aisles
14 were located, is it the exact same aerial
15 photograph as State's Exhibit 6?

16 A Yes.

17 Q And it just counts through one through
18 ten and the aisles that - or one through nine?

19 A Correct.

20 MS. HOLT: Your Honor, at this time the
21 State would like to publish Exhibit 7 to the
22 Jury.

23 THE COURT: Did you put it in as evidence?

24 MS. HOLT: And move it into evidence?

25 THE COURT: Any objection?

1 MR. D'AGOSTINO: Your Honor, I would object
2 as to who created that document with the
3 modifications to it.

4 THE COURT: How was it modified?

5 MR. D'AGOSTINO: Number identifying rows
6 have been superimposed on the photograph itself.

7 THE COURT: If you all would approach?

8 (Bench conference)

9 BY MS. HOLT:

10 Q Ms. Parker, can you explain what sort
11 of surveillance system you have at Walmart?

12 A The name of the system is called March
13 Network. It constantly records video 24 hours a
14 day, seven days a week and they are placed
15 strategically throughout the store and parking
16 lot.

17 Q If there are any problems with that
18 system, who makes any repairs or provides
19 services for that system?

20 A We call our home office and put in a
21 service call and they send out a technician to
22 service any of the equipment or cameras that
23 need repair.

24 Q Is it possible to view that camera via
25 live feed?

1 A Yes.

2 Q Does the surveillance system also
3 record what is going on?

4 A Yes.

5 Q And that footage, is it stored?

6 A Yes.

7 Q How long is that footage stored?

8 A Typically, 30 to 45 days.

9 Q Have there been times where a recording
10 may be retained longer than it otherwise would
11 have been retained?

12 A Yes. If we go in and save a snippet of
13 it or a timeframe, it will stay on our hard
14 drive until the hard drive is full.

15 Q What kind of circumstances would you do
16 that?

17 A Normally, if there's a shoplifting that
18 we need to retain the video evidence for if
19 police request video evidence for any number of
20 reasons.

21 Q Who is trained to authorize and then
22 retrieve those recordings?

23 A Myself and I have two asset protection
24 associates and then the other members of
25 management in the building.

1 Q When you are trying to access a
2 recording, are you able to search by date or
3 time or location?

4 A Yes.

5 Q When I say location, I mean are there
6 different angles -- if there are eight cameras,
7 so there's different located cameras on the
8 outside of that building? Is that right?

9 A Yes.

10 Q Does the system allow you to edit or
11 change anything within that recording?

12 A No.

13 Q You mentioned as part of your job as an
14 Asset Protection Officer, you assist sometimes
15 law enforcement in providing surveillance
16 videos?

17 A Yes.

18 Q When you provide law enforcement with
19 videos, does the computer designate what has
20 been provided in any way?

21 A It just labels it by the name and case
22 number. If I reported something today, it may
23 label it as Case 100 and if I record something
24 tomorrow, it will be 101 then we go from there.

25 Q Is that stored in the system?

1 A Yes.

2 Q At some point, did the York Police
3 Department request surveillance from the parking
4 lot of the York Walmart from the date of April
5 21st, 2017?

6 A Yes.

7 Q Did you provide that footage to them?

8 A Yes.

9 Q How was that footage designated for
10 that case?

11 A I believe it was case marked 155 and
12 156.

13 Q The disc that you provided to York PD
14 for the initial disc that you provided?

15 A I think it was 139.

16 Q Ms. Parker, I'm going to show you
17 what's been previously marked as State's Exhibit
18 8.

19 Have you viewed that video?

20 A Yes.

21 Q Did you review that video as of today's
22 date?

23 A Yes.

24 Q Can you tell me how many angles are on
25 that camera?

1 A I believe it was all 8 in the front.

2 Q And that is what you provided to the
3 York Police Department when requested?

4 A Yes.

5 Q And a determined date of April 21st of
6 2017. Is that correct?

7 A Yes.

8 Q And it accurately and truthfully
9 reflects the footage that you provided to YPD
10 for April 21st, 2017?

11 A Yes.

12 Q Has it been altered in any way?

13 A No.

14 MS. HOLT: The State would like to move
15 Exhibit 8 into evidence.

16 THE COURT: Any objection?

17 MR. D'AGOSTINO: No objection.

18 THE COURT: Into evidence without
19 objection.

20 (Court Reporter marks State's Exhibit
21 Number 8, Disk, attached hereto.)

22 MS. HOLT: Your Honor, I'd like to publish
23 it for the Jury.

24 THE COURT: You may publish.

25 BY MS. HOLT:

1 Q Ms. Parker, is that is the system that
2 you were telling us about?

3 A Yes.

4 Q It is the Walmart surveillance. Is
5 that correct?

6 A Yes.

7 Q Ms. Parker, across there it's got clip
8 one through clip nine. Is that right?

9 A Yes, ma'am.

10 Q Why is there nine clips but there are
11 only eight camera angles?

12 A It looks one and nine are just
13 duplicated clips.

14 Q Ms. Parker, when you provided this to
15 YPD, it's showing approximately two-minute clips
16 on clips one through eight. Is that right? To
17 the ones that you provided to the York Police
18 Department?

19 A I believe so, yes, ma'am.

20 Q You'll see on here that clip one is
21 indicated as right grocery parking. Is that
22 right?

23 A That is the camera angle on the
24 rooftop.

25 Q Rooftop. I apologize. Rooftop grocery

1 parking?

2 A Yes.

3 Q Then clip two, same indication, rooftop
4 grocery parking?

5 A Right. If you double click on clip one
6 it will change the camera name.

7 Q Oh, my apologies. Thank you. The
8 rooftop grocery and then the crosswalk?

9 A Correct.

10 Q Clip two is rooftop grocery parking?

11 A Yes.

12 Q It's a little brighter in that clip.
13 Is that right?

14 A Yes.

15 Q Do you know why that is?

16 A It looks like in clip one, the sun, how
17 it's coming through the clouds. There's no real
18 reason why.

19 Q So, the sun's placement during the day
20 is going to change how the camera angle looks.
21 Is that right?

22 A Yes.

23 Q Clip three is the rooftop GM parking.
24 Is that correct?

25 A Yes.

1 Q And that one also looks a little
2 different in terms of coloring?

3 A Yes, ma'am.

4 Q Clip four is a duplicate of clip one.
5 Is that right?

6 A Yes.

7 Q Clip five is rooftop parking grocery
8 but it is basically to the -- if I'm correct on
9 this, to the right of the rooftop grocery
10 parking that we saw on clip one.

11 Is that right?

12 A The GC is garden center, so it's
13 rooftop garden center.

14 Q So, it's going to be to the right of
15 the grocery parking?

16 A Yes.

17 Q As it corresponds to the aisle we were
18 looking, where we saw the aerial photograph, we
19 were looking basically at the far end of the
20 garden center. Is that right?

21 A Right.

22 Q And then clip six, can you tell me what
23 that label is?

24 A Rooftop GM parking.

25 Q Another angle looks like the

1 difference. Clip seven, can you tell me what
2 that one is?

3 A Rooftop garden center parking.

4 Q And then clip eight?

5 A Rooftop grocery parking.

6 Q That was pretty bright in that photo?

7 A Yes.

8 Q And then finally, clip nine?

9 A Rooftop grocery to GM crosswalk.

10 Q At some point, did you receive a
11 request from the solicitor's office through
12 Investigator Tanner Davis for additional footage
13 for the period of April 21st, 2017?

14 A Yes.

15 Q Did you provide that requested footage?

16 A Yes.

17 Q Do you recall how that footage is
18 labeled that you provided to the solicitor's
19 office?

20 A I believe it's 155 and 156.

21 Q Ms. Parker, I'm going to show you what
22 I've marked as State's Exhibit 9.

23 Do you recognize that exhibit?

24 A Yes.

25 Q Are you initials indicated on there?

1 A Yes.

2 Q What's the date that's on there?

3 A 3/06 2020.

4 Q So, this video, the last time you
5 viewed it was March 6th, 2020. Is that correct?

6 A Yes.

7 Q Is this also footage, though, from
8 April 21st, 2017?

9 A Yes.

10 Q And it truthfully and accurately
11 depicts the parking lot as it was on that date?

12 A Yes.

13 Q With two case numbers, 155 and 156.

14 A Yes.

15 MS. HOLT: Your Honor, at this time the
16 State would like to move Exhibit 9 into
17 evidence.

18 THE COURT: Any objection?

19 MR. D'AGOSTINO: No objection, Your Honor.

20 THE COURT: State's 9 is into evidence
21 without objection.

22 (Court Reporter marks State's Exhibit Number 9,
23 Disc, attached hereto.)

24 MS. HOLT: I would like to publish to the
25 Jury.

1 THE COURT: You may publish.

2 BY MS. HOLT:

3 Q Ms. Parker, this one is showing how
4 many angles across the top here?

5 A Four.

6 Q Do you know the approximate duration of
7 each of the clips, one through four?

8 A I believe it's about two hours each.

9 Q Starting at 3 p.m.?

10 A Yes.

11 Q And then what does it go to?

12 A Should be around five.

13 Q These are going to be the exact same
14 angles that you provided to YPD?

15 A Correct.

16 Q But they've extended the time from two
17 minutes to two hours?

18 A Right.

19 Q Can you tell me what the name -- I
20 apologize -- name of clip one is?

21 A Can you double click on it? It should
22 show it. Rooftop grocery to GM crosswalk.
23 Rooftop grocery parking.

24 Q And that's clip two?

25 A Correct.

1 Q Clip three?

2 A Rooftop GM parking.

3 Q Clip four?

4 A Rooftop grocery to GM crosswalk.

5 Q Ms. Parker, what does GM stand for?

6 A General merchandise. It would be the
7 pharmacy entrance.

8 Q I have now moved to case 156.

9 This is clip one on Case 156. What is that
10 one called?

11 A Rooftop grocery to GM crosswalk.

12 Q And then clip two?

13 A Rooftop grocery parking.

14 Q Ms. Parker, can you please tell the
15 Jury, Case 139, is prior to Case 155 and 156.

16 Is that correct?

17 A Yes.

18 Q What's the reason for that number being
19 different?

20 A Mr. Davis came to me a couple of days
21 after YPD had originally asked for the video.
22 So, in between the two requests we identified
23 more video, and that was just the next one in
24 line when he came and made his request.

25 Q So some time had passed between York PD

1 asking you for the footage versus the
2 solicitor's office asking for footage?

3 A Yes.

4 Q And additional cases unrelated to this
5 case would have been recorded, and that's the
6 reason for the number difference?

7 A Yes.

8 Q There have been recordings that you and
9 I viewed, and you reviewed another recording
10 other than today's date. Is that correct?

11 A Yes.

12 Q Ms. Parker, when you viewed the video
13 on March 6th, was there at that time metadata
14 that wasn't loading so that it showed no name
15 available?

16 A I'm not sure what you mean.

17 Q At the top part where it says rooftop
18 grocery parking, at any point that you and I
19 viewed the video, did it say no name available?

20 A Not that I -- I don't recall.

21 Q If I showed you a photo, would that
22 refresh your recollection?

23 A Okay.

24 Q Can you tell me what camera angle that
25 is?

1 A It doesn't say on there, but it looks
2 like grocery to GM parking, from my knowledge of
3 parking where the camera is.

4 Q But what does it indicate on that
5 photograph?

6 A Name not available.

7 Q On March 6th, 2020 when we reviewed the
8 video, is that how the video was appearing?

9 A Yes..

10 Q It has not been changed or altered in
11 any way?

12 A No.

13 Q But the name did not appear at the
14 point when we reviewed the video. Is that
15 correct?

16 A To my knowledge. Yes, ma'am.

17 Q I have no further questions at this
18 time. Please answer any questions the defense
19 counsel may have.

20 MR. D'AGOSTINO: I just want to be sure if
21 Exhibits 8 and 9 were moved into evidence.
22 Correct, Your Honor?

23 THE COURT: That's correct.

24 ***

25 CROSS EXAMINATION

1 BY MR. D'AGOSTINO:

2 Q Good afternoon, Ms. Parker. Thank you
3 for being here. I just have a few questions for
4 you. As it relates to all these videos, the
5 first one, the file runs on files and you've got
6 files and clips.

7 Is that a good way to do it?

8 A Okay.

9 Q I just want to make sure you and I are
10 talking the same language because sometimes it
11 gets confusing. So, file number 139, those are
12 just two mini clips of all the various video
13 angles. Correct?

14 A Yes.

15 Q And those are all eight or nine --
16 eight cameras across the Walmart store. Right?

17 A Right.

18 Q Now, there was an exhibit introduced
19 that was an aerial photograph of Walmart.
20 That's not something Walmart produced is it?

21 A No.

22 Q That's not something you all take
23 aerial photographs of and have the capacity to
24 do on a daily basis is it?

25 A No.

1 Q That's just something that was provided
2 to you. Correct?

3 A Yes.

4 Q You don't know what day that was taken,
5 what time of day or anything else? Right?

6 A No.

7 Q It was just demonstrative of the way
8 your parking lot looks, right?

9 A Right.

10 Q That's the purpose of that, just to see
11 the layout of the parking lot. Okay.

12 You see that on your screen, right?

13 A Yes.

14 Q This just shows the Walmart side of the
15 parking lot, right?

16 A Yes.

17 Q There's a whole other parking lot over
18 here down at this end, to the -- if you're
19 looking at the picture, to the right of the
20 picture. If you're looking at the picture,
21 there's the Walmart store in the background.
22 Right?

23 A Yes.

24 Q And that big white things we see,
25 that's the Walmart store, right?

1 A Correct.

2 Q So, everything to the right would be
3 where that -- I don't remember what the stores
4 are now. There was a variety store down there I
5 think at one time, a restaurant, all those other
6 stores. Excuse me?

7 A Yeah, Cato, Dollar Tree.

8 Q Yes, those stores. And there's a whole
9 big parking lot off to the right from this
10 photograph, right?

11 A Yes.

12 Q In fact, on video clip number 156 when
13 you have the photos of the crosswalk, one facing
14 toward Lowes and one facing the other way, you
15 actually see that driveway going out towards the
16 gas station. Correct?

17 A I believe so.

18 Q And you can see that in the background,
19 right?

20 A Right.

21 Q So, when you see that in the background
22 with cars coming down, across, in front of that,
23 you actually can follow cars down through there
24 if you're playing that at the right speed,
25 right?

1 A Yes.

2 Q Now, as it relates to these videos that
3 you saw, you viewed, when was the last time you
4 looked at these videos?

5 A I looked at them this morning.

6 Q Did you look on each one of these
7 videos that were introduced, these exhibits, did
8 you look at all the video on each -- all the
9 file, excuse me, all the clips on each file?

10 A No, sir.

11 Q Have you, prior to today, watched all
12 the clips on each one of those files?

13 A Yes, sir.

14 Q How many hours of video was that?

15 A 16.

16 Q Where did you do that at?

17 A Walmart.

18 Q Did you do it after you gave it to the
19 solicitor's office? Have you sat down and
20 watched all the files and all the clips?

21 A No.

22 Q So, when you said you looked at the
23 videos before the trial this morning, what did
24 you actually look at, since I know you couldn't
25 do 16 hours' worth of video this morning.

1 What did you actually look at?

2 A I just focused from 2:30 to about 3:30
3 going through all of the clips.

4 Q But you didn't do that on all eight
5 clips though, did you?

6 A Yes, sir.

7 Q This morning?

8 A Yes, sir.

9 Q What time did you start this morning?

10 A It was a little after 8.

11 Q So, it's 12:00 now. You've been on the
12 stand for quite awhile. Each clip is about an
13 hour long that you looked at?

14 A Well, you can fast forward --

15 Q Now, there was a clip, video, that you
16 testified to, that March 6th showed up that
17 didn't have the metadata on it, right?

18 A Right.

19 Q When you looked at them this morning,
20 did you fast forward through all those clips?

21 A Yes, sir.

22 Q And you can change the speed on the
23 cameras, can't you?

24 A Yes, sir.

25 Q Are there more angles that we could

1 have gotten hour long clips from, other than the
2 six that they do have?

3 A As far as the parking lot?

4 Q Yes, ma'am.

5 A I gave them all eight camera shots that
6 I had, I believe.

7 Q But I think on file folder 155 there
8 are four clips and file folder 156 there are two
9 clips and that equals six cameras.

10 A Right.

11 Q So, where are the other --

12 A The other two are at the back of the
13 building, so the incident didn't occur at the
14 back of the building.

15 Q So, file folder 139 has them from the
16 back of the building as well?

17 A I don't recall.

18 Q Are there a total of eight including
19 what's on the back of the building?

20 A Yes, sir. I believe so.

21 Q Okay. I'm just trying to understand
22 because I haven't talked to you before about
23 this. I'm just trying to understand the videos.

24 Now, the one that did not have the metadata
25 that said something about no, none available, do

1 you know why that was that way?

2 A I don't.

3 Q Do you know if that was put through a
4 converter in order to look at it?

5 A I don't understand much about the
6 technical part of it, so I don't know.

7 Q Okay. Do you understand much about the
8 downloading, the different players they can be
9 played to and things like that?

10 A The downloading, yes, sir. There's
11 only one way to download a video.

12 Q From the hard drive to a disk?

13 A Right.

14 Q But as far as other people playing it,
15 you don't know much about that?

16 A Correct.

17 Q The videos you watched today, you fast
18 forwarded through all six of those videos for
19 about an hour?

20 A Yes, sir.

21 Q Did you look -- from what time to what
22 time?

23 A Around 2:30 to about 3:30.

24 Q When you looked at the video clip of
25 155 and 156, did you observe or were you looking

1 at anything particularly? Looking for anybody's
2 car or anything like that?

3 A This morning? No, sir.

4 Q But those are accurate copies of what
5 was downloaded from Walmart as it relates to 155
6 and 156, as well as the others, right?

7 A Yes.

8 Q As it relates to, I think it was 155
9 that had the four clips. Those are the four
10 clips from the front of the store and then 156
11 has the other two close from the crosswalk,
12 right?

13 A Yes, sir.

14 Q As it relates to any compilations or
15 any kinds of things or things that were
16 highlighted, you would not have had any part of
17 doing that, correct?

18 A No.

19 Q Have you watched those videos?

20 A Of the video I burnt for --

21 Q No, the other one, the compilation
22 video or videos where anything was highlighted?

23 A No.

24 Q You've just watched these six videos
25 that you burnt?

1 A Yes.

2 Q No other questions. Thank you.

3 THE COURT: Ms. Holt?

4 MS. HOLT: Just briefly, Your Honor.

5 ***

6 REDIRECT EXAMINATION

7 BY MS. HOLT:

8 Q Ms. Parker, I know we already went
9 through this so I'm not going to -- just one
10 more time to specify why there are so many
11 camera angles on this video. I know we went
12 through all these names, so bear with me, but
13 camera clip number one, and this is State's
14 Exhibit 8, that's number 139.

15 That's the footage that was provided to
16 YPD. Camera number one, can you tell the Jury
17 what that camera number is?

18 A It is Rooftop grocery to GM crosswalk.

19 Q Can you tell the Jury what clip number
20 four is?

21 A It's the same. Rooftop grocery to GM
22 crosswalk.

23 Q Can you tell the Jury what clip number
24 nine is?

25 A Rooftop grocery to GM crosswalk.

1 Q So, clip numbers 1, 4, and 9 are all
2 the same clip. Is that right?

3 A Yes, ma'am.

4 Q So, that's one clip. And then we have
5 two, clip number two? What is that called?

6 A Rooftop grocery parking.

7 Q And then we have clip number three.
8 What is that one called?

9 A Rooftop GM parking.

10 Q And then clip number six. What is that
11 one called?

12 A Rooftop GM parking.

13 Q So, clip number three and clip number
14 six are also the same?

15 A Yes.

16 Q So, one, four and nine are the same
17 video, same angle. Is that right?

18 A Yes.

19 Q And then clip three and six are the
20 same angle?

21 A Yes.

22 Q So, if I counted correct, that would be
23 six camera angles.

24 Is that right?

25 A Yes.

1 Q I have no further questions.

2 THE COURT: Mr. D'Agostino?

3 ***

4 RE-CROSS EXAMINATION

5 BY MR. D'AGOSTINO:

6 Q So, what were seven and eight on the
7 video? Do you know what angles seven and eight
8 were?

9 A If I can see it again, I can tell you.

10 Q I'm just trying to get it situated so I
11 understand the different angles.

12 A Seven is the garden center parking.

13 Q Is that the front of the store?

14 A Yes, sir. Going towards the garden
15 center.

16 Q And eight?

17 A The rooftop grocery parking.

18 Q Front of the store?

19 A Yes.

20 Q So, there are -- we've got one, two,
21 three and three and six are the same, Four --
22 four and nine are the same. Five, what's five
23 say?

24 A Rooftop garden center parking.

25 Q So, that's the same as which one?

1 A Seven.

2 Q So, five and seven are the same. And
3 we have six, you said six was the same as three
4 and seven was the same as five.

5 Eight was the same as -- what was eight the
6 same as?

7 A Two.

8 Q Eight and two are the same. Okay, so
9 when you first testified on direct that these
10 were eight angles, these really only represent
11 six angles. The other two are in the back of
12 the store?

13 A Yes, sir.

14 Q So, Okay. I was just trying to
15 understand because when you testified the first
16 time, I thought you said there were eight angles
17 here, that's what I misunderstood. So, I just
18 want to fully understand.

19 So, these six angles reflect the six videos
20 from files 155 and 156, just longer clips on 155
21 and 156?

22 A Yes, sir.

23 Q Okay. Thank you.

24 THE COURT: Redirect?

25 MS. HOLT: No, Your Honor.

1 THE COURT: Any objection to excusing this
2 witness?

3 MS. HOLT: No objection from the State.

4 MR. D'AGOSTINO: I may need to recall her,
5 but I have no objection to her leaving, Your
6 Honor.

7 THE COURT: Ma'am, you can step down but
8 you're still under subpoena.

9 (Witness exits witness stand.)

10 THE COURT: Let me Counsel real quick.

11 (Bench conference)

12 THE COURT: All right, Ladies and
13 Gentlemen, I appreciate your attention and time
14 and continuing to pay close attention. We're
15 going to take a break until 2:15.

16 So, I'm going to again remind you, don't
17 discuss this with each other or anyone else.
18 Don't do any outside research, but you are free
19 to head home or wherever you want to go for
20 lunch. We'll see you back at 2:15.

21 Thank you very much.

22 (LUNCH RECESS)

23 * * *

24 (Whereupon, the following proceedings were held in
25 open court. The defendant was present along with his

1 attorney, along with counsel for the State.)

2 THE COURT: Okay. I hope everybody had a
3 good lunch. Anything you can think of, counsel, that
4 we need to bring up before we get started?

5 MS. HOLT: Nothing from the State, Your
6 Honor.

7 MR. D'AGASTINO: Nothing from the defense.

8 THE COURT: Let's bring them in.

9 (Jury enters courtroom.)

10 THE COURT: Thank you, ladies and gentlemen.
11 Hope you had a nice lunch. Did everyone follow
12 the rules the Court has given you earlier? Very
13 good. Ms. Holt or Ms. Joyner, you may call your
14 next witness.

15 MS. JOYNER: Thank you, Your Honor.

16 The State calls Michael Davis.

17 ***

18 MICHAEL TANNER DAVIS,
19 called as a witness by and on behalf of
20 the Court to testify, being first duly
21 sworn was examined and testified as follows:

22 ***

23 DIRECT EXAMINATION

24 BY MS. JOYNER:

25 Q Good afternoon, Mr. Davis.

1 A Good afternoon.

2 Q Can you please state your full name for the
3 record?

4 A Michael Tanner Davis.

5 Q How are you known by --

6 A Tanner.

7 Q Tanner. How are you employed?

8 A I work for the Sixteenth Circuit Solicitor's
9 Office.

10 Q How long have you been in the Sixteenth
11 Circuit Solicitor's job?

12 A Three years next month.

13 Q In what capacity?

14 A As an investigator.

15 Q Prior to coming to work at the Solicitor's
16 office, did you have previous law enforcement
17 experience?

18 A I did. I worked at the Clover Police
19 Department prior to living here, prior to coming here.

20 Q In what capacity at Clover Police
21 Department?

22 A I served as a patrol officer starting,
23 served time on the multi-jurisdictional forensics
24 service unit as an investigator and at the time I left
25 I was a lieutenant over the investigative efforts

1 there.

2 Q Were you working for the Solicitor's Office
3 in 2017?

4 A Yes, ma'am.

5 Q Regarding the criminal charges against
6 Mr. Jeffrey Dauer, did you obtain a Walmart
7 surveillance video from April 21st of 2017 for the
8 time of 3 p.m. to 5 p.m.?

9 A I did.

10 Q Who provided that to you?

11 A Ms. Kasie Parker.

12 Q Is she the loss prevention officer for
13 Walmart?

14 A Yes, she is.

15 Q Did you, as part of your work as an
16 investigator with the Solicitor's Office -- had you
17 had a familiarity with what the allegations were in
18 the case?

19 A I did.

20 Q Did you have an opportunity to review the
21 surveillance video that Ms. Parker provided?

22 A Yes, I did.

23 Q Am I correct that those are folders 155 and
24 156?

25 A Yes, ma'am. That's what they're titled.

1 Q Did you request those in addition to what
2 had previously been provided to the York Police
3 Department?

4 A I requested an additional time. I believe
5 what they got would be included in what I got, but I
6 got more time on the front and the back of the
7 incident time.

8 Q After receiving those files, 155 and 156,
9 did you have an opportunity to review them?

10 A Yes.

11 Q As you were reviewing those videos, what
12 information did you have that you were using to review
13 the videos?

14 A I knew the time of the call and I also knew
15 the description of the vehicle as a dark Jeep Cherokee
16 with a lighter stripe on the bottom. I also knew that
17 the vehicle that I was looking for had a kayak or a
18 boat strapped to the roof. So, I used that
19 information to try to find the vehicle in the video.

20 Q In your review of the video, were you able
21 to locate a car matching that description in the
22 Walmart parking lot?

23 A Yes, ma'am.

24 Q If you recall, what period of time according
25 to the time stamp on the videos that Walmart provided?

1 A From roughly 3:00 to roughly 3:35.

2 Q Did you have other information about other
3 people that were in the parking lot that you also
4 utilized in examining 155 and 156?

5 A I knew that the witness was, Ms. Jarrett,
6 was in the parking lot and I knew what time she
7 called. I was able to locate her in the parking lot
8 and based on finding her, I was able to locate the
9 car.

10 Q Now, the Walmart in question, this is the
11 Walmart in York. Are you familiar with that parking
12 lot?

13 A Yes, ma'am. I shop there.

14 Q You shop there? Did you ever have an
15 occasion to go out to the parking lot around this
16 period of time?

17 A Yes, ma'am.

18 Q I direct you to what's already been entered
19 as State's Exhibit 6 and are you able to see it on
20 your screen?

21 A Yes.

22 Q I am pointing to that big, white building.
23 What is it your understanding that big white building
24 is?

25 A That's Walmart.

1 Q Now, going to the upper -- the corner that
2 I'm pointing to now that's got like a hash, looks like
3 a sort of hash here in the corner.

4 A Yes.

5 Q What business is that?

6 A I think it is the Wendy's.

7 Q The Wendy's. Just to orient the Jury --
8 it's a little bit difficult to look at. on the
9 opposite side of the Walmart from the Wendy's, what is
10 the major business?

11 A On the opposite side?

12 Q If Wendy's is here, what would be just at
13 a --

14 A Okay, Lowe's.

15 Q Lowe's? Okay. Mr. Davis, when you reviewed
16 the surveillance video in 155 and 156, did you have an
17 occasion to put together a compilation of clips that's
18 showing the Jeep Cherokee with a kayak in the Walmart
19 parking lot during the time period you've mentioned?

20 A I did.

21 Q If I could ask you to explain for the Jury
22 in general terms, how you went about making this
23 compilation?

24 A Being familiar with the parking lot and the
25 -- familiarized myself with the angles, I was able to

1 watch the video, find the vehicle and track it through
2 the parking lot.

3 So, what I did was to try to show as concise as
4 the time period was in the parking lot. I followed
5 the vehicle around the parking lot during the time
6 period from start to finish and I would change camera
7 angles as the vehicle would leave one camera position
8 and enter another, I would change it.

9 There were periods of time when there were dead
10 spots in the video surveillance in which the car
11 cannot be seen, but to try to keep the time code
12 integrity, I left an empty space in there. So, there
13 are portions of the video in which the vehicle cannot
14 be seen.

15 Q But you would still see, wouldn't you, in
16 those empty spaces, would you still see the video of
17 the parking lot?

18 A Yes, yes.

19 Q Would you have the video clip be where you
20 were waiting for the Defendant to reenter?

21 A Yes. That way, like I say, the time code
22 would -- I didn't want gaps in the time period in the
23 video, was the goal.

24 Q What program did you use in order to make
25 the compilation?

1 A I used a program I have on my computer
2 called Camtasia. It's something I use regularly to
3 work with video.

4 Q In making the compilation, were you able to
5 alter the contents of the videos that you were working
6 with?

7 A Well, I didn't alter the contents of the
8 video. Whatever was on there is still on there. I
9 did add a layer on top that puts a circle over the
10 vehicle, just so it's easier to see the video where
11 it's in the very, very back portion of the video and
12 it's difficult to realize, and so tracking it through,
13 I did put an indicator over it so that you would know
14 where the vehicle was.

15 Q Okay. Other than that highlight over the
16 top or that layer over the top, there is nothing that
17 was altered within the actual content?

18 A No, ma'am.

19 Q I'm showing you what's been marked for
20 exhibit purposes as State's Exhibit 10. Do you
21 recognize that exhibit?

22 A I do.

23 Q What do you recognize that exhibit as?

24 A This is the disc containing the compilation
25 video I made.

1 Q Prior to the trial today, have you had an
2 opportunity to review that disk?

3 A I have.

4 Q How are you able to know that you reviewed
5 the disc?

6 A I put my initials on it.

7 Q Okay. Is this disk an accurate
8 representation of the compilation that you made of the
9 surveillance videos from Walmart?

10 A It is.

11 MS. JOYNER: At this time, we would offer State's
12 Exhibit 10 into evidence.

13 THE COURT: That's without objection. Into
14 evidence without objection.

15 (Court Reporter marks State's Exhibit Number 10, Disk,
16 attached hereto.)

17 MS. JOYNER: At this time, I'd ask to publish
18 this to the Jury?

19 THE COURT: You may publish.

20 BY MS. JOYNER:

21 Q I'm pausing this at the time being 3:00 and
22 51 seconds. Mr. Davis, just to ask you a quick
23 question, the top portion, there is a date and time
24 stamp on the Walmart surveillance video, is there
25 something that reads, "name not available"?

1 A Yes.

2 Q Do you understand, after making the
3 compilation, why there could be close within the
4 surveillance video a compilation that show "name not
5 available"?

6 A I do now. At the time I made it, when
7 opening the surveillance video from Walmart you have
8 to use their proprietary software that comes with the
9 -- that they give you with the surveillance video.
10 When using that, if you open the video from the case
11 file location, you lose some of the metadata.

12 They give you information like the name of the
13 camera. I later discovered that when you open the
14 file from the root folder, you regain all that
15 metadata, so there are clips in here in which the
16 camera name can be seen.

17 Q But other than the loss of the metadata,
18 there's nothing different about the content?

19 A No, the content is still the same.

20 Q Okay. Thank you. Mr. Davis, am I correct
21 that he entered that -- entered from the Lowe's side
22 of the parking lot?

23 A Yes, ma'am.

24 (Video is being played for the Jury)

25 BY MS. JOYNER:

1 Q. Thank you very much, Mr. Davis. Please
2 answer any questions the Defense has.

3 A Yes, ma'am.

4 ***

5 CROSS-EXAMINATION

6 BY MR. D'AGOSTINO:

7 Q Good afternoon, Mr. Davis.

8 A Good afternoon.

9 Q You took the videos from Walmart and put
10 that compilation together, right?

11 A Yes, sir.

12 Q And you knew what my client's, Jeff Dauer's,
13 car looked like and you even recognized the kayak on
14 it?

15 A Yes, sir.

16 Q Did you do the same for Ms. Jarrett's
17 vehicle?

18 A I did not.

19 Q Did you know what her vehicle was?

20 A I did.

21 Q And it was in there, wasn't it?

22 A It was.

23 Q Did you ever look to follow her vehicle from
24 the time she came onto Walmart property till the time
25 she parked?

1 A No, sir.

2 Q Do you know which direction she came from?

3 A No, sir.

4 Q Do you know how long -- do you know what
5 frame it's in? Could you identify it on that video?

6 A I can identify it in the video. Yes, sir.

7 Q You can identify it from the time we see
8 her, because you don't have the whole time she's on
9 the compilation, do you?

10 A Not on this compilation. No, sir.

11 Q But you know where she parked?

12 A Yes, sir.

13 Q But you know that because you knew what to
14 look for. Correct? Did something help you identify
15 her vehicle? Did she help you identify her vehicle?

16 A Her vehicle is visible on one of the body
17 cams with the officers.

18 Q Right. And then how were you able to locate
19 it when you were just looking through the videos?

20 A I knew the time of the 911 call and the time
21 on the video in which the car was in that area.

22 Q About what time does she park, if you
23 recall?

24 A I don't know what time she parked.

25 Q Do you know where it is on the video that

1 she parks?

2 A I saw it when we were watching it.

3 Q I'm trying to think of the best way to do
4 this.

5 Let me ask you this. The speed on that video,
6 you didn't change the speed at all, did you?

7 A No, sir.

8 Q That video is kind of choppy compared to
9 what we're used to seeing because of the quality of
10 the video equipment. Right? The number of frames per
11 second?

12 A I don't know what frames per second that
13 video recorded at.

14 Q Well, what I'm getting at is, when you watch
15 the video on your camera or you are videotaping with a
16 camcorder, it looks a lot smoother than that does.
17 Right?

18 A Could be...

19 Q It could be?

20 A Yeah.

21 Q So, my home videos might be a little
22 smoother than that or they might not be as smooth?

23 A Most of that video seemed fairly smooth.
24 Resolution maybe, but the smoothness, I didn't see
25 that issue.

1 Q Well, let's talk the same language. What do
2 you think resolution means?

3 A The pixilation.

4 Q Pixilation? The vehicle going from one spot
5 to the next. Is that what you mean by pixilation
6 resolution?

7 A No, just that it's a little bit grainy
8 looking.

9 Q Okay. Is the resolution better when you
10 have more frames per -- or the equipment records more
11 frames per millisecond or whatever the phraseology is?

12 A I don't believe the resolution would change.
13 It would just be how many frames per second you
14 record.

15 Q Well, does it change how you are able to
16 view it?

17 A Sure. Yes, sir.

18 Q All right. You do agree that he was off
19 video -- went off video beside where the gas station
20 was for six to seven minutes, right?

21 A Yes, sir. I checked with the businesses on
22 that strip mall and none of them had any videos that
23 captured the parking lot.

24 Q You don't know how she entered the Walmart
25 parking lot? You don't know how long she was on

1 Walmart's parking property before she parked her
2 vehicle, do you?

3 A No, sir.

4 Q Do you know if she was driving around before
5 she parked her vehicle?

6 A No, sir.

7 Q Do you know where she went when she pulled
8 her vehicle out?

9 A She went to the car wash over by the Walmart
10 parking lot.

11 Q When she went to park her vehicle, or after
12 he had passed her, did she go to her vehicle and then
13 go to the left and try to talk to somebody in a truck
14 that was backing out?

15 A Yeah. In the video it looks like she pushes
16 her buggy out of the middle and then she walks over to
17 a Ford truck that is backing up.

18 Q Okay. And then she puts her stuff in the
19 vehicle?

20 A I don't know. At some point she did.

21 Q When somebody points out where she is on
22 that video, the video is an accurate reflection of
23 what you got from Walmart?

24 A Yes, sir.

25 Q Other than watching the video, you know

1 nothing about this case?

2 A Only what I've read in the reports.

3 Q That's what I mean. No first-hand
4 knowledge?

5 A That's correct.

6 Q And the sole role that you had was creating
7 this video?

8 A Yes, sir.

9 Q That's all the questions I have. Thank you.

10 THE COURT: Ms. Holt, any redirect?

11 MS. HOLT: Briefly, Your Honor.

12 ***

13 REDIRECT EXAMINATION

14 BY MS. JOYNER:

15 Q Mr. Davis, I'm just going to start this
16 video and go back on State's Exhibit 10 and go back
17 about three -- according to this time stamp in the
18 corner, about 3:02, and I'll ask if you'll pause right
19 here. So, we've paused at 3:02 and 26 seconds.

20 Is that Ms. Jarrett's vehicle pulling into that
21 parking spot, according to what you can tell?

22 A Yeah, parking in between the two large white
23 vehicles, yes.

24 Q I'm going to ask you take it a little bit
25 forward to approximately 3:21, according to the time

1 stamp. Put that 3:20 and 15 seconds, Your Honor.

2 Tell us to stop, what is your understanding of the

3 video, when you see Ms. Jarrett re-appear on the

4 video.

5 A Yes, ma'am. There's Ms. Jarrett's -- that's

6 the right side of the car.

7 Q We have that at 3:21 and 52 seconds... 53, 53

8 seconds. The truck's pulling out at 3:22 and 05

9 seconds. Is that the truck you were referencing a

10 moment ago when you were speaking with Mr. D'Agostino?

11 A Yes, ma'am.

12 Q The compilation is meant to track the

13 movements of the Defendant's vehicle. Is that

14 correct?

15 A Yes, ma'am.

16 Q Not the victim's?

17 A Correct.

18 Q Thank you very much.

19 MR. D'AGOSTINO: May I re-direct, re-cross?

20 THE COURT: You may.

21 ***

22 RE-CROSS-EXAMINATION

23 BY MR. D'AGOSTINO:

24 Q All right. I'm going to play this video

25 again for you. I'm going to start at -- I'm starting

1 at 3:01:18. That's Mr. Dauer that's lit up, right?

2 A Yes, sir.

3 Q Again, that's Jeff coming down the aisle lit
4 up, right?

5 A Yes, sir.

6 Q Now, these cars coming down the road in
7 front of Walmart, do you know which one of those Ms.
8 Jarrett is?

9 A I don't know that any of them are but if one
10 would, it would be the one there (indicating). It's
11 the only SUV.

12 Q Right. So, she was the fourth one back.

13 A Okay.

14 Q That's Jeff about to turn right in the
15 bottom, right picture lit up. Right?

16 A Yes, sir.

17 Q And that's Ms. Jarrett still back there at
18 the crosswalk. Right?

19 A Yes, sir.

20 Q All right. That is Jeff going up the aisle
21 that we see lit up. Right?

22 A Uh-huh.

23 Q Now, the first parking place, the one on the
24 left, that is a handicapped spot, isn't it?

25 A The one on the left? Where the car is

1 parked?

2 Q No. You've got -- the car is parked, where
3 there's no parking, then there's a vehicle --

4 A The first open one on the left?

5 Q The first one open alongside -- is that
6 handicapped?

7 A It looks like it has the borders, yes, sir.

8 Q All right. So, keep going. Jeff goes past
9 that one on the right that is empty, right?

10 A Yes, sir.

11 Q Ms. Jarrett's still not in the lane there
12 yet, is she?

13 A I don't see her. No, sir.

14 Q You don't see her yet? He's about half to a
15 little more than a third close to halfway down that
16 aisle?

17 A Okay.

18 Q Do you agree with that?

19 A Yes, sir.

20 Q She's still not in there and he's getting
21 further along, right?

22 A Yes, sir.

23 Q All right. That's her coming into the
24 aisle, right?

25 A It could be. Yes, sir.

1 Q Well, we'll see in a second.

2 A Yeah.

3 Q He's just about at the end of that parking
4 aisle, isn't he?

5 A Yes, sir.

6 Q All right. And she's just now turning into
7 that aisle, right?

8 A Yes, sir.

9 Q That is her pulling into that parking spot,
10 isn't it?

11 A Yes, sir.

12 Q And he's all the way at the end of the
13 parking aisle?

14 A Yes, sir.

15 Q Going around?

16 A Uh-huh.

17 Q All right. Now, let's go to where you were
18 asked some other questions about it. It was 3:20:41,
19 right there. That's Jeff we see coming towards us,
20 right?

21 A Yes, sir.

22 Q That's the same way I was looking before
23 when I said that's where Ms. Jarrett was coming from?

24 A Yes.

25 Q Looking towards that gas station, right?

- 1 A No, he's driving away from the gas station.
- 2 Q Right.
- 3 A He's driving towards the Lowe's.
- 4 Q Right. But we're looking towards the gas
5 station?
- 6 A Yes, sir. We're looking that way.
- 7 Q He's driving down through there at about the
8 same pace, right?
- 9 A Yes, sir.
- 10 Q That's Jeff down there, right?
- 11 A Yes, sir.
- 12 Q You notice that -- did you ever look to see
13 if you could tell -- did you ever look to discern
14 whether his windows were open or closed?
- 15 A I did not. I mean, I can't be sure if it's
16 opened or closed. I don't know how transparent his
17 windows were.
- 18 Q You never looked to see if the sun was
19 reflecting off the windows as he came around the
20 curve? You never studied any of that, did you?
- 21 A My job was to track the vehicle.
- 22 Q To track the vehicle. Fair enough. That's
23 him going around the curve, right?
- 24 A Yes, sir.
- 25 Q All right. That was Ms. Jarrett, you said,

1 in front of his vehicle, right?

2 A Yes. Just to the front and to the right.

3 Q Front and to the right. She's still to the
4 front and to the right. Right?

5 A Uh-huh.

6 Q That's at 3:21:53. At 3:21:54, she seems to
7 be almost parallel with the passenger window, right?

8 A Close. Yes, sir.

9 Q Close? So, she's far enough away that you
10 can still see most of her body, right?

11 A I can see her torso. Yes, sir.

12 Q You can see her torso, hands on the
13 carriage?

14 A Yes, sir.

15 Q All right. 3:21:55, a second later, he's
16 past her, and she is at the back, rear window.
17 Correct?

18 A I don't know if she was at the back, rear
19 window yet, from the angle of this video, but she --

20 Q Was she close to it?

21 A It won't be long before, yes, that's true.

22 Q Let's see if I can do it real quick.

23 There's 3:21:55 still. Clearly, he's past her.

24 Right?

25 A Again, I don't think he's past her. I think

1 he's about -- the rear of the car would be about level
2 to that white line on the far side of the handicapped
3 spot.

4 Q Where she's past?

5 A Uh-huh. But again, judging from the angle
6 of the camera, there's --

7 Q Clearly the front window, he's past the
8 front window.

9 A Correct.

10 Q And the rear window?

11 A Possibly. Yes.

12 Q All right. So, in that second, he goes past
13 her?

14 A Uh-huh.

15 Q According to the video that you've made.

16 A Uh-huh.

17 Q Right?

18 A Yes, sir.

19 Q Now, looking at that car. I know you
20 haven't studied it before, but doesn't that look like
21 a reflection off his driver's window on there?

22 A The driver's side window?

23 Q Yes, sir.

24 A It does appear as something.

25 Q Thank you.

1 MR. D'AGASTINO: Those are all the questions
2 I have, Your Honor.

3 MS. JOYNER: Nothing further from the State.

4 THE COURT: Any objection to excusing this
5 witness?

6 MS. JOYNER: Not from the State, Your Honor.

7 MR. D'AGOSTINO: I might have to call on him, but
8 I don't anticipate it.

9 THE COURT: You may step down.

10 MS. HOLT: Your Honor, the State's next witness
11 is Stephanie Jarrett.

12 THE COURT: All right.

13

* * *

14

STEPHANIE JARRETT,

15

called as a witness by and on behalf of

16

the State to testify, being first duly

17

sworn was examined and testified as follows:

18

19

DIRECT EXAMINATION

20

BY MS. HOLT:

21

Q Good afternoon, Ms. Jarrett.

22

A Good afternoon.

23

Q Bear with me while I move this. Just a

24

moment.

25

Ms. Jarrett, could you please state your full

1 name for the record?

2 A Stephanie Smith Jarrett.

3 Q Where do you live?

4 A 214 East Liberty Street.

5 Q What is your occupation?

6 A City Council Woman for York.

7 Q And you were elected into office?

8 A Yes.

9 Q Were you City Council Woman back on April

10 the 21st of 2017?

11 A No. I was just elected in January.

12 Q Were you campaigning back in April of 2017?

13 A No.

14 Q What was your occupation back then?

15 A A stay-at-home mom and a volunteer for the

16 PTA, different stuff like that.

17 Q Did you go to the Walmart in York on April

18 21st, 2017?

19 A I did.

20 Q Do you recall about what time that was?

21 A Around 3:00-ish.

22 Q And that's the Walmart that's located at 970

23 Liberty Street?

24 A It is.

25 Q What did you observe upon entering the

1 parking lot of the Walmart?

2 A I went to turn down an aisle and saw a
3 vehicle turning down the same aisle in front of me
4 with a kayak on front on -- on top of the vehicle.

5 Q Ms. Jarrett, I'm going to show you what has
6 been previously marked as State's Exhibit 9.

7 A Okay.

8 Q Ms. Jarrett, can you see that on the screen
9 in front of you?

10 A Yes.

11 Q I'm going to fast forward just a little bit
12 here on the video. Ms. Jarrett, do you know whose
13 vehicle just came into that frame?

14 A I do, ma'am.

15 Q What is on top of that vehicle?

16 A A kayak or canoe, some kind of boat or
17 something.

18 Q And you are currently located where, in
19 terms of that where?

20 A Just barely out of the frame as I was turned
21 down the same aisle.

22 Q From the angle where you were coming, could
23 you see that turn?

24 A Yes.

25 Q Could you see the vehicle and it looks like

1 there was open space there?

2 A Yeah.

3 Q What made you recognize the vehicle or take
4 note of that vehicle when you went to go pull into
5 that aisle?

6 A That he hadn't turned into any spaces and
7 that he had the big kayak on top of his vehicle.

8 Q Whose vehicle, then, pulled into that first
9 open space?

10 A I did.

11 Q So, that's your vehicle pulling between
12 those two white SUV's?

13 A Correct.

14 Q Can you please give a description of the man
15 you recall seeing in the SUV with the kayak on top?

16 A At this point or when I saw him later?
17 Because at this point, I wouldn't have known, but
18 later --

19 Q Just the description that you knew at the
20 time.

21 A Okay. He was scruffy, with a ballcap and
22 dark glasses.

23 Q Were they regular glasses or dark glasses?

24 A Dark, the frames were dark. Not the
25 sunglass part, but the actual --

1 Q The frames were dark?

2 A Right.

3 Q Do you see that man in the courtroom today?

4 A Yeah.

5 Q Can you point him out for the Jury?

6 A The Defendant with the striped shirt.

7 Q Did you know the Defendant prior to April

8 21st, 2017?

9 A No, I did not.

10 Q Did the Defendant slowly pass you?

11 MR. D'AGOSTINO: Your Honor, may we approach?

12 THE COURT: You may.

13 (Bench conference)

14 BY MS. HOLT:

15 Q Ms. Jarrett, tell me what occurred when you

16 parked into that parking spot. What happened next?

17 A When I parked?

18 Q After you parked, what did you do?

19 A I got out of the car and went into the

20 store.

21 Q What did you do while you were in the store?

22 A Was picking up groceries, just a couple of

23 things for my daughter's cookout. Hotdogs and stuff -

24 different stuff.

25 Q What did you do after that?

1 A Exited the store.

2 Q And when you exited, what did you see?

3 A The same kayak. The guy with the kayak
4 pulled alongside me, and when I glanced over I saw
5 into his vehicle.

6 Q What did you see when you looked into the
7 vehicle?

8 A His fully erect penis with his hand at the
9 base.

10 Q His hand was at the base of what?

11 A Of his penis.

12 Q What made you notice that vehicle as it
13 pulled alongside you?

14 A Because it was the same vehicle I had seen
15 going in and it was a little closer to me.

16 Q How did you know it was the same vehicle?

17 A Because of the kayak on top.

18 Q Did you see any other vehicles in the
19 parking lot that day that had a canoe or a kayak on
20 top?

21 A No.

22 Q What did you do next?

23 A I hurried around and put my groceries to the
24 front. There was somebody backing up so I stopped
25 them, because I didn't have a phone on me and asked if

1 I could use their phone.

2 Q Did they allow you to use their phone?

3 A They didn't roll down the window so I asked
4 them if they would call 911 for me because someone was
5 exposing themselves in the parking lot.

6 Q You didn't use their phone?

7 A No.

8 Q What did you do after that?

9 A Loaded my groceries.

10 Q After you loaded the groceries, what do you
11 do?

12 A I back out of the parking lot and head out
13 to go home.

14 Q Did you leave at that time?

15 A Uh-uh.

16 Q What did you do instead of leave?

17 A I looked over my shoulder and realized that
18 he was back at the front of the lot where other people
19 were walking, so I turned around and went back to the
20 ladies that he had been just beside and spoke with
21 them.

22 Q So, what was his vehicle doing?

23 A It was kind of pacing alongside of another
24 lady and -- two ladies and a baby coming out of the
25 store.

1 Q So when you reached the ladies that you saw
2 the vehicle pass in the parking lot, what did you do
3 then?

4 A I told them what had happened to me and
5 asked them if they had seen anything and asked if I
6 could use their phone.

7 Q Did they allow you to use the phone?

8 A She offered to make the phone call for me.

9 Q Did she call 911?

10 A She did.

11 Q Did you speak with a 911 operator?

12 A Yes.

13 Q What did you do after that?

14 A Stayed on the phone with the 911 operator as
15 the guy was still circling around and once the police
16 actually came into the parking lot, I went and met
17 with the officer.

18 Q So, you say while the guy was still circling
19 around, were you referring to the Defendant?

20 A Yes.

21 Q This is the vehicle that had the kayak on
22 top?

23 A Yes, he was still circling the entire time I
24 was on the phone with the police and I was standing.
25 It was obvious what I was doing.

1 MR. D'AGOSTINO: I'm going to object to the
2 statement, "obvious what she was doing."

3 THE COURT: What's the basis of the objection?

4 MR. D'AGOSTINO: Obvious to whom and what would
5 be obvious?

6 THE COURT: I'm going to overrule the objection.

7 BY MS. HOLT:

8 Q Ms. Jarrett, during that phone call, did the
9 vehicle pass you again?

10 A Yes.

11 Q How many times?

12 A Several times.

13 Q Were you able to observe anything that you
14 had not observed before?

15 A As he passed, I was able to give them his
16 license plate number.

17 Q The entire license plate number?

18 A The last three digits.

19 Q What did you do after that?

20 A After the police arrived, I met with the
21 officer.

22 Q After concluding your meeting with the
23 officer, what did you do?

24 A I went home.

25 Q I'm going to back up just for a moment, Ms.

1 Jarrett, just briefly. (Reviewing tape) Do you know
2 who the woman is that just came into the frame?

3 A No.

4 Q And what do you see right there?

5 A That was when I glanced over and saw him
6 exposing himself.

7 Q Ms. Jarrett, what are you doing right now?

8 What were you just doing in that frame, Ms.
9 Jarrett?

10 A I loaded the groceries and then I took about
11 two steps from the back of the car to put the buggy
12 thing up and then turned.

13 Q Which direction did you just turn?

14 A Left, towards home.

15 Q Ms. Jarrett, please let me know the next
16 time you see your vehicle.

17 A Right here.

18 Q Which vehicle is that?

19 A Top, the one in the top corner.

20 Q So, what vehicle is in front of you?

21 A The same one.

22 Q Who just turned down that aisle?

23 A Jeffrey Dauer.

24 Q Who went straight down the aisle in front of
25 you?

1 A In front of me? He did.

2 Q Well, where are you located at this moment?

3 A I think I'm behind this little bush here.

4 Q That's your vehicle?

5 A Yes. And the lady's right here that he
6 drove past?

7 Q Did you just see his vehicle in that frame?

8 A Yeah.

9 Q Which aisle is he on in respect to where
10 you're standing?

11 A One over.

12 Q What vehicle is about to pass here in that
13 aisle?

14 A Jeffrey Dauer.

15 Q Where is the vehicle now?

16 A He's -- that way.

17 Q Did you just see the vehicle in question
18 again?

19 A Yes.

20 Q Which aisle?

21 A One aisle to the right.

22 Q Do you see the vehicle again?

23 A Yes, at the bottom of the frame.

24 Q Upon exiting the parking lot, Ms. Jarrett,
25 where did you go now?

1 A To the right, to the -- there's a car wash
2 there.

3 Q And that's where you met the officer?

4 A Uh-huh.

5 Q I have no further questions.

6 THE COURT: Mr. D'Agostino?

7 MR. D'AGOSTINO: Thank you, Your Honor.

8 ***

9 CROSS EXAMINATION

10 BY MR. D'AGOSTINO:

11 Q Good afternoon, Ms. Jarrett.

12 A Good afternoon.

13 Q First, let me ask you how many times have
14 you watched this video?

15 A Not very many.

16 Q About how many?

17 A Over the course of the two to three years
18 waiting for this to come to trial, probably three
19 times.

20 Q And the compilation video, how many times
21 have you watched that?

22 A I had never seen it in its entirety until
23 today.

24 Q But you've watched parts of it?

25 A I guess.

1 Q Seen any other videos?

2 A No.

3 Q Have you watched any other clips from other
4 statements, from other angles from Walmart?

5 A No.

6 Q So, this video, the one we saw just now,
7 Clip 3 from File 155, is the only one you've watched?

8 A Like, little bitty clips? I'm sure.

9 Q So, you've seen it a number of times to
10 prepare for today as well, correct?

11 A What do you mean by a number of times, I
12 mean, I've been to the office probably three times.

13 Q I'm just trying to determine how many times
14 you have watched the video.

15 A And we watched them while I was there.

16 Q It's not important how often you've seen
17 these videos? The important questions are about these
18 videos and your recollection.

19 A Okay.

20 Q Very important. So, you've seen the videos
21 a number of times, or parts of them, correct?

22 A Right.

23 Q You've watched them before today recently,
24 haven't you?

25 A Some of it.

1 Q You've been through it sitting through this
2 trial as well?

3 A Right.

4 Q You've seen multiple witnesses point at my
5 client, the Defendant, right?

6 A Uh-huh.

7 Q He looks a lot different today, doesn't he?

8 A Uh-huh.

9 Q About 30, 40 pounds lighter?

10 A Lighter. Uh-huh.

11 Q Let's talk then about what happened that
12 day.

13 Is your testimony today at all influenced by
14 having watched the videos several times and having
15 prepared for today?

16 A No.

17 Q Now, as it relates to that day, April 21st,
18 2017, isn't the first -- you knew Officer Hawkins,
19 didn't you?

20 A Briefly. A little bit. Not like on a
21 personal --

22 Q What's one of the first things you said to
23 him when he got out of the vehicle at your vehicle?
24 Didn't you say, "It would be me, right? I always get
25 myself involved in all this crap."?

1 A Yeah.

2 Q So, in fact, he knew who you were as well by
3 the license, so you all -- it wasn't briefly, you knew
4 more than --

5 A I thought -- what do you mean by license?

6 Q When he asked you for identification
7 purposes in order to get in touch with him, he said,
8 "I know who you are, but I need your license, ma'am."

9 A Yeah.

10 Q Now, when you were describing to him that
11 day, April 21st, 2017 -- when you were telling him
12 about Mr. Dauer, didn't you tell him -- didn't you
13 tell Officer Hawkins that as you drove up you noticed
14 him because he passed a parking spot and you made a
15 motion like this -- he was driving around several
16 times.

17 A Right.

18 Q That's when you were telling him about Mr.
19 Dauer, and you were saying he had been driving around,
20 when you drove up and saw him for the first time in
21 the parking lot.

22 A Well, I think what I was telling him was
23 that Mr. Dauer -- by now we're already past the
24 initial and I'm nervous, you know, because I'd just to
25 call 911 and talk to them about something for the

1 first time.

2 So, I believe what I was telling him was that
3 this guy has been driving around the parking lot and I
4 know he'd been there a long time because before I went
5 in he was already there because I'd noticed him
6 because he was in front of me and turned into a spot.

7 Q But actually --

8 A Turned into a spot, because that's what my
9 driving around -- because part of the reason I turned
10 around and came back was because it concerned me, he'd
11 been in the parking lot that long.

12 Q Let me ask a specific question.

13 A Sure.

14 Q You got out of the vehicle and made the
15 comment, "It would be me, right," he asked you what
16 happened and you said, "All right, I drove up, I
17 noticed him because he passed a couple of drive-in
18 spots and he was driving around."

19 That's the sequence as you were describing it to
20 Officer Hawkins, Sergeant Hawkins, that day. You
21 said, "The driving around" at the same time you refer
22 to Mr. Dauer, Jeff, passing a parking spot. Right?

23 A Sure, but it's not what I meant by that.

24 Q Not what you meant?

25 A No.

1 Q You also told him that you could see inside
2 his car because all of his windows were down.

3 A Right.

4 Q And you told him clearly about that, and a
5 little while ago you said he passed you after that --
6 after you got back in your car, after you went grocery
7 shopping and you said he passed you several times.
8 When we watched the video, I think he only passed you
9 one other time, right?

10 A Well, several times and it is not on the
11 exact same aisle. One aisle over and one aisle over.
12 That's why we were able to figure out.

13 Q So, he didn't go right by you several times,
14 he went down the aisles around you?

15 A Right. Exactly.

16 Q And he wasn't circling you, he was driving
17 around the parking lot like we saw on the compilation,
18 right?

19 A No, but he stayed pretty close to me and I
20 was standing up behind the vehicle talking to her, so
21 that's why I said it was obvious. He could see me and
22 I could see him.

23 Q You don't know whether he saw you or not, do
24 you?

25 A Maybe not.

1 Q You don't know, do you?

2 A I would assume.

3 Q Assume. You assumed he saw you?

4 A Uh-huh.

5 Q Now, let's look at the video. Now, you
6 looked at clip 3 from file 155. Here we are. You
7 were -- it was placed -- the video a little while ago
8 was placed on the frame and I believe it was at
9 3:02:15 and this is clip 3 of file 155 and it was at
10 3:02:15. Let's go there.

11 So, we're at 3:01:59. I'm going to go back to
12 regular time now so we can take a look at that
13 together. Now, that's Jeff coming down the aisle,
14 right?

15 A Right.

16 Q Where were you at this point?

17 A I would have been probably about the further
18 row back, where they go in the opposite direction.

19 Q Okay.

20 A I couldn't turn down that aisle.

21 Q Let's remember this. 3:02:10. You think
22 you're just one row back?

23 A I would think so.

24 Q Okay. 3:02:10. That's why you could see
25 where he was going because you were that close to him?

1 A I could see he turned down the same aisle,
2 so I could have even been slightly further back from
3 that, but I couldn't have turned down that aisle and I
4 saw that he started down. The next one I could go
5 down.

6 Q Okay. Then let's go and look at something
7 else.

8 A Okay.

9 Q Let's speed it up a little bit. We're at
10 3:01:59. You're that fourth car back, right?

11 A Sure.

12 Q That SUV?

13 A Uh-huh.

14 Q Now we're at 3:02:03. That's 3:02:06 and
15 you're still -- before the doors, before the
16 crosswalk, right?

17 A Uh-huh.

18 Q That's Jeff turning, right? Down there on
19 the bottom, right?

20 A I think so.

21 Q You're still way back there before the doors
22 or at the doors and the crosswalk, aren't you?

23 A Yes.

24 Q That's 3:02:08.

25 A Yeah.

1 Q Let's see when you get to turn. That's the
2 aisle before right there and that's 3:02:18. You're
3 just passing the aisle before Jeff turns, right?

4 A Right. That was one way.

5 Q Correct. So, you start to turn right there
6 at 3:02:21, right?

7 A Right.

8 Q Let's see where Jeff is at 3:02:21. That's
9 3:02:09. So, when you start your turn, Jeff is almost
10 all the way at the end.

11 A Uh-huh.

12 Q That's when you first see him is when he's
13 almost all the way at the end.

14 A I noticed that the car turned in down that
15 row, because that was the first row that was going to
16 be available to me and then when I turned down the
17 row, he didn't go into any of the spots, which was
18 different. You could see it turning in as you're
19 watching.

20 Q Just watching the video.

21 A A little while ago when you were talking about
22 when Jeff went past you again, I think you said -- you
23 told the officer, you described it for him that day
24 and I'm let's just focus only on him going past you,
25 what you told the officer. You told the officer, "He

1 slowed down" -- Officer Hawkins. You told the
2 officer, "He slowed down and was pacing you."

3 A Yeah.

4 Q I think you even made that motion, he was
5 pacing you.

6 A I guess.

7 Q And you indicated that he had slowed down
8 his vehicle.

9 A Uh-huh.

10 Q And traveled beside you.

11 A Uh-huh.

12 Q Is that right?

13 A Yes.

14 Q And that would have been at 3:21 when we say
15 that. That's the only time you would have been
16 talking about, right?

17 A Right.

18 Q Let's go look at that. Well, let me ask you
19 this. How slowed down did he get?

20 A I don't know. It felt slow to me.

21 Q You saw that he was on a his brake a second
22 at the most. Are you saying he put his brakes on?
23 When did you realize -- when did you realize he'd
24 tapped his brakes? Was it that day?

25 A No.

1 Q It was after watching the videos?

2 A Well, right then when she was showing me,
3 asking me what I saw on the video is when I said that.

4 Q Okay, so it was because you were prompted?

5 A No. That's what I saw right there.

6 MS. HOLT: Objection.

7 THE COURT: Hold on. What's the objection?

8 MS. HOLT: He's saying it was prompting. I asked
9 what she saw on the video.

10 THE COURT: I'm going to allow the question.

11 BY MR. D'AGOSTINO:

12 Q As it relates to going down that aisle, his
13 car -- that video accurately depicts what happened
14 that day, doesn't it?

15 A Sure.

16 Q Him driving past you, correct?

17 A Uh-huh.

18 Q His windows were all up, weren't they? They
19 weren't down except for that back, driver's window was
20 cracked a little bit. Right?

21 A No. I thought all the front windows were
22 down. It looks like the back were not all the way
23 down, which is how they do in my SUV. That would be
24 all the way down in mine.

25 Q But you weren't in yours. We're talking

1 about his.

2 A I know. I would assume that --

3 Q You assume?

4 A Cherokee's back windows are the same way, so
5 when I said all his windows were down, to me, they
6 would all be down.

7 Q So, you were assuming they're down?

8 A The front ones were down. The back ones I
9 assumed were down.

10 Q You're sure the front ones were down?

11 A To my recollection, the front ones were
12 down.

13 Q You told the officer that day all the
14 windows were down.

15 A Right. Exactly.

16 Q Do you really know whether the windows were
17 down or up?

18 A I still think they were all down, because to
19 me, the back windows -- if you push the button and
20 they only go halfway, that's all the way down in my
21 mind.

22 Q Are you sure the back passenger window was
23 partially down?

24 A The driver's window?

25 Q No, the passenger's side?

1 A Yeah.

2 Q You're sure that window was down when he
3 went past you?

4 A I don't know.

5 Q You don't know?

6 A I don't know. I wasn't studying the
7 windows, especially when he passed me.

8 Q Were his windows tinted?

9 A I'm not sure.

10 Q Well, you were here today, and you saw the
11 video. Do you not recall whether they were tinted or
12 not?

13 A Uh-uh.

14 THE COURT: Mr. D'Agostino, we need to give our
15 court reporter a short recess. Is now a good time?

16 MR. D'AGOSTINO: Yes, sir.

17 THE COURT: Thank you. We'll take a 10-minute
18 recess.

19 (BRIEF RECESS)

20 THE COURT: Mr. D'Agostino?

21 BY MR. D'AGOSTINO:

22 Q I just want to follow up one other thing you
23 told the officer. You clearly told the officer that
24 you believe, or you told the officer, as part of his
25 investigation -- did you realize that he was going to

1 make a decision to arrest Jeffrey Dauer based on your
2 statement?

3 MR. HOLT: Objection. Speculation. How would
4 she know that?

5 THE COURT: I'm going to overrule the objection.

6 BY MR. D'AGOSTINO:

7 Q Did you know that the officer was going to
8 make a decision to arrest Jeffrey Dauer based upon
9 what you had to say?

10 A No, I was just giving my statement.

11 Q Just giving your statement?

12 A Uh-huh.

13 Q Have you ever given a statement to law
14 enforcement before?

15 A No.

16 Q You told him clearly that Mr. Dauer, that
17 Jeffrey was pacing you, riding beside you. Correct?

18 A Correct.

19 Q That video doesn't show him pacing you, does
20 it?

21 A No.

22 Q No.

23 A The way it felt, it certainly seemed like it
24 was much slower. I actually told them when we watched
25 it, I was surprised that it was quicker than it was.

1 Q But he wasn't pacing you. The windows were
2 up on his car, not down on the passenger's side.
3 Weren't they? You don't remember?

4 A The passenger's side was down, and I could
5 see clearly into the vehicle.

6 Q The passenger's side of the vehicle was
7 down?

8 A I could see clearly into the vehicle.

9 Q Have you looked to see the reflection of the
10 sunlight off those windows as you passed by?

11 A No.

12 Q Did you notice anything in the center
13 console of his vehicle as he passed by?

14 A No.

15 Q So, you didn't see the water bottle there?

16 A Uh-uh.

17 Q You didn't see the bag of clothes in the
18 passenger's side? You didn't notice the junk in the
19 car, the floorboard, his backpack or anything like
20 that?

21 A Uh-uh.

22 Q Didn't see any of that? Is that a no? The
23 Court Reporter's got to get it down.

24 A No, I did not. That didn't catch my
25 attention.

1 Q The water bottle didn't catch your attention
2 that was sitting there between you and him?

3 A Uh-uh.

4 Q No? That's all the questions I have, Your
5 Honor.

6 THE COURT: Redirect?

7 MS. HOLT: Briefly.

8 ***

9 REDIRECT EXAMINATION

10 BY MS. HOLT:

11 Q Ms. Jarrett, through which window did you
12 see Mr. Dauer's penis?

13 A The front passenger.

14 Q And could you clearly see the penis from
15 where you were standing?

16 MR. D'AGOSTINO: Objection. Leading, Your Honor.

17 THE COURT: I'm going to overrule the objection.

18 A Yes.

19 Q I have no further questions.

20 THE COURT: Any re-cross?

21 MR. D'AGOSTINO: One moment, Your Honor.

22 THE COURT: Yes, sir.

23 ***

24 RECROSS-EXAMINATION

25 BY MR. D'AGOSTINO:

1 Q You were just asked if you saw his penis.
2 A Yes.
3 Q Was he doing anything?
4 A His hand was at the base of his penis.
5 Q Hand was at the base of his penis?
6 A And I could see his penis.
7 Q You could see his penis?
8 A Yes.
9 Q In that split second that the car went by?
10 A Yes.
11 Q You didn't see the water bottle? You didn't
12 see the bag of clothes?
13 MS. HOLT: Objection. Asked and answered.
14 THE COURT: Overruled.
15 A He made sure I could see it.
16 Q He made -- Your Honor, I move to strike
17 that. How could she know what he was doing?
18 THE COURT: I'm going to overrule the objection.
19 BY MR. D'AGOSTINO:
20 Q In that split second?
21 A Yes.
22 Q All the questions I have, Your Honor.
23 MS. HOLT: Nothing further from the State.
24 THE COURT: All right. Thank you. You may step
25 down.

1 MS. HOLT: Your Honor, this concludes the State's
2 witness list.

3 THE COURT: The State rests?

4 MS. HOLT: The State rests.

5 ***

6 STATE RESTS

7 THE COURT: All right. Ladies and Gentlemen, the
8 State has rested their case. Given that it is almost
9 4:30, we are not going to go any further today, so I'm
10 going to go ahead and ask you all to head on home and
11 be back here at 9:30 tomorrow and the rules I've given
12 you still remain in force.

13 Don't discuss this case with anyone else. Don't
14 discuss it amongst each other and please don't do any
15 outside research. Ladies and Gentlemen, I know it's
16 been a long day. Thank you very much for your
17 attention and your patience. I'll see you back at
18 9:30 tomorrow.

19 (Jury exits courtroom)

20 Mr. D'Agostino, do you have a motion?

21 MR. D'AGOSTINO: I do, Your Honor. At this time,
22 I'd move for directed verdict at this time on the
23 charge of indecent exposure, Your Honor.

24 I submit the State has noted presented sufficient
25 evidence to carry their burden of proof to take this

1 case any further. They have not demonstrated that my
2 client committed this crime. Let me properly quote
3 the statute.

4 The State has not demonstrated that my client has
5 exposed his private parts, that the exposure was
6 willful and malicious and that the exposure occurred
7 in a public place on property the property of others
8 or to the view of any person on the street or highway.

9 Your Honor, I would ask the Court to -- I would
10 move for the Court to direct the verdict on these
11 charges. Not only do I believe that there is not
12 sufficient evidence, the State has not presented any
13 evidence.

14 I understand they've got a witness, a person who
15 says, "I saw his penis," but, Your Honor, the Court
16 has to also consider all the evidence in making this
17 decision as well.

18 You have multiple different witnesses giving
19 varying statements as it relates to windows up,
20 windows down. My client -- whether his appearance
21 changed or not changed and most importantly, the Court
22 has the videotape that it saw that the State's relying
23 upon as it relates to the witness's testimony.

24 She told the officer that day that my client was
25 pacing him and slowed down. She acknowledges that did

1 not happen. He drove by her. He never slowed down.
2 He never exposed himself to her and he never did
3 anything willfully, maliciously. We deny that he
4 exposed himself at all. But, Your Honor, we submit
5 that even if she did see something, there was nothing
6 willful or malicious about it.

7 I submit that at some point, that even in a case
8 where you have somebody that says, "Yes, I saw this,"
9 at some point you've got to consider the evidence as
10 well, and we submit there's not sufficient evidence
11 that this trial should go any further.

12 THE COURT: Mr. D'Agostino. I understand and
13 just for the record, specifically, which elements do
14 you the State has not met their burden on?

15 MR. D'AGOSTINO: Your Honor, specifically, I do
16 not believe that the State has met its burden on, even
17 assuming that there was an exposure, which we deny,
18 but assuming there was, there's no evidence that there
19 was a malicious or willful exposure of my client's
20 private parts and that the exposure was indecent.

21 So, as it relates to "on property of others,"
22 certainly, he is not on his own property, so I can't
23 argue it wasn't on his property. That would be
24 ridiculous for me to argue that, and they have
25 somebody that says he exposed his private parts. We

1 deny he exposed his private parts, but the other two
2 elements -- there is some testimony that there was a
3 private part exposed. But I submit to you, Your
4 Honor, that exposure being indecent, the exposure was
5 willful and malicious, they have not met their burden
6 as it relates to those two elements, and the Court
7 should dismiss and direct the verdict.

8 THE COURT: Ms. Holt?

9 MS. JOYNER: Your Honor, the State's position is
10 that we've met the burden for the directed verdict
11 motion. The evidence should be viewed in the light
12 most favorable for the State.

13 We do have a witness, Stephanie Jarrett, who
14 testified that she witnessed the -- she saw the
15 Defendant's erect penis with his hand at the shaft,
16 and that occurred while he was in the Walmart parking
17 lot.

18 I think that that evidence alone is sufficient to
19 bring us over the hump of showing that he -- we have
20 sufficient evidence that he did expose his person.
21 Clearly, he's in a public place.

22 As to whether it was malicious or willful, Your
23 Honor, his intention is for the Jury to decide, but I
24 would submit that there is other evidence that we can
25 put forward as to that, Your Honor. I think we have

1 evidence of him in the Walmart parking lot for an
2 extended period of time, driving up and down, back and
3 forth through the same aisles that he has been on over
4 and over again.

5 He is pacing, as Ms. Jarrett said. It felt like
6 he paced her. He came alongside her. There is a
7 video. He hit his brakes. I saw the brake lights. I
8 think the Jury has a right to consider this case. The
9 brake lights when he passed her, they were on the
10 video. She says she looked over, she saw, she clearly
11 saw it, and I think we've met our burden of purposes
12 of this directed verdict motion.

13 THE COURT: Reply?

14 MR. D'AGOSTINO: Just briefly, Your Honor.
15 First, she testified now he wasn't pacing her. She
16 might have felt something, but he wasn't pacing her.
17 He never slowed down. His brake lights came on for a
18 millisecond.

19 So, the State keeps saying he was in the parking
20 lot and therefore we can infer something from -- they
21 didn't use the word infer, but because he was driving
22 around the parking lot, that's weird.

23 Well, he could be driving around the parking lot
24 for any reason whatsoever. That doesn't show any
25 malicious intent. It doesn't show anything other than

1 the fact that he was there. And you've got to
2 remember that he left the parking lot for six to seven
3 minutes.

4 THE COURT: Mr. D'Agostino, under your view, what
5 would the State have to show to show malicious or
6 willful conduct in this indecent exposure case?

7 MR. D'AGOSTINO: I'm sorry I interrupted, Your
8 Honor. I apologize.

9 First of all, Ms. Jarrett I don't believe said
10 erect penis. She just said penis.

11 MR. HOLT: She said erect penis.

12 THE COURT: My notes say she said erect.

13 MR. D'AGOSTINO: All right. What they would have
14 to show, Your Honor, is something more than just him
15 passing by her. I think they would have to show that
16 he slowed down to make sure she saw him.

17 I think that they would have to show that he did
18 something to intentionally expose himself to her.
19 There's no evidence that he did anything to expose
20 himself. He was not doing anything to cause her to
21 look at him.

22 You've seen the videos. His windows were closed
23 on that side of the vehicle. I know that she says --
24 she thought it was open but when you look at the
25 videos, the physical evidence that is in evidence.

1 demonstrates that those windows were closed on that
2 side of the vehicle, on the side of the vehicle where
3 she was.

4 So, Your Honor, I think there would be something
5 that the Court -- the State. Not the Court but the
6 State would need something more to show that his
7 exposure was willful and malicious. He would need to
8 be doing something to make sure she saw him. He would
9 need to be, you know, put the window down, slow down.
10 Something like that, Your Honor.

11 THE COURT: Mr. D'Agostino, for the purposes of a
12 directed verdict motion, isn't it enough he's driving
13 around a public parking lot at a Walmart in broad
14 daylight?

15 MR. D'AGOSTINO: No, I don't think that's enough,
16 Your Honor. There's nothing illegal about driving
17 around a Walmart parking lot in broad daylight.
18 People do it all the time.

19 THE COURT: No, no, no. I mean, if he's exposing
20 his genitals, doesn't the fact that it's being done in
21 broad daylight in a busy store in downtown York, isn't
22 -- and I'm not saying what the Jury should do, but
23 isn't that enough to get it to the Jury?

24 MR. D'AGOSTINO: I think, Your Honor, it comes
25 down to -- I don't think it's enough to just say he

1 was driving around the Walmart parking lot.

2 I think they've got to show that he willfully and
3 maliciously exposed himself, and there's nothing to
4 demonstrate that there was any willful -- assuming she
5 saw a penis -- there is nothing to demonstrate that he
6 willfully and maliciously did this. He was there for
7 30 minutes. 23 if you take out the seven he wasn't on
8 video. Nobody else, nobody, no other complaints, no
9 other calls. Nothing.

10 It's her. How many times did she use the word
11 assume? So, Your Honor, I submit to you that there's
12 not sufficient evidence to take this case any further
13 because the State has the burden. They've got to
14 present some evidence of willfulness and
15 maliciousness. They haven't presented anything to
16 take us past that burden or else the statute wouldn't
17 require willfulness and maliciousness. It would be
18 just, you know, it would take out that phraseology
19 entirely. If you expose yourself in public -- it
20 doesn't say, "exposed his privates and the exposure
21 was indecent and it was in a public place." It
22 requires some evidence of maliciousness and
23 willfulness.

24 He's in his vehicle. He's not stopping, he's
25 driving. There's no evidence of any willfulness or

1 maliciousness on his part, assuming his penis was out.
2 We deny it was, but regardless, for the purposes of
3 this argument, that's our position, Your Honor.

4 THE COURT: I'm going to deny the motion. The
5 basis for the motion is - obviously, it's not my job
6 to weigh the evidence. It's whether the evidence
7 exists or not, the evidence that exists has to be
8 viewed in the light most favorable to the State.

9 There was testimony that his erect penis was
10 visible and I think that, obviously, the state of mind
11 is something that has got to be -- the Jury's got to
12 make a decision based on circumstantial evidence.
13 People very rarely give direct evidence of their state
14 of mind, and I think the fact that the Defendant
15 allegedly, according to the witness, was driving
16 around in front of a busy store in the middle of the
17 afternoon in broad daylight, I think that's enough to
18 submit to the jury.

19 MR. D'AGOSTINO: Thank you.

20 THE COURT: Anything else, Counsel?

21 MR. D'AGOSTINO: Not today, Your Honor.

22 THE COURT: Mr. D'Agostino, do you want me to do
23 the colloquy with the Defendant today, or do you want
24 him to do that tomorrow?

25 MR. D'AGOSTINO: I'm going to discuss the matter

1 with him. You can add him on the record as far as
2 telling him his rights, but I'm going to discuss it as
3 well with him and we'll make a decision overnight as
4 to whether he'll testify or not.

5 THE COURT: If you're going to discuss it with
6 him overnight, I'll just go through the colloquy
7 tomorrow.

8 Mr. Dauer, what we're talking about is you have
9 the right to take the stand if you want to testify,
10 but you also have the right under the Fifth Amendment
11 to our Constitution to not take the stand. So that is
12 a very important decision in the case, and you need to
13 discuss it this evening with your lawyers, your
14 family, your friends, because it can have significant
15 consequences in your case whether you take the stand
16 or not.

17 So you need to make sure you fully discuss it
18 this evening, and then tomorrow I'm going to talk to
19 you about that decision a little bit and make sure you
20 understand the implications and I'm going to ask you
21 then whether or not you want to take the stand in the
22 case.

23 Do you understand?

24 MR. DAUER: I understand, Your Honor.

25 THE COURT: All right. See you all at 9:30

1 tomorrow.

2 Hold on, I take that back. Counsel, I forgot we
3 have a civil hearing that's going to carry over, so it
4 will be 10:00 tomorrow.

5 We'll recess until 10:00 tomorrow in this case.

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- - -END OF VOLUME I- - -

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STATE OF SOUTH CAROLINA

IN THE GENERAL SESSIONS COURT

YORK COUNTY

2017-GS-46-03041

-----x
The State of South Carolina, :

Plaintiff, :

vs. :

Jeffrey Jack Dauer, :

Defendant. :
-----x

Transcript of Hearing
Volume II
Pages 232 - 321

February 11, 2020
York, South Carolina

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The Honorable William A. McKinnon, Judge Presiding.

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P R O C E E D I N G S

* * *

THURSDAY, MARCH 11, 2020

YORK, SOUTH CAROLINA

(Whereupon, the following proceedings were held in open court. The Defendant was present with her attorney, along with counsel for the State.)

1 THE COURT: All right, Counsel.

2 I understand that we have about three things to go
3 over. I understand the defendant wishes to present an
4 additional argument on directed verdict, the defendant
5 has requested a Jury charge, and then finally we have
6 to have the colloquy with Mr. Dauer; is that correct?

7 MR. D'AGOSTINO: Yes, sir, Your Honor.

8 THE COURT: And I believe the State also has a
9 charge that they would; is that correct?

10 MS. JOYNER: No, Your Honor. We were just

1 clarifying if the criminal intent statute included a
2 definition for malicious or willful.

3 THE COURT: What did you find out?

4 MS. HOLT: It does not. So if we could just do
5 criminal intent, Mr. D'Agostino's requested charge.

6 THE COURT: Mr. D'Agostino, what is the charge
7 you would like me to give?

8 MR. D'AGOSTINO: I emailed it up.

9 THE COURT: Okay.

10 MR. D'AGOSTINO: It's the one from South Carolina
11 Charge, criminal 2007. That's actually at page 294.
12 It talks about a willful act is one that is voluntary
13 and intentional. A malicious act is an intentional
14 wrongful act formed against another without legal
15 justification or excuse. Malicious may be intentional
16 and a deliberate knowing of a wrongful fact, intending
17 it to be wrong and admitting that act without just
18 cause or excuse. It indicates a heart clearly bent on
19 mischief, depraved, malicious, wicked spirit in deed
20 of being outrageously offensive, especially in a
21 vulgar or sexual way. Indecent, offensive, immodest
22 obscene and --

23 THE COURT: I'm not going to charge the bit about
24 malicious, the really archaic language, the depraved,
25 hard, that kind of -- I'm not going to give that.

1 It's not at all helpful to the jury.

2 Also I'm not inclined to charge the malicious
3 act is an intentional wrongful act performed against
4 another. I think it's redundant with the sentence
5 that comes after that.

6 And I also think it applies, there's got to be
7 some kind of physical injury or some kind of attack on
8 someone, which I don't think the law requires in this
9 -- on this particular charge.

10 I would be inclined to charge a willful act is
11 one that is voluntary and intentional, and malicious
12 means the intentional and deliberate doing of a
13 wrongful act, intending it to be wrong, and committing
14 that act without just cause or excuse.

15 MR. D'AGOSTINO: And, Your Honor, will you also
16 charge the indecent part?

17 THE COURT: Is that acceptable to the State?

18 MS. JOYNER: Yes, Your Honor, that is acceptable.

19 THE COURT: Decent refers to a state or condition
20 of being outrageously offensive, especially in a
21 vulgar or sexual way.

22 MS. JOYNER: The only objection I would have
23 would be outrageously offensive. I think that the
24 offensive tracks the statute, but not outrageously
25 offensive.

1 THE COURT: Right. And again, the two sentences
2 are not -- they're almost two different standards.
3 One is offensive, and the other is outrageously
4 offensive. So again, I will be inclined to charge the
5 second sentence where it says indecent refers to the
6 Indecent means offensive, immodest, obscene, and
7 obscenely. I'd be willing to charge that. I think
8 outrageously offensive -- is there any case law that
9 uses that outrageously offensive language so that
10 that's a standard?

11 MR. D'AGOSTINO: I'm not familiar with a case
12 that says outrageously offensive, but, Your Honor, I
13 would believe that -- I do think we need something
14 more than just the second sentence. Even if the Court
15 says indecent versus immodest or condition of being
16 offensive, especially in a vulgar or a sexual way.
17 Because at first -- because that's indicating an act
18 more than just the state of being.

19 THE COURT: You know, the way I read the sentence
20 immodest, obscene or obscenely, that it has to be all
21 of that. I mean that about covers it. If you've got
22 -- I mean offensive in and of itself, I mean giving
23 someone the middle finger is offensive, but it's not
24 indecent..

25 So I think -- I think with the second sentence,

1 it's got to be offensive and immodest and obscene and
2 unseemly. I'm kind of flying blind on this since we
3 have no guidance here.

4 MR. D'AGOSTINO: The only case that I had was --
5 is -- the only case I had dealing with indecent
6 exposure is an unreported case. I have not handed you
7 this up because it's not a precedent.

8 THE COURT: Is there any guidance? I understand
9 it's not precedential, but is there any guidance from
10 it?

11 MR. D'AGOSTINO: I'll hand up a copy, Your Honor.

12 MS. JOYNER: I've had a number of indecent
13 exposure cases, and I don't think I've ever found a
14 case that defined it.

15 THE COURT: I think indecent is a word that is in
16 enough common usage the Jury understands what that
17 means. I don't think giving them a list of grossly
18 vulgar, obscene, lewd, or obscenely unbecoming or
19 unfit -- I'm not sure that adds a whole lot of
20 helpfulness to them.

21 Let me go back to Mr. D'Agostino. Do you want me
22 to say -- I just don't think any of these proposed
23 charges on indecent are particularly helpful to the
24 Jury. I don't think outrageously offensive is
25 required and the rest of it, offensive, etc. -- I

1 think those are all pretty much synonyms for indecent.
2 I don't think it adds all that. I will do the charge
3 and talk about willfulness and maliciousness.

4 MR. D'AGOSTINO: So the first two sentences,
5 willful act and intentional, and stop there?

6 THE COURT: That is my definition being heard on
7 the record and --

8 MR. D'AGOSTINO: Like I said, Your Honor, I just
9 didn't want something on indecent. I understand the
10 Court's ruling on malicious. I'll be fine with those
11 first two sentences. I do want -- I did want, and I'm
12 not going to argue with the Court, just note for the
13 record, I did want something on indecent.

14 THE COURT: Well, to protect you for the record,
15 why don't you go ahead and write it and tell me
16 exactly what you would have liked for me to charge,
17 and that way, if it goes that far, you can send it up
18 to Columbia.

19 MR. D'AGOSTINO: Indecent refers to the state or
20 condition of being offensive, especially in a vulgar
21 or sexual way, I'll take out the word "outrageously."
22 Indecent means offensive, immodest, obscene, and
23 unseemly. That's what I would like to see.

24 THE COURT: Okay.

25 MR. D'AGOSTINO: Thank you.

1 THE COURT: Okay. Thank you, sir. All right.

2 And what about the -- do we want an intent charge?

3 Either side requesting that? It's not something I

4 normally give, but --

5 MR. D'AGOSTINO: No, sir, I will not, Your Honor.

6 THE COURT: Okay. Defense is not requesting it.

7 MS. HOLT: State is not arguing it.

8 THE COURT: Thank you, Counsel. All right,

9 directed verdict motion.

10 MR. D'AGOSTINO: I would like to revisit the

11 issue of directed verdict. I handed up the case,

12 because I know we have to take -- in hearing a motion

13 for directed verdict, the Court considers the evidence

14 in light most favorable to the State. If there is

15 direct evidence -- I'm referring to State vs. Smith.

16 THE COURT: Yes, sir.

17 MR. D'AGOSTINO: Page 5 of what I handed up. In

18 reviewing the filed motion for directed verdict, this

19 Court must view the evidence in light most favorable

20 to the State. If there's any direct evidence or any

21 substantial circumstantial evidence reasonably

22 intending to prove guilt of the accused.

23 Your Honor, as it relates to the elements for the

24 crime of indecent exposure, I would like to go back

25 and submit that -- I submit, Your Honor, that even if

1 there's evidence the Court would believe that my
2 client exposed himself, there is not substantial
3 evidence that the exposure was indecent, willful,
4 malicious. I believe that's what I argued yesterday.

5 Your Honor, I submit that the fact that he was
6 just riding around does not -- could not and should
7 not establish circumstantial evidence of any type of
8 indecent, intentional, malicious conduct. I don't
9 believe there's substantial evidence to demonstrate
10 any substantial evidence of indecent exposure,
11 willful, or maliciousness, or any kind of intent like
12 that on my client's part. He was riding around in a
13 parking lot.

14 THE COURT: Mr. D'Agostino, this is the most
15 direct kind of evidence which exists. Someone who
16 claims they saw this happening with their own eyes.
17 It's a direct evidence case, isn't it?

18 MR. D'AGOSTINO: She claims that she saw him
19 drive past him, and she saw his erect penis. That's
20 all she says.

21 He drove past her and did not stop, the evidence
22 is clear he did not stop, he did not do anything to
23 draw attention to himself. There was no evidence
24 whatsoever of any intent, willful, malicious conduct
25 on my client's part.

1 THE COURT: Let me hear -- I think what you're
2 asking me is to apply the substantial evidence
3 standard to the state of mind elements. I don't think
4 that's required.

5 I think that puts an enormous burden on the
6 State. There's never been or very rarely any direct
7 evidence of malice or -- I think the substantial
8 evidence standard kicks in, you know, when the case is
9 circumstantial, not where you're talking about
10 particular elements.

11 MR. D'AGOSTINO: I understand the Court's ruling.
12 I'm not arguing with the Court. I just wanted the
13 Court to make sure I've made that clear as it relates
14 to the burden, especially in light of the case citing.

15 THE COURT: Yes, sir.

16 MR. D'AGOSTINO: Thank you.

17 THE COURT: Thank you. I appreciate you. All
18 right, and let's do the colloquy.

19 MR. D'AGOSTINO: Do you want him to come around,
20 Your Honor?

21 THE COURT: No. He can just stand up. I'm just
22 going to ask for our clerk to swear him in.

23 The defendant was duly sworn and testified as
24 follows:

25

DEFENDANT'S RIGHT TO TESTIFY

THE COURT: Give me one second, Mr. Dauer, I've got to find my script.

All right. Mr. Dauer, at this time, I'm going to explain certain of your rights to you. If you don't understand anything I say, please let me know. If you want me to explain something in more detail, please let me know. Do you understand?

THE WITNESS: I understand that.

THE COURT: We have reached the stage of the trial where you may present your defense. You have the right to claim protections given to you by the Fifth Amendment of the Constitution of the United States. That Amendment states in part "No person shall be compelled in any criminal case to be a witness against himself."

That means you cannot be required to testify in this case. You have the right to testify on your own behalf if you want to, but no one can make you testify. It's a personal right. No one can waive it or give it up except you.

If you do decide to testify, you'll be subject to the same rules that govern other witnesses, and you may be examined or cross-examined on any relevant

1 issue in the case.

2 In addition, if you have a convictions involving
3 dishonesty or false statement or grounds punishable by
4 imprisonment for more than a year and the Court
5 determines the probative value of any evidence
6 outweighs any prejudice, the Solicitor will be able to
7 introduce your record to attack your credibility.

8 If you decide to testify, this decision on your
9 part must be freely, voluntarily, and intelligently
10 made with knowledge of the protections given to you by
11 the Fifth Amendment and the consequences of your
12 decision to testify.

13 If you decide not to testify, I will instruct the
14 Jurors that they cannot give the fact you did not
15 testify any consideration whatsoever and that there is
16 to be absolutely no prejudice to you because you did
17 not testify. In fact, I will instruct them they are
18 not even to discuss the fact that you didn't testify
19 in the jury room.

20 It is left entirely up to you whether or not you
21 testify. You can talk with your attorney, your family
22 or friends, anyone else, but the final decision is
23 entirely up to you.

24 Do you understand what I've explained to you?

25 THE WITNESS: I understand.

1 THE COURT: Do you have any questions about what
2 I've just explained to you?

3 THE WITNESS: No, Your Honor.

4 THE COURT: Have you discussed with your lawyer
5 whether you should or should not testify?

6 THE WITNESS: I have.

7 THE COURT: Do you want to talk to your lawyers
8 anymore about that issue?

9 THE WITNESS: No, sir.

10 THE COURT: Okay. Do you want to testify in this
11 case then?

12 THE WITNESS: No. I do not Your Honor.

13 THE COURT: Thank you, Mr. Dauer. You may have a
14 seat.

15 All right, Counsel, anything else we need to take
16 up before we resume with the Jury?

17 MR. D'AGOSTINO: No, Your Honor, I'll just -- in
18 light of his decision, I'll just rest when we come
19 back in -- bring the jury back in. I'll just renew
20 all my motions.

21 THE COURT: Oh, yes. I thought you said you may
22 have a short witness.

23 MR. D'AGOSTINO: No, sir, Your Honor. I'm not
24 going to present anything.

25 THE COURT: Okay. In that case, since we're

1 going to go right to closings, Counsel, would you all
2 like a few minutes to prepare?

3 MS. HOLT: Your Honor, we have a matter we would
4 like to take up.

5 THE COURT: Okay.

6 MS. HOLT: Your Honor, during opening statements,
7 there was some alluding to that there would be
8 evidence that the Jury would see regarding a camping
9 trip regarding the reason that he was driving around
10 the parking lot.

11 In addition to that, there was statements made to
12 the Jury about how they would hear evidence of an air-
13 conditioner being at issue. So basically he didn't
14 have air-con in the vehicle, and that's why he was
15 driving around.

16 We would just ask if those statements -- and then
17 specifically that he went and parked for seven minutes
18 to think about what to do about that air-conditioning.
19 We would just ask that those statements be stricken
20 from the record, because there was no evidence that
21 was presented.

22 MR. D'AGOSTINO: That's not evidence. May it
23 please -- I'm jumping up too quickly, I'm sorry.

24 MS. HOLT: I just wanted to -- you already made
25 an instruction at the beginning, but I would like

1 another instruction -- I would like the ability to
2 argue in closing that that is not evidence.

3 THE COURT: I'll definitely charge them again
4 that the arguments of counsel are not evidence.

5 MS. HOLT: And that we would like to be able to
6 make that argument in closing as well, but that it is
7 not evidence and that you instructed that in the
8 beginning, and --

9 THE COURT: You can definitely -- you can
10 absolutely say that in closing.

11 MS. HOLT: In addition, Your Honor, we would ask
12 that the Defense be prohibited from making any of
13 those arguments in closing since that was not
14 presented as evidence.

15 THE COURT: Mr. D'Agostino.

16 MR. D'AGOSTINO: Your Honor, I know I'm limited
17 to what is in the record and arguing -- subject to
18 that, arguing the facts that were presented at trial,
19 as is the State. Because opening arguments -- I
20 understand what opening arguments are and closing
21 arguments. If they start talking about what I said
22 during opening, I'm going to respond. I mean, it's
23 got to be fair either way. If they want to go into
24 it, I'm going to respond to it.

25 THE COURT: Yeah, I -- what I'm understanding the

1 State is saying is that they're not going to go into
2 it, they just don't want you to go in -- they don't
3 want you to make arguments based on evidence that's
4 not in the record.

5 MR. D'AGOSTINO: I have no intention of bringing
6 that up, but if they sit there and start saying
7 Mr. D'Agostino said such and such in his opening
8 statement, I've got to respond to it. If they want to
9 open that door as to why my client claims -- you know,
10 that's a comment on my client's right to remain silent
11 in and of itself, and I object to it.

12 MS. JOYNER: Just to clarify, the problem is that
13 Mr. D'Agostino in his opening statement essentially
14 testified for his client when he put forth -- he put
15 forth --

16 THE COURT: Slow down, please.

17 MS. HOLT: So the problem is we have to walk a
18 very fine line in this closing --

19 THE COURT: I understand.

20 MS. JOYNER: -- at trial. But this trial also
21 has to be fair for the State as well.

22 THE COURT: I understand.

23 MS. JOYNER: And so maybe we need to get the
24 Court's blessing on what we're going to say about this
25 so we don't step over a line, but at the same time,

1 things have been put forward by the Defense, and his
2 client has the right not to present evidence or to
3 testify, but those things have been aired in court,
4 and so we have got to be able in some way to speak to
5 those things and to make sure that it is fair to the
6 State.

7 THE COURT: Well, tell me what you would like to
8 do? Talk about that.

9 MS. HOLT: Well, Your Honor, I want to basically
10 tell the Jury again that they've already been
11 instructed not to consider it as evidence.

12 I do want to specifically point out that at the
13 beginning of the trial, Mr. D'Agostino did let them
14 know that they would be hearing about a camping trip,
15 the defendant feeling sick, and that he told us that
16 we would hear about his air-conditioner not working,
17 and that they are not -- and that you instructed them
18 not to consider our statements that that information
19 that they heard - that they will be instructed again
20 not to consider that as evidence, and they are not to
21 weigh that in their judgment when making a decision as
22 to not guilty or guilty.

23 THE COURT: Okay. This is the first time I've
24 ever had this issue.

25 I mean I understand where you're coming from. I

1 understand your objection, but my initial reaction is
2 allowing you to do that is going to infringe on the
3 defendant's Fifth Amendment right.

4 I think Mr. D'Agostino in good faith made what he
5 -- told the Jury what he thought was the evidence was
6 going to show. His client made a different -- maybe
7 changed his mind and made a different decision.

8 I don't think you can comment on that opposing
9 Counsel said you would hear evidence of X, Y, Z, and
10 you haven't heard it and basically -- I think you can
11 argue that theory -- I think you can say something to
12 the effect of theory is presented by opposing Counsel
13 or just that. It's not based on the evidence, but I
14 don't think you can specifically say you were promised
15 by opposing Counsel you were going to hear X, Y, Z,
16 and you haven't heard it.

17 MS. HOLT: And I wasn't planning on saying you
18 haven't heard it, I was just planning to say what they
19 were told and that that would not be considered as
20 evidence.

21 THE COURT: There is nothing wrong with saying
22 theories or explanations opposing Counsel have said
23 are just that, or that kind of thing. I don't think
24 you can go beyond that.

25 MS. HOLT: Just so I'm clear, I cannot say

1 anything about any specifics.

2 THE COURT: I don't think so.

3 I mean I'm more than happy to give you all 15
4 minutes to get West's Law and go over the same thing.

5 I've never had this issue before, but my initial
6 reaction is allowing you to do what you want to do and
7 implicate an infringement on his Fifth Amendment
8 Right, and I can't allow that.

9 MS. HOLT: If we could just take 15 minutes, Your
10 Honor?

11 THE COURT: Sure.

12 Mr. D'Agostino, anything you want to say before
13 we take a short recess?

14 MR. D'AGOSTINO: The only thing I was going to
15 say, Your Honor, is you instructed the Jury -- and in
16 case I have to deal with that however I deal with it
17 in my closing arguments. I'm limited to what was in
18 the record, and that's where we are. In a criminal
19 trial, I don't think it's appropriate at all to talk
20 about that as it relates to what I might have said in
21 my opening. I tried to limit my opening generally,
22 but, you know, based upon the evidence they presented,
23 I changed my trial strategy.

24 But anything referencing my opening, what
25 specifically I said, the way I presented my opening,

1 is an implication or infringement upon my client's
2 Fifth Amendment. So I agree with that.

3 THE COURT: That is my initial reaction without
4 having researched it. So we'll take a 15-minute
5 recess.

6 Would you all tell the Jury that we've had a
7 legal issue come up and we'll -- you know, we promise
8 we're not just sitting here doing nothing; that we
9 will get to them as quickly as we can.

10 We'll see you all in 15 minutes.

11 (Whereupon, a recess was held.)

12 THE COURT: Please be seated.

13 Any luck, Counsel?

14 MS. HOLT: No, Your Honor. I'll concede that the
15 -- what you said earlier about what I'm restrained to
16 say in closing and referencing that he -- not just
17 Mr. D'Agostino, but nothing let me just state that in
18 opening by Mr. D'Agostino and the State, nothing
19 should be considered as evidence for any theories that
20 we put forth.

21 THE COURT: Did you all read The State vs. Meggit
22 (phonetic)? That was the closest I found.

23 MS. HOLT: I did not, Your Honor.

24 THE COURT: Listen to The State vs. Meggit. It's
25 a Court of Appeals case from 2012, 398-SC-5-16, it was

1 a CSC case.

2 Apparently in that case in the opening argument,
3 the defense accused the victim of being a prostitute
4 and then referenced it again in closing. And in that
5 case, the solicitor said there's no evidence in the
6 record that the defendant -- that the victim was a
7 prostitute, and the Court said that was okay.

8 They said that was because the defense counsel
9 made that argument and implication in opening and
10 closing. So I just -- Mr. D'Agostino, you can't go
11 down that road in your closing.

12 MR. D'AGOSTINO: I understand that, Your Honor.
13 I didn't present any evidence, and I'm limited to the
14 record.

15 MS. HOLT: The State understands as well.

16 THE COURT: Appropriate and fine to comment on
17 general comments about arguing to counsel or not.
18 That will be my charge as well.

19 Anything else, Counsel?

20 MR. D'AGOSTINO: Nothing from the defendant.
21 Thank you.

22 MS. HOLT: Nothing from the State, Your Honor.

23 THE COURT: Have you all had a chance to look at
24 the verdict form?

25 MR. D'AGOSTINO: Yes, sir, Your Honor, no

1 objection.

2 THE COURT: Anything from -- any objections from
3 the State?

4 MS. HOLT: No objections, Your Honor.

5 THE COURT: All right.

6 Mr. D'Agostino, I'll just -- I'll call on you and
7 tell you to present your first witness and you can
8 rest and we will proceed to closings.

9 MR. D'AGOSTINO: Thank you, Your Honor.

10 THE COURT: To the charge. Sorry.

11 MR. D'AGOSTINO: Thank you.

12 THE COURT: If you'll hold the Jury just one
13 second. If you'll close the door back one more time.

14 Counsel, just to make sure we're all on the same
15 page. My understanding on the state of law is that if
16 the defense doesn't put on a case, it's the old system
17 where the State closes in full and the defense closes
18 in full.

19 Is that your understanding?

20 MS. HOLT: Yes, Your Honor.

21 MR. D'AGOSTINO: Yes, sir.

22 THE COURT: Okay.

23 Let's bring them in.

24 (Whereupon, the Jury enters the courtroom.)

25 THE COURT: All right, Ladies and Gentlemen,

1 thank you all for being back and thank you for your
2 patience. I know it's somewhat frustrating, I'm sure,
3 that I asked you to be back here at 9:30 and it's now
4 10:45. Some things have just come up, and it's my
5 fault.

6 There was a civil hearing on a totally unrelated
7 case involving the impactees in Fort Mill, and that
8 was at 9:30 this morning, and I forgot to tell you
9 about that.

10 I should have told you to come in later today,
11 and I apologize for that. That's entirely my fault.
12 So please accept my apologies.

13 That said, has everyone followed the rules I have
14 given you? Thank you very much.

15 The State has rested.

16 Mr. D'Agostino, you may call your first witness.

17 MR. D'AGOSTINO: The Defense rests, Your Honor.

18 ***

19 DEFENSE RESTS

20 THE COURT: All right. Ladies and Gentlemen,
21 that leaves us the close of the evidence in this case.
22 So what is going to happen now is I'm going to charge
23 you on the law, my instructions to you on what the law
24 is, and then that will be followed by the closing
25 arguments of the attorneys, and then it will be your

1 turn to deliberate.

2 ***

3 JURY CHARGE

4 THE COURT: I always apologize when I do these
5 jury charges because if you've ever taken a public
6 speaking class in high school or college, the teacher
7 will always tell you when you are speaking to the
8 other people you should make eye contact with them and
9 not read off a piece of paper.

10 I break that rule when I do this because it's
11 very important that I explain the law to you correctly
12 and not sort of ad lib. So I will mostly be reading
13 off this paper so I apologize for that, but there's no
14 other way to make sure I get it right.

15
16
17 * * *

18 JURY CHARGE

19 Mr. Foreperson and Members of the Jury, you have
20 heard the evidence and you will soon hear the closing
21 arguments of the parties.

22 First, I will explain to you the rules of law you
23 must follow and apply in deciding this case. When I
24 finish, you will hear the arguments of the attorneys
25 and then go to the jury room and begin your

1 deliberations. I will give you a written copy of the
2 instructions to take in your jury room.

3 During your deliberations, you may refer to these
4 instructions to guide your decision-making. You must
5 consider these instructions as a whole and not follow
6 some and ignore others. Your decision must be based
7 only on the evidence presented here. You must not be
8 influenced in any way by either sympathy for or
9 prejudice against anyone.

10 The indictment in this case charges the Defendant
11 Jeffrey Jack Dauer with the offense of indecent
12 exposure. The indictment is simply the formal,
13 written instrument which contains the charge against
14 the Defendant. I'll remind you that the fact that the
15 Defendant was arrested, charged, and indicted in this
16 case is not evidence and cannot be considered by you
17 as evidence of guilt in this case, nor does it create
18 the presumption or inference of guilt.

19 Presumption of innocence.

20 The Defendant has pled not guilty to the charge
21 of indecent exposure and that puts the burden of proof
22 on the State to prove him guilty beyond a reasonable
23 doubt. A person charged with committing a criminal
24 offense in South Carolina is never required to prove
25 himself innocent.

1 I charge you that it is an important rule of law
2 that the Defendant in a criminal trial, no matter how
3 serious the charge, will always be perceived to be
4 innocent of the crime for which the indictment was
5 issued unless guilt has been proven by evidence
6 satisfying you the Jury of his guilt beyond a
7 reasonable doubt.

8 This presumption of innocence does not end when
9 you begin your deliberations, but it accompanies the
10 Defendant throughout the trial until you reach your
11 verdict. The presumption of innocence is not a mere
12 legal theory or legal phrase, it's a substantial and
13 important right to which every defendant is entitled
14 unless you the Jury are satisfied from the evidence of
15 the Defendant's guilt beyond a reasonable doubt.

16
17 Reasonable Doubt

18 So what is reasonable doubt in the law? Some of
19 you may have served as jurors in civil cases where
20 someone was suing somebody where you were told that
21 it's only necessary to prove a fact that it's more
22 likely true than not true, such as by the greater
23 weight or the preponderance of the evidence. In
24 criminal cases, the State's proof must be more
25 powerful than that. It must be beyond a reasonable

1 doubt.

2 Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the Defendant's guilt.
4 Now, there are very few things in this world that we
5 know with absolute certainty. In criminal cases the
6 law does not require proof that overcomes every
7 possible doubt. If, based on your consideration of
8 the evidence, you are firmly convinced the Defendant
9 is guilty of the crime he is charged with, you must
10 find him guilty.

11 If, on the other hand, you think there is a real
12 possibility the Defendant is not guilty, you must give
13 him the benefit of the doubt and find him not guilty.
14 Put another way, a reasonable doubt is the kind of
15 doubt that would cause a reasonable person to hesitate
16 to act.

17 Duties of the Judge and Jury

18 I'll remind you that during this trial you and I
19 have had certain duties to perform. As the trial
20 judge, it is my responsibility to preside over the
21 trial of this case. I also have a duty to rule on the
22 admissibility of the evidence offered during the
23 trial.

24 You are to only consider the evidence before you.
25 If there was any testimony ordered stricken from the

1 record in this case during the trial, you must
2 disregard that testimony. You are to consider only
3 the testimony which has been presented from the
4 witness stand. The exhibits are part of the record
5 and any agreements or stipulations of the attorneys.

6 I have the additional duty to charge you on the
7 law applicable to this case, which is what I'm doing
8 now. As the presiding judge, I am the sole judge of
9 the law of this case. And it is your duty as jurors
10 to accept and apply the law as I am now explaining it
11 to you. If you already have any idea as to what the
12 law is or what it ought to be and it does not agree
13 with what I am now telling you, you must abandon your
14 idea because you are sworn to accept the law and apply
15 it exactly as I state it to you.

16 In every case tried in court before a jury, you
17 the jury are the sole and exclusive judge of the facts
18 in the case. As a judge, I cannot intimate or state
19 or comment on or make any statement to a jury about
20 the facts in the case. Since you the jury are the
21 sole judge of the facts, you should not infer from
22 what I have said during the progress of this trial or
23 in rulings on issue of law or anything else, or
24 anything that I have now said, that I have any opinion
25 about the facts of this case.

1 The law does not allow me to have an opinion on
2 the facts of this case. That is a matter solely for
3 you the Jury to determine. As Jurors, it is your duty
4 to determine the effect, the value, the weight, and
5 the truth of the evidence that was presented during
6 the trial.

7 EVIDENCE

8 As I have said before, you must consider only the
9 evidence I admitted in the case. Evidence includes
10 the testimony of witnesses and any exhibits that have
11 been admitted. You should not assume from anything
12 that I have said that I have any opinion about factual
13 issues.

14 Ladies and Gentlemen, excuse me, I just realized
15 I forgot one thing, and I'm just inserting it in the
16 charge. We will just keep going.

17 Ladies and Gentlemen, as I have said before, you
18 must consider only the evidence that I've admitted in
19 this case. Evidence includes testimony of witnesses
20 and the exhibits that have been admitted. You should
21 not assume from anything I have said that I have any
22 opinion about the factual issues in this case. In
23 fact, except for my instruction to you on the law,
24 which I'm telling you now, you should disregard
25 anything I may have said during the trial in arriving

1 at your own decision about the facts.

2 Your own recollection and interpretation of the
3 evidence is what matters. In considering the
4 evidence, you must use your reason and common sense to
5 make deductions and reach conclusions.

6 Direct and Circumstantial Evidence

7 There are two types of evidence presented during
8 the trial, direct evidence and circumstantial
9 evidence. Direct evidence is the testimony of a
10 person who claims to have actual knowledge of a fact,
11 such as an eyewitness. This evidence immediately
12 establishes the main fact to be proved.

13 Circumstantial evidence is proof of a chain of facts
14 and circumstances indicating the existence of other
15 facts. It is evidence that immediately establishes
16 collateral facts from which the main fact may be
17 inferred.

18 Circumstantial evidence is based on inference,
19 not based on personal knowledge or observation. The
20 law makes absolutely no distinction between the weight
21 or value to be given to either direct or
22 circumstantial evidence, nor is a greater degree of
23 certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all the evidence in
25 this case. After weighing all the evidence, if you're

1 not convinced of the guilt of the Defendant beyond a
2 reasonable doubt, you must find the Defendant not
3 guilty.

4 Redactions

5 Ladies and Gentlemen, during the presentation of
6 this case, you may have noticed that certain parts of
7 the audio and video that were presented were redacted.
8 This is due to the rules of Court and that was a
9 decision made by me. Please do not speculate as to
10 what may or may not have been contained in these
11 redacted portions, and you should not hold these
12 portions against either party.

13 Arguments of Attorneys

14 While argument of attorneys are a beneficial part
15 of every trial, you should remember that the
16 statements made by Counsel are not evidence. When
17 presenting arguments, the attorneys often refer to
18 evidence. However, you should base your verdict on
19 the evidence as you remember it. Therefore, if there
20 are any conflicts between the recollection of the
21 attorneys about the evidence and your own
22 recollection, you should rely on your own
23 understanding of the evidence.

24 Believability of Witnesses

25 Ladies and Gentlemen, when I say that you must

1 consider all the evidence, I do not mean that you must
2 accept all the evidence as true or accurate. You
3 should decide whether you believe what each witness
4 had to say and how important their testimony was.

5 In making these decisions, you may believe or
6 disbelieve any witness in whole or in part. The
7 number of witnesses testifying about a particular
8 thing doesn't necessarily matter.

9 In deciding whether to believe a witness, I
10 suggest you ask yourselves a few questions. Did the
11 witness impress you as the one telling the truth? Did
12 the witness have any particular reason to not tell the
13 truth or have a personal interest in the outcome of
14 the case? Did the witness have a good memory? Did
15 the witness have the opportunity and ability to
16 accurately observe the things he or she testified
17 about? Did the witness appear to understand the
18 questions clearly and answer them directly? Did the
19 witness's testimony differ from other testimony or
20 other evidence?

21 Please keep in mind that a simple mistake doesn't
22 mean a witness wasn't telling the truth as he or she
23 remembers it. People naturally tend to forget some
24 things or remember them inaccurately. So if a witness
25 misstated something, you must decide whether that was

1 because of an innocent mistake or lapse in memory or
2 an intentional deception. The significance of your
3 decision may depend on whether the misstatement is
4 about an unimportant fact -- unimportant detail or an
5 important fact.

6 Statements Made by the Defendant

7 Statements alleged to have been made by the
8 Defendant in this case have been admitted into
9 evidence. While the Court has determined the
10 statement is admissible, I instruct you that you make
11 the ultimate decision on whether or not the Defendant
12 made the statement. If the Defendant did make the
13 statement, you must determine whether it was made
14 voluntarily and of his own free will. This means the
15 statement was not caused by pressure, force, fear,
16 threats, coercion, or intimidation or by hope or
17 promise of leniency or award of any kind. In
18 determining whether the statement was voluntary, you
19 must consider what are the characteristics of the
20 defendant and the details of the questioning. Some of
21 the factors you should consider are the age of the
22 Defendant, his lack of education or his education, his
23 mental ability or capacity, his IQ or intelligence,
24 his background or environment, the place and length of
25 the detention, the nature of the questioning, and the

1 advice or lack thereof to the Defendant of his
2 Constitutional rights, including but not limited to,
3 the right to remain silent, that any statement he made
4 could be used against him in a court of law, the right
5 to have a lawyer present, and that if he could not
6 afford a lawyer one would be appointed to represent
7 him without any cost; and that he could stop making a
8 statement at any time.

9 You must carefully consider all the surrounding
10 circumstances before you give any weight to an alleged
11 statement. The State has the burden of proving beyond
12 a reasonable doubt that the alleged statement was
13 voluntary. If you determine it was, you may give the
14 statement any further consideration that you deem
15 proper. You must decide what weight, if any, should
16 be given to any alleged statement.

17 If you determine the alleged statement was not a
18 free and voluntary statement of the Defendant, you
19 should not consider that statement at all.

20 **Decision of the Defendant not to Testify**

21 Ladies and Gentlemen, in this case, the Defendant
22 did not testify. I instruct you and I emphasize to
23 you the fact the Defendant did not testify in this
24 case is not a factor to be considered by you in your
25 deliberations and consideration of guilt or innocence.

1 in any way. It must not be considered by you in any
2 manner whatsoever.

3 A defendant in the United States has the
4 Constitutional right to remain silent. And the
5 assertion or use of this right must not be considered
6 by you in your deliberation. I repeat, under your
7 oath, you are to draw no conclusion whatsoever from
8 the fact the Defendant did not testify. In fact, his
9 choice to not testify should not be discussed by you
10 at all in the jury room.

11 Charge of Indecent Exposure

12 The Defendant has been charged with the crime of
13 indecent exposure. In order to be guilty of indecent
14 exposure, the State must prove beyond a reasonable
15 doubt that 1) the Defendant exposed his private parts;
16 2) it was an indecent exposure; 3) the exposure was
17 willful and malicious; and number 4) the exposure
18 occurred in a public place on the property of others
19 or for the view of any person on the street or
20 highway.

21 A willful act is one that is voluntary and
22 intentional. A malicious act means the intentional
23 and deliberate doing of a wrongful act intending it to
24 be wrong in committing the act without any just cause
25 or excuse.

Verdict

Ladies and Gentlemen, in this case there are two possible verdicts, guilty and not guilty. There is no significance whatsoever in the order in which I just listed those possibilities. There's simply the fact one of them had to be listed first.

Ladies and Gentlemen, your verdict must be unanimous, meaning you all must agree.

Mr. Foreperson, when the Jury agrees on the verdict, you will check the box on the verdict form, which will be either guilty or not guilty, and then sign and date the form. When that happens, then knock on the door and tell the Bailiff you have a verdict.

And again, when we finish up with the closing arguments, I will send you back to the jury room. Please don't begin deliberating quite yet. The last step in the trial is that the attorneys will review the video disk and the other evidence and make sure everything is in order. And then the Bailiff will then come back and will bring you the evidence in the case for you to have in the jury room. He will also bring you a copy of my instructions, which I'm telling you now, and finally he will bring you a copy of the verdict form.

When the Bailiff brings you those items, that

1 is your signal that it is okay to begin deliberations
2 and discussing the case. All right.

3 I'm going to give the attorneys an opportunity to
4 object to anything I've said, and then we'll move on
5 to closings.

6 THE COURT: Any objections from the State?

7 MS. HOLT: No objections from the State.

8 THE COURT: From the Defense?

9 MR. D'AGOSTINO: None.

10 THE COURT: Yes, ma'am.

11 MS. HOLT: Thank you, Your Honor.

12 * * *

13 CLOSING ARGUMENT BY THE MS. HOLT

14 MS. HOLT: Good morning, Ladies and Gentlemen.
15 This is the last time that I'll have an opportunity to
16 talk to you about this case. I want to start by
17 telling you what the law is and what the Defendant has
18 been charged with.

19 I'm going to read it straight from Powerpoint.
20 "Defendant is charged with violation of South Carolina
21 Code 16-15-130. It is unlawful for a person to
22 willfully, maliciously, indecently expose his person
23 in a public place, on the property of others or to the
24 view of any person on a street or highway."

25 For you to find the Defendant guilty of indecent

1 exposure, I must have proven to you beyond a
2 reasonable doubt that he exposed his private parts,
3 and the exposure was indecent. It was willful and
4 malicious, and it was in a public place. We will come
5 back to this slide at the end of my going through the
6 evidence with you, and I will go through how we did
7 those -- how we met that burden.

8 The first thing I want to show you here is the
9 incident in question. In the photo, you can see the
10 brake lights. You can see that Ms. Jarrett is
11 standing. And the timestamp on the video in 3 minutes
12 and 21 seconds, 54 -- should be 3:21:54, 54 seconds.
13 She is standing at that point right beside his vehicle
14 with his brake lights engaged. The defendant did stop
15 right beside where she was standing. She has an
16 opportunity to look into the vehicle and see that he
17 has a fully erect penis and he has his hand at the
18 base of the shaft of his penis.

19 Judge McKinnon has instructed you that statements
20 by Counsel aren't evidence. That means that both my
21 opening statements and Defense Counsel's opening
22 statements are not evidence. The statement that I'm
23 making to you right now is not evidence. No theories
24 that we put forth are evidence. You have to find on
25 the facts based upon the evidence presented which

1 we'll go through, and which you've heard as testimony
2 whether or not the Defendant is guilty.

3 Let's talk about what evidence is. We have
4 talked a lot about this parking lot. Where the
5 Walmart is, the relationship between the Walmart and
6 the different sides of the parking lot where the Lowes
7 is and where the stuff actually occurred, where the
8 indecent exposure actually occurred.

9 You can see the different rows that we went
10 through, and you heard me asking Kacey on the stand
11 about the different row aisles that we see here in
12 this photo.

13 You heard that the Defendant was circling the
14 parking lot. Here is the entrance part where the
15 defendant comes on the scene. The first camera shot
16 that we can see from the Walmart surveillance, at
17 3:59.

18 We also know when the defendant exited the
19 parking lot. There is a gap of almost seven minutes
20 where we will not see him on any of the surveillance
21 cameras. There are six cameras on the front of that,
22 and none of those cameras caught him during that time.
23 A big piece of this that I want you to take back is
24 that you can see him go in and out of these roads
25 throughout the duration, with the exception of that

1 seven minutes. You see him go in and out of these
2 rows. And it's going to be important in a moment as
3 to why that's so important.

4 In this photo - this is about the best photo that
5 I can see. You will see in this photo, and I
6 encourage you to go back and look at this in the Jury
7 room, to look at the videos in their entirety in the
8 jury room, to look at the compilation, if you'd like a
9 quick shot of where the Defendant is on video.

10 In this shot I can see in this photo where the
11 Defendant is sitting in the vehicle, you can see the
12 time on the clock, and it appears to me that the
13 shadowing on the vehicle from the sun is cutting off
14 right here at the shoulder.

15 So it doesn't appear that the shadowing is on the
16 forearm. To me that means that the arm can be
17 extended onto where the ledge is of the door, which
18 would mean the window was down. The same shot you
19 just saw, but a closeup. Again, the are important
20 whether the -- you can tell at a different place on
21 each of the videos -- each of the screenshots that you
22 see as the defendant goes in and out of these rows,
23 and you can see the timestamp of where he is in the
24 parking lot. And it's important to note when the
25 brakes are engaged and not engaged. Here you will see

1 the brakes are engaged. Here you can see the brakes
2 are not engaged.

3 This is the moment where it is emphasized in
4 testimony where Stephanie Jarrett pulled up. We went
5 into extensive detail about the timestamp and when she
6 pulled over, when the defendant pulled over, how far
7 he was, how close he was. The testimony that you
8 heard is that Ms. Jarrett pulled into the Walmart
9 parking lot. She had seen the vehicle with a canoe on
10 top. That is significant at that time. She hasn't
11 seen him start circling the parking lot at the time.
12 She sees a vehicle that she thinks is about to take
13 that spot or a spot on that row. He goes past that
14 spot and then she pulled in.

15 He's still in that row. She can see him as she's
16 pulling in, as she is rounding that turn. She could
17 she's now parked and he is still on the same row that
18 she was just on. Over and over again you see him
19 circling those rows in the parking lot.

20 This is that moment in question where he is
21 indecently exposed. She sees him with a fully erect
22 penis, hand at the base of the shaft, as she is
23 standing beside him with her cart, and she sees in the
24 passenger side window. Now through the back window,
25 through the passenger side window she saw him. We

1 know here that the brakes are engaged because here the
2 brakes are not engaged. They're very visible.

3 What happened next? She comes up to this truck
4 to use the phone to call 9-1-1. At 3:22:23 what do we
5 see? Defendant is still circling the parking lot.
6 This is after the incident. The Defendant passes the
7 victim while she standing. You see him, see the kayak
8 at the top. She is standing behind her vehicle on the
9 phone with 9-1-1.

10 Then he passed her again going the other
11 direction. He passed her two times on the same road.
12 And as we went through that video yesterday, he also
13 passed her again on the road. So a total of four
14 times, not one time. He passes her four times. What
15 does she say? "He passes me several times."

16 At 3:25:28, you can see the gray interior of the
17 passenger side. Again, we're looking at a camera
18 angle from the rooftop of Walmart. I'm not going to
19 guess how tall a Walmart is, several feet, certainly.
20 But we're looking at the top of the Walmart down into
21 that vehicle.

22 I can see gray interior from here. You can see
23 it for yourself. If you want to pull the cameras,
24 you've got it in the evidence video. She calls.
25 3:41, a little bit closer shot there.

1 Mr. Dauer, his pants are untied and you can see
2 it, I'm going to play the video that was played
3 earlier on the stand. 3:50, pants untied. He tries
4 to pull them up.

5 Pulled them up, pants are untied. She did recall
6 seeing additional clothes in the backseat after
7 reviewing video. (Playing video. He is wearing the
8 swimming trunks.

9 At what point did he change the clothes? Does it
10 make sense to you? He changed while he was driving?
11 We see him going in and out of the rows. He's going
12 up and down the rows. He changed while he was driving
13 down the row?

14 What else did we hear? Ms. Jarrett said, "I felt
15 like he was taping me." She explained that. He
16 brakes right beside her. We see it -- we can see the
17 brake lights.

18 She said, "I saw his erect penis."

19 "His penis, fully erect with his hand at the base
20 of the shaft through the passenger window and he made
21 sure I could see.

22 What reason would this kind woman have to lie?
23 Why would she take time out of her schedule to be
24 here? She's never been involved in a Police
25 investigation before.

1 Her extent of involvement with law enforcement
2 was limited to volunteer work when her children were
3 in school. What motive does she have other than to
4 report what happened?

5 She told us she'd never met him before. She
6 didn't know him -- she didn't know who he was prior to
7 that day. She knows who he is now. Defense will say,
8 there is a water bottle in the car. I see a water
9 bottle. But if his penis was out fully erect, I
10 certainly wouldn't notice the water bottle.

11 You're only here to answer one question. You as
12 a juror are here to decide whether or not the
13 Defendant's act of pulling out and touching his erect
14 penis in a public place, in this case Walmart,
15 constitutes indecent exposure. We're not here to
16 judge the Defendant. We're not here to embarrass the
17 Defendant. We're only here to answer that one
18 question. And the law has already established
19 indecent exposure.

20 I told you that I would come back to this slide,
21 and I would go over with you how the State has met
22 their burden. We've proven it to you during testimony
23 the Defendant exposed his fully erect penis with his
24 hand at the base of the shaft. She saw him, and he
25 knew she saw him. He made sure of it. The exposure

1 was willful and malicious. Willful as the Judge told
2 you, voluntary and intentional. He didn't accidentally
3 pull out this fully erect penis. It had to be an
4 intentional and willful act.

5 Malicious because it was intentional and
6 deliberate, doing a wrongful act. He knew he isn't
7 permitted to do that. He's in a parking lot at 3:00
8 in the afternoon in broad daylight. How could it not
9 be intentional and deliberate? How could he not know
10 that was an intentional and willful act?

11 That's established over and over. Walmart
12 parking lot, 970 East Liberty Street, broad daylight,
13 3:21 p.m. in the afternoon, and it was the defendant,
14 Jeffrey Dauer, who pulled out a fully erect penis, he
15 exposed himself in a public place, touching himself
16 as she testified.

17 I have proven to you the defendant's guilt beyond
18 a reasonable doubt.

19 THE COURT: Mr. D'Agostino?

20 MR. D'AGOSTINO: Thank you, Your Honor.

21 * * *

22 CLOSING ARGUMENT BY MR. D'AGOSTINO

23 MR. D'AGOSTINO: Your Honor, Mr. Foreman, Ladies
24 and Gentlemen of the Jury, let me get set up.

25 Before I start discussing or telling you, talking

1 to you, about the facts of the case, I want to thank
2 you. I want to thank each and every one of you for
3 being here today. It's a very important
4 responsibility to be on a jury. It's part of our
5 judicial system, it's part of our way of life of
6 finding out the facts and coming to a conclusion.

7 If we didn't have jurors, then it might be up to
8 an officer who takes one person's word for it after
9 talking to them for a minute or two, three minutes,
10 and making a decision. It might be up to a solicitor
11 and assistant solicitor who comes in here and says all
12 types of things and -- but it's not. It's up to you
13 all collectively, as 12 people together come to a
14 conclusion and judge the facts of this case and decide
15 whether my client, whether Jeff Dauer, is guilty or
16 not guilty of this charge. And that's very important
17 because this affects his life. It's a very important
18 decision to make, not one you take lightly. Being on
19 a jury is one of the most important things you can do
20 in your life because you're actually judging
21 collectively as a group someone else.

22 Now, I'm going to talk a little bit about the
23 law, then I'm going to go into the facts, and I'll
24 come back and talk about law a little bit.

25 Mr. Dauer, Jeff, comes into this courtroom

1 presumed innocent. It's a cloak that they surround
2 him, never leaves him. When he walked in throughout
3 this trial when you're in the deliberation rooms, he
4 is presumed innocent, and the State has the burden of
5 proving him guilty beyond a reasonable doubt. The
6 kind of doubt that causes a person to hesitate in
7 matters of importance. I understand it can't be some
8 whimsical doubt, but it has to be beyond a reasonable
9 doubt.

10 The State hasn't done that in this case. You've
11 got to consider all the facts. You've got to consider
12 the witnesses and testimony and realistically the
13 evidence as well, the video evidence. The video
14 evidence. Not still frames, not arguments, not my
15 arguments. You can consider my arguments as they
16 relate to the facts in the case, consider the State's
17 arguments, but the evidence is the evidence. And I'm
18 going to go through that. But first, I want to lay
19 out some things. How many times did the State just
20 now say he stopped his vehicle, he stopped beside of
21 it, he applied his brake, he engaged his brakes?

22 When Ms. Jarrett herself said when she testified
23 said, he tapped his brakes. The evidence, the video
24 itself shows that he never stopped. He tapped his
25 brakes as he was coming around the curve as everybody

1 does when they're coming around a curve in a parking
2 lot.

3 He didn't stop, slow down or anything, now this
4 is the video the State made. They had somebody from
5 their office sit there and make this video and
6 highlight where he was the whole time. And we'll look
7 at it in a few minutes, not a still frame, but the
8 video itself that they made, which shows that he
9 didn't stop.

10 He didn't slow down. He didn't pace. We'll also
11 look at frames from the video that show clearly his
12 window was closed. Now that makes a big difference
13 because you heard the lady from Walmart testify, you
14 know, he had different shading because the sun was
15 coming in and out, which also affects how you look
16 inside the vehicle, which you can see inside the
17 vehicle. All this as a preview, before we start going
18 through it, makes a big difference because nobody has
19 accused Ms. Jarrett of lying, but how many times does
20 she say that in her testimony she assumed something?
21 How many times did the officer say "their perception"?
22 Remember?

23 I asked the second officer, Officer Williams, I
24 said, "Does Jeffrey Dauer look any different today?
25 Do you perceive him to look any different today?"

1 Well, Ms. Jarrett said she would have recognized him.

2 First officer said he perceives him to be the
3 same person. Perception. Two people can look at the
4 same thing and see something entirely different. Now
5 what do we know from the State's witnesses, the
6 individual Mr. Davis who works for the State -- the
7 Solicitor's Office, works for the Solicitor's Office,
8 and Ms. Jarrett.

9 I'm also going to point something out in the
10 video. She said that he circled her after they -- he
11 went by her at 3:21, 3:22, she says she got out of the
12 car and you see eventually the car leave, you don't
13 see that on the highway in this video, but you can see
14 it on the video compiled 1:56 -- excuse me, I believe
15 it's 1:55.

16 You can see where she gets out of the car, her
17 car backs up, it backs up and leaves. Now the State
18 showed you a clip and said, "Jeffrey Dauer was coming
19 behind her twice and then eventually circled her."
20 No, that first time when she pointed out in the still
21 photograph and said Mr. Dauer -- Ms. Jarrett was
22 talking to those women, when you go back and look at
23 the video and look at the timestamp, the first time
24 he's coming down that aisle, she's not behind him yet.

25 She's coming around the top of the aisle and she

1 parks afterwards. You've got to look at the whole --
2 you can look at the highlighted version and see it,
3 and I'll show it to you. But she parks afterwards,
4 and then you remember, she said in her testimony, she
5 didn't say he was circling the parking lot. I asked
6 her about that. I think he was going around the
7 parking lot. She said, "No, he was circling me."
8 Well, I went back and looked last night, and we'll
9 look at this, he wasn't circling her. After he does
10 pass her one time going up the aisle, he goes two
11 lanes over, then for the next two minutes, he's on the
12 other side of the parking lot, way over at Wendy's.
13 Way over at Wendy's.
14 See, I'm pointing all this out, and we'll go over
15 it. The State has to prove him guilty beyond a
16 reasonable doubt. You can't do it based upon
17 assumptions. I assumed the window was down. I
18 assumed the window was only halfway down. I assumed
19 this. You can't assume. You can't base something on
20 somebody's on feelings. I felt like it. It's got to
21 be based on credible evidence to convict somebody.
22 What we know is that he drove around that parking lot
23 for a while. How many of you have driven around a
24 parking lot waiting for something?
25 He drove it around, he exited, he left the

1 parking lot, we don't see him for close to seven
2 minutes. As they said, which part of the parking lot
3 did he go to? Up there where the gas station is. He
4 comes back. It's not a crime to drive around a
5 parking lot.

6 Now let's look at the video and let's look at
7 some evidence. I'm going to show you -- I'm going to
8 go through -- I'm going to talk to you about the
9 videos now. I'm then going to show you some other
10 still photographs that I've taken from the videos
11 themselves. I'll point out times so if you want to
12 look at the video, you'll know where to look to see
13 those stop -- see those spots. And I'll talk some as
14 we're going through it.

15 (Plays video.) This is at three minutes. This
16 is when they first pick him up, this is the video that
17 the Solicitor's Office's employee made. And you'll
18 see him coming down through here, speeds up a little
19 bit. And you'll notice some sunlight. He does stop
20 there for the crosswalk. You can see the glare on his
21 windows. That's on the driver's side. See the glare
22 on this window as he was turning, that's on the
23 driver's side. Not the passenger's side.

24 See the glare off these windows. The windows are
25 closed. The only window that was partially open was

1 the back passenger window -- back driver's window.
2 You'll see it here in a moment. Now, as you heard,
3 before the car got here, that's Ms. Jarrett. You see
4 my client turning down there at the right, it's
5 moving. You see when he turns, you saw the glare off
6 his windows. Now what's important to note, see the
7 back passenger window's partially down, he's got the
8 front windows closed.

9 Now what's important to note, the Solicitor's
10 Office put a photograph up a moment ago that says,
11 "She could still see him," now this is where she's
12 turning in. That's at three minutes, 3:02:23, where
13 she's turning in. Now, she put a photograph up a few
14 minutes ago, a still frame, that said, "He's still in
15 the same aisle and she could that he's continuing to
16 pass car." Now at this point in that day, she's
17 turning into a parking spot, she'd have no reason to
18 look at him. She's not looking down the aisle, she's
19 trying to get her car into the lot. To sit there and
20 say at this point based on that photograph they put a
21 -- she could still see he was passing the parking lot,
22 that was not based upon her observations that day,
23 that's based upon her looking at videos.

24 And remember what she told the officer, she
25 testified she told the officer, Officer Hawkins, when

1 she got out of the car, the first thing she said now,
2 which I still don't understand, is -- let me get it
3 out, "It would be me, right. I always get myself
4 involved in all this crap."

5 Never quite understood that. But that's the
6 first thing she said, and then she says, she testified
7 to it, that she got out and told him, "I came up, he
8 passed several cars, and he was going around the
9 parking lot." Well, she wasn't in the parking lot to
10 see him going around the parking lot. She testified
11 that she came in from the far side, she had come in
12 and saw straight for that lot.

13 She wasn't basing her resuscitation upon what she
14 told the officer based upon facts. She was assuming
15 things, assuming things that weren't accurate, because
16 by 3:01 he hadn't been driving around the parking lot
17 for a while. He had just come in the parking lot two
18 minutes earlier.

19 Let's continue on. She parks, and she goes into
20 the store. And I have a video shows him -- I'm not
21 going to play 25 minutes of the video, I'm going to
22 flip over to between 3:12 and 3:17 -- 3:11 and 3:17
23 where he's not even in the video. Then we have --
24 that's 3:18, 3:19:47. I'm going to speed it up a
25 little bit. There's a picture. This is at 3:20:58.

1 This is right before she comes out of the store.
2 Look at his car. The front window is closed on the
3 driver's side. The passenger window's partially open,
4 just a crack. Look at the shading. The sun is not
5 shining out. Now as he goes around the curve, this is
6 right before. See the glare off the passenger's front
7 window? You continue to watch. The glare is off the
8 passenger's side windows. Now he's coming down that
9 aisle.

10 In a moment you'll see her, and I'm going to stop
11 as quick as I can. His driver's window, he's turning
12 right now, has his brakes engaged while he's turning.
13 This is what all of us do, or else he's going to run
14 into somebody. Remember, the Solicitor said he
15 stopped. She held up a still photograph a few minutes
16 ago and said "He stopped beside her so she could be
17 sure he saw her." That's her argument. "He stopped
18 beside her so she could be sure." He past, that's the
19 brake light continuing from the turn. Does he ever
20 stop? He never stops. That car doesn't slow down.
21 It doesn't stop. It keeps rolling. I'll back it up.
22 She's in front of him right there. He never paces
23 her. And look how far away she is from the car. You
24 can see her whole torso the whole time.

25 Now it's going to be important, I'm going to play

1 this -- let this circle through right here, because I
2 want you to see the glare on that window again, the
3 two passenger windows. Now why is that important?
4 Because the officer asked her, and she said, "The
5 windows were down." Why is that important? Because
6 that's part of his investigation. Were the windows up
7 or down? Was he pacing you? I tell you, he used that
8 in his decision to place him under arrest.

9 Now what's really important and what's really
10 interesting is what did the officer tell you? He did
11 not note anything about my client's pants when he made
12 the decision to arrest him. Because the other officer
13 is with my client, he didn't note anything about his
14 pants being loose. And we heard testimony, one
15 officer said he didn't have shorts on, but yet the
16 still photograph the Solicitor's Office showed you
17 showed him having boxers on underneath. He had boxers
18 on underneath. One officer says he did, one officer
19 says he didn't. I'm not saying anybody's lying, it
20 goes to perception, memory. And mind you, they have
21 all had the opportunity, every one of them testified
22 they watched these videos before they took the stand.
23 They watched these videos, certainly.

24 Let's continue on. I want you -- I'm going to
25 stop right there, because I believe that -- and I.

1 didn't look at this this morning to double-check, but
2 I do know that was Mr. Dauer's car that was
3 highlighted. That truck right there, I believe, is
4 the truck those women were in that came up the row
5 that Ms. Jarrett used their phone. Look how that is
6 positioned on this video. This is very important.
7 As it relates to the argument, the State's
8 theory, and the encircling her. Just speed it up a
9 little bit because I've got to get to 3:25, I think.
10 Now see, he goes to the other side of the parking lot.
11 I've got it on -- it's not normal time. The State's
12 set up two times normal time. He goes all the way to
13 the other side of the parking lot. Remember, she
14 testifies, "He was circling." He's all the way down
15 there at the gas station side now. I'm going to speed
16 it up a little bit more, we're only at 3:22. Let me
17 go to regular time, now at 3:24. Oops. I messed up.
18 Here we go. All right. Now this is what I wanted you
19 to compare. There's that truck. He's going by that
20 truck. There's no other car parked beside that truck
21 yet. Watch. See that car parked? That's Ms.
22 Jarrett's. When you watch these base videos, not the
23 one from this compilation, you will see that she's the
24 one -- this is when she pulls into the parking spot,
25 right here. And you'll be able to tell in a minute.

1 Now, Mr. Dauer does drive -- goes to the next two
2 aisles over to the right as you're looking out towards
3 the road, but then he circles back and he goes to the
4 other side of the parking lot. I'll plot it out in a
5 moment. I'll set it up just so you know what I'm
6 doing.

7 That's Jeff. And he's two aisles over, two or
8 three aisles over right now. Notice, passenger
9 windows are closed. He stops for traffic. Now he's
10 going up the aisle where Ms. Jarrett is, you'll see.
11 That's Ms. Jarrett's car beside that truck. That
12 first time that the Solicitor's Office said he went by
13 her to say he went by her twice, she wasn't there yet.
14 This is the only time he went behind her after she
15 moved up from parking spot when she put her groceries
16 in the car. And you can see clearly her car.
17 And that's -- when you watch the rest of this
18 video if you want to in your deliberations, you'll see
19 that what he does is eventually he goes to the other
20 side of the parking lot. He leaves this side of the
21 parking lot and goes to the other side of the parking
22 lot.

23 Now, I'm going to switch to another video because
24 I think it's very important. What is that one?
25 This is Sergeant Baker's stop. Look at the car, look

1 at the windows. This is Jeff's passenger car --
2 passenger side. Look at the windows, now watch.
3 Watch when you walk up. Look at the reflection. Look
4 at the reflection on those windows.

5 And it's sunny out now. It wasn't cloudy at this
6 time as we saw in the other photograph. But even with
7 it being sunny, the front window is not as tinted as
8 the back, but look at the reflection. With the car,
9 with the windows closed, that's how his car was when
10 he went by. That's what it was. The window's closed
11 on the passenger side, the window on the front
12 driver's side is totally closed, the window on the
13 rear driver side opened a crack.

14 Why is all this important? Why did I take the
15 time to do this? I don't have a big, huge stack of
16 investigators and Police officers and everything.
17 It's important because of the details to him and his
18 life. It's important because of the details. And
19 when you look at the video, and you consider the
20 evidence and look at the evidence from the video, I'm
21 not sitting here saying, "He stopped." He didn't
22 stop. The fact that you watch that whole video, he
23 doesn't stop beside anybody except when he has to
24 because of people crossing the street or cars in front
25 of him. He's not pacing anybody. The whole time he's

1 out there he's not pacing anybody, stopping beside
2 anybody, doing anything. He's driving through a
3 parking lot which is perfectly legal the last time I
4 checked in the State of South Carolina and the United
5 States. There's nothing illegal about that at all.

6 But what happened was somebody assumed
7 something, I have no idea what Ms. Jarrett saw, but it
8 wasn't my client doing something with his penis out
9 and erect or anything else. He didn't do it. He was
10 driving through a parking lot. She assumed she saw
11 something, and it went from there. When we get the
12 evidence, what do we have?

13 We know longer have all the windows are down and
14 he is pacing me. It's "I felt like it he was pacing
15 me. Maybe the windows were down. I don't know. I
16 assume." Is that the kind of proof that proves
17 somebody guilty of a crime beyond a reasonable doubt?
18 No, it is not. It is not.

19 Now the State put up on the screen -- I could sit
20 here --- I went through these videos. I went through
21 the base video numerous times, and I pulled out
22 photograph after photograph after photograph on all
23 different times, at 3:05, 3:19, 3:22, 3:25; all
24 different times from the base photos to show the glare
25 on those windows or show them clearly closed, if it

1 didn't matter as to whether they were open or closed,
2 why did the officer ask about it? If it didn't matter
3 why did she have to say the windows were all open?
4 The windows weren't open.

5 I'm not going to worry about putting every one of
6 those up today. You all can look at it if that's what
7 you decide to do because you have the videos, not
8 still photographs.

9 The crime for which my client is charged and
10 which the State has to prove beyond a reasonable doubt
11 is that his -- that he exposed his private parts, that
12 the exposure was indecent, the exposure was willful
13 and malicious, and the exposure occurred in a public
14 place on a property of others or to the view of a
15 person on any street or highway. You will have this
16 instruction with you. It includes all of these
17 elements altogether. And the State has to prove every
18 one of those elements beyond a reasonable doubt.

19 The Court also charged you, and you will have
20 this back there with you, that you have to consider
21 the credibility of the witness, and the Court went
22 through the factors, but a couple of them I want to
23 point out.

24 Did the witness seem to have good memories? Did
25 the witness have the opportunity and ability to

1 actively observe the things he or she testified about?
2 Did the witness's testimony differ from other
3 testimony or other evidence? And I submit to you Ms.
4 Jarrett's testimony differed substantially from the
5 video evidence.

6 I thought for a long time. My role -- I'm not
7 evidence, I don't present evidence, I'm presenting the
8 argument. I'm pointing out facts. I'm not trying to
9 take apart the video, the evidence, which is what you
10 all can look at.

11 You all know the law, His Honor is in charge of
12 the law, and you've got to accept that law the way it
13 is. But I submit to you that the evidence
14 demonstrates -- or the evidence fails to demonstrate
15 and the State has not proven that my client committed
16 any crime.

17 The State has not proven anything beyond a
18 reasonable doubt. What we ask you to do is take your
19 time, deliberate, come to a verdict that seeks the
20 truth, my client did not commit a crime and that is
21 why he pled not guilty to this charge.

22 The Court has charged you with the burden of
23 determining the fate of my client. We ask you to
24 return a verdict that speaks the truth. That verdict
25 should be not guilty in this case.

1 Again, thank you for your time, your attention,
2 your patience in performing your obligations.

3 THE COURT: All right, Ladies and Gentlemen, you
4 have now heard all the evidence, and you've heard the
5 arguments of the lawyers. In just a second, I'm going
6 to send you back to the jury room. I don't know if
7 it's arrived yet, but the Clerk of Court has ordered
8 pizza for you all so you won't have to worry about
9 going out to lunch.

10 There's nothing wrong with deliberating while
11 you're eating if you want to do that. The only
12 restriction is if someone is in the restroom or has
13 left the room, you have to stop deliberating. As long
14 as you all are present, it's okay to talk while you
15 eat. Again, just head on back to the jury room in
16 just a second. Don't start deliberating until the
17 Bailiff brings you back the evidence, the copy of my
18 jury charge, and verdict form. Once the Bailiff has
19 done that, that's your signal to go ahead and begin
20 deliberations. Ladies and Gentlemen, thank you very
21 much for your attention.

22 (Whereupon, the Jury adjourns to jury room and begins
23 deliberations.)

24 THE COURT: Anything we need to take up from the
25 State?

1 MS. HOLT: The only thing -- I don't know about a
2 computer for viewing the videos. I can check that. I
3 can run upstairs and check --

4 THE COURT: Somebody told me they had a computer
5 back there in the jury room right now. Is that true?

6 THE BAILIFF: Yes.

7 THE COURT: All right. Anything from the
8 Defense?

9 MR. D'AGOSTINO: I've noted my objection to the
10 charge earlier. That's the only objection I have.
11 And nothing -- and for the record, Your Honor, I
12 rested, and I had said previously my motions would be
13 renewed. I didn't do that in front of the Jury, but
14 I'll renew my motions for a directed verdict after I
15 rest as well. I didn't want to do that in front of
16 the Jury, and I wanted to preserve the record. I just
17 wanted to be sure. Thank you, Your Honor.

18 THE COURT: Yes, sir. Now if you all would look
19 through the evidence real quick, and I'll give
20 everything to the bailiff to be sent back to the jury
21 room so they can begin deliberating.

22 (Whereupon, the Jury goes into jury room for
23 deliberations.)

24 THE COURT: We have a few questions.

25 Number two, copy of the Police report.

1 Number three, please confirm if the Defendant's
2 car had power windows.

3 Number four, was the Defendant aware if he
4 stopped for anything before he said he was changing
5 his bathing suit.

6 Number five, copies of the Court transcript for
7 the Defense opening statement.

8 Number six, can we listen to the 9-1-1 call or
9 view a transcript of it.

10 Number seven, in the vehicle inventory log, what
11 was inside the velcro'd camping bag and other -- and
12 other bag in the seat.

13 Number eight, the cam footage of Officer Parker
14 when he first exits the car.

15 Obviously, we can't provide any of those things.
16 any of those things. My first answer would be with
17 regard to the one question about the transcript, we
18 can hear that portion of testimony, but the transcript
19 has not been prepared yet.

20 Everything else, the evidence is in the record.
21 They have got all the evidence there is.

22 MS. JOYNER: They want a transcript of the
23 closing or to hear it?

24 THE COURT: Correct, they want a downloaded --
25 that's right, you're right, we can't replay that. We

1 can't replay arguments of Counsel.

2 MS. JOYNER: Maybe to remind them that the
3 arguments, openings and closings are not evidence.

4 THE COURT: Any objections to that, Mr.
5 D'Agostino?

6 MR. D'AGOSTINO: That's what the law is, Your
7 Honor.

8 MS. JOYNER: Your Honor, if I may? For number
9 eight, would it be possible -- Officer Parker, I'm
10 assuming that they mean Officer Williams -- his
11 bodycam footage. Would it also be acceptable if we
12 could just run another -- they do have the full body
13 camera, however, they can view the entire footage of
14 the body camera. That's all three body cameras.

15 THE COURT: My recollection of the video is
16 someone standing there and kind of blocking the view
17 for a time. I think they're asking for a different
18 video where there's no one blocking the view of the
19 Defendant.

20 MS. HOLT: Well, there is -- there is -- but
21 there's the body camera though of him exiting the
22 video from Officer Williams and Sergeant Baker.

23 So they've got both of those body camera footages
24 that show two angles of him getting out of the
25 vehicle.

1 MR. D'AGOSTINO: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. D'AGOSTINO: I'm not going to presuppose what
4 they're asking for. I mean, the evidence is the
5 evidence, and I think the only thing -- I mean, I
6 leave it up to the Court obviously, but realistically,
7 I think the only thing the Court can do is tell them
8 to take the evidence review all of the evidence.

9 I suspect that they know they've got all those
10 videos. They have them back there in the form of
11 disks. They're all identified. They're asking for
12 something that's not in the record. So -- I mean
13 everything they've asked for, for the most part is in
14 the record.

15 MS. HOLT: Your Honor, tell them they have all
16 the body camera footage, and that they can view all
17 the body camera footage.

18 MR. D'AGOSTINO: I think you're commenting on the
19 evidence.

20 THE COURT: With regard to the other seven
21 questions, all the evidence available is in the jury
22 room.

23 MS. HOLT: Thank you, Your Honor.

24 MR. D'AGOSTINO: I think that's -- I agree with
25 you.

1 THE COURT: Any objections from the State?

2 MS. HOLT: No objections.

3 MR. D'AGOSTINO: No, Your Honor.

4 THE COURT: Let's bring them in.

5 (Whereupon, the Jury enters the courtroom.)

6 THE COURT: All right, Ladies and Gentlemen, I
7 have received your note with regard to question number
8 5. Copies of the court transcript for the defendant's
9 opening statement. Court transcripts are not prepared
10 instantly. The court reporter has to work on it
11 later, so those are not available.

12 As far as evidence and witness testimony in
13 court, we can replay the audio for you if you would
14 like to hear it. But statements of the attorneys',
15 arguments are not evidence, so we do not replay those.

16 With regard to your other set of questions, I can
17 only respond to you that all of the available evidence
18 to in this case is already in your possession.

19 Thank you, Ladies and Gentlemen.

20 (Whereupon, the Jury goes back to jury room for
21 deliberations.)

22 THE COURT: Any objection to my comments to the
23 Jury from the State?

24 MS. HOLT: No objections from the State.

25 THE COURT: The Defense?

1 MR. D'AGOSTINO: None from the Defense.

2 THE COURT: All right. Thank you, Counsel.

3 We're at ease.

4 (Whereupon, the court stood at ease while the
5 jury continued deliberating upon its verdict.)

6 THE COURT: Counsel, we have a note that says,
7 "We are trying to view a videoclip of the defendant
8 driving by Ms. Jarrett the first time when the
9 exposure happened.

10 The computer won't run the evidence viewer
11 software, we need an installer."

12 What I propose to do is if Dave is willing, I
13 will send him into the jury room accompanied by a
14 bailiff. You can't have any communication with the
15 jury. If they want to run the evidence viewer
16 program, if you would just get that up and running for
17 them with no communication with the jury. That should
18 not be an issue.

19 Any objection to that, Mr. D'Agostino?

20 MR. D'AGOSTINO: I don't object to him going back
21 there and getting whatever video - just following the
22 directions.

23 THE COURT: This is a better way. Let's just
24 bring the computer in here and let them view it in
25 here?

1 As long as there is no communication with the
2 jury, I think that is acceptable.

3 Mr. D'Agostino, are you okay with that?

4 MR. D'AGOSTINO: I'm fine with that, as long as
5 he just follows the directions of what you want him to
6 do.

7 THE COURT: If they start asking questions, just
8 tell the jury that he is not allowed to communicate
9 with them concerning deliberations.

10 Any objection, Ms. Holt?

11 MS. HOLT: No, Your Honor.

12 THE COURT: Let's do it that way.

13 (Whereupon, the court stood at ease while the
14 jury continued deliberating upon its verdict.)

15 THE COURT: All right, Counsel. I have received
16 another note from the jury. It says, we have a split
17 decision of 10 to 2. We have been discussing evidence
18 to gain alignment, which we have not been able to.
19 Ten guilty; two not guilty.

20 I think in this situation, an Allen charge is
21 appropriate. I would be happy to hear from the State
22 and from the defense.

23 MS. HOLT: I have no objection to the Allen
24 charge.

25 THE COURT: Mr. D'Agostino?

1 The one I propose to give is Judge Alford's old
2 charge, which I think is good and not coercive. It's
3 the State v. Taylor case, that just came out and does
4 not fall afoul of that case.

5 MR. D'AGOSTINO: Will this be the only Allen
6 charge you give, Your Honor.

7 THE COURT: My understanding is it is only to be
8 given once.

9 MR. D'AGOSTINO: Yes, sir, Your Honor.

10 THE COURT: Any objection, Mr. D'Agostino?

11 MR. D'AGOSTINO: No, Your Honor.

12 THE COURT: Counsel, take a look at the charge
13 before I give it. I think it's a pretty standard
14 Allen charge. The case law says not to talk to the
15 jury about the cost of a retrial.

16 The other thing I want to add at the end is, the
17 case law also has some warnings. The jury is not
18 supposed to tell me how they are split. The case law
19 has cautions about giving an Allen charge when you
20 know how the jury is split.

21 I would approach that by saying something at the
22 end like, Ladies and Gentlemen, I don't want you to
23 think that I am directing this to the majority jurors
24 and telling them should change their mind or to the
25 minority jurors and think I am directing them to

1 change their minds. Everyone just needs to think
2 about if they can reach an agreement - something to
3 that effect. But we are on dangerous ground when they
4 tell me how they are split when giving an Allen
5 charge.

6 Okay. What I am going to do is change the
7 language in the long paragraph. "A mistrial is an
8 unfortunate thing" - instead of saying what will
9 happen say what may happen. I have also deleted the
10 one sentence in that paragraph that says, One day this
11 matter will have to be decided. I have taken that one
12 sentence out.

13 Any objections from either side?

14 MS. HOLT: No objection from the State.

15 MR. D'AGOSTINO: No. Thank you, Your Honor.

16 Let's bring them in.

17 (Whereupon, the jury entered the courtroom.)

18 THE COURT: Ladies and Gentlemen, I thank you
19 very much for the note. I will have some further
20 instructions for you to gain.

21 One thing I do want to tell you: Please in the
22 future, do not write how you are split on any note
23 that you give to me. The reason for that is, I will
24 give you a little talk now about coming to an
25 agreement and that sort of thing, but I don't want

1 anyone to think I am speaking to them. I am not
2 talking to the majority of the jurors and saying, you
3 should change your mind and join with the minority,
4 and I am not talking with the minority and saying, you
5 need to change your mind and go with the majority. I
6 am talking to everyone about the decision--making
7 process. So please in the future, don't send me any
8 more notes that tell me how you are split. Okay.

9 Ladies and Gentlemen, when any matter is in
10 dispute, it's not always easy for even two people to
11 agree. Therefore, I understand that when 12 people
12 have to agree, it becomes much more difficult.

13 It is important that this case should be ended if
14 it can be ended without a single one of you doing
15 violence to your conscience.

16 It is your duty as jurors to consult with one
17 another and to deliberate with a view towards reaching
18 an agreement, if you can do that, without doing
19 violence to your individual judgment.

20 Each of you must decide the case for himself or
21 herself, but do so only after an impartial
22 consideration of the evidence in the case with your
23 fellow jurors.

24 In the course of your deliberations, do not
25 hesitate to re-examine your own views and change your

1 opinion if you decide your own opinion was erroneous.
2 No juror is expected to give up his or her opinion
3 based on reasoning satisfactory to yourself merely for
4 the purpose of being in agreement with other jurors.

5 I want you to understand that. Do not surrender
6 your honest convictions as to the weight or the effect
7 of the evidence, solely because the opinion of the
8 other jurors is contrary to your opinion, or for the
9 mere purpose of getting a unanimous verdict.

10 It is never intended that the verdict of the jury
11 should be the verdict of any one person. On the other
12 hand, the verdict of the jury is the collective
13 reasoning of all the jurors put together. The reason
14 we have a jury is so that we might have the benefit of
15 a collective bond and a collective reasoning of the
16 jury.

17 It might help to tell the other jurors how you
18 feel about the case and why you think as you do, and I
19 am sure that you have been doing that.

20 On the other hand, it may help if other jurors
21 exchange views with you, and I ask that you listen to
22 each other and give each other's thoughts the meaning
23 that you think they should have.

24 A mistrial of a case is an unfortunate thing. If
25 you as jurors do not agree on a unanimous verdict, it

1 doesn't mean the case is over. It means that at some
2 future time in another term of court before me or
3 another judge, some other jury may sit where you are.

4 In the trial of that case, the same participants
5 might come; the same lawyers might come. They might
6 ask basically the same questions, and presumably might
7 get the same answers.

8 We may go through the entire process again. Now,
9 I have no reason to believe that any other 12 jurors
10 from York County will represent more of a cross-
11 section of the county or be smarter or be more capable
12 of deciding the matter than you are.

13 I am now going to ask that you again retire to
14 the jury room for some further deliberation and see if
15 it's possible to reach a verdict in this case.

16 Let me include by reminding you once again,
17 although it is important that this case be ended, it
18 should be ended in the form of a verdict without any
19 juror doing violence to his or her own conscience or
20 beliefs. No juror is expected to give up, based on
21 reason satisfactory to themselves, merely for the
22 purpose being in agreement.

23 Now, with these added instructions, I am going to
24 ask you to retire to your jury room to deliberate
25 further.

1 Thank you, Ladies and Gentlemen.

2 (Whereupon, the jury exited the courtroom.)

3 THE COURT: Any objections from the State to my
4 charge?

5 MS. HOLT: No objections, Your Honor.

6 THE COURT: From the defense?

7 MR. D'AGOSTINO: No thank you, Your Honor.

8 THE COURT: Thank you, Counsel.

9 We will be at ease.

10 (The court stood at ease while the jury
11 deliberated upon its verdict.)

12 THE COURT: I understand they have a verdict.
13 Let's bring them in.

14

15

16

17

18

READING OF THE VERDICT

19

THE COURT: Ladies and gentlemen, I understand
20 you have reached a verdict. Is that correct?

21

THE FOREPERSON: That's correct.

22

THE COURT: Hand it to the bailiff, please.

23

The defendant please rise.

24

Madam Clerk, please publish the verdict.

25

THE CLERK: Case Number 2017-GS-46-03041, the

1 State v. Jeffrey Jack Dauer, we the jury by unanimous
2 consent find the defendant, Jeffrey Jack Dauer, as to
3 the charge of indecent exposure, guilty.

4 Signed by the foreperson dated today's date.

5 Ladies and Gentlemen of the jury, if that be your
6 verdict so say you all by raising your right hand.

7 Let the record show all jurors affirmed the
8 verdict.

9 THE COURT: Mr. D'Agostino, would you like the
10 jury individually polled?

11 MR. D'AGOSTINO: Yes, sir, Your Honor.

12 THE COURT: Madam Clerk, please poll the jury.

13 THE CLERK: Juror 248, is this your verdict?

14 JUROR 248: Yes, it is.

15 THE CLERK: Is this still your verdict.

16 JUROR 248: Yes, it is.

17 THE CLERK: Please be seated.

18 Juror 72. Is this your verdict?

19 JUROR 72: Yes, it is.

20 THE CLERK: Is this still your verdict?

21 JUROR 72: Yes, it is.

22 THE CLERK: Juror 106, is this your verdict?

23 JUROR 106: Yes, it is.

24 THE CLERK: Is this still your verdict.

25 JUROR 106: Yes, it is.

1 THE CLERK: Please be seated.
2 THE CLERK: Juror 122, is this your verdict?
3 JUROR 122: Yes, it is.
4 THE CLERK: Is this still your verdict.
5 JUROR 122: Yes, it is.
6 THE CLERK: Please be seated.
7 THE CLERK: Juror 116, is this your verdict?
8 JUROR 116: Yes, it is.
9 THE CLERK: Is this still your verdict.
10 JUROR 116: Yes, it is.
11 THE CLERK: Please be seated.
12 THE CLERK: Juror 143, is this your verdict?
13 JUROR 143: Yes, it is.
14 THE CLERK: Is this still your verdict.
15 JUROR 143: Yes, it is.
16 THE CLERK: Please be seated.
17 THE CLERK: Juror 78, is this your verdict?
18 JUROR 78: Yes, it is.
19 THE CLERK: Is this still your verdict.
20 JUROR 78: Yes, it is.
21 THE CLERK: Please be seated.
22 THE CLERK: Juror 194, is this your verdict?
23 JUROR 194: Yes, it is.
24 THE CLERK: Is this still your verdict.
25 JUROR 194: Yes, it is.

1 THE CLERK: Please be seated.
2 THE CLERK: Juror 129, is this your verdict?
3 JUROR 129: Yes, it is.
4 THE CLERK: Is this still your verdict.
5 JUROR 129: Yes, it is.
6 THE CLERK: Please be seated.
7 THE CLERK: Juror 67, is this your verdict?
8 JUROR 67: Yes, it is.
9 THE CLERK: Is this still your verdict.
10 JUROR 67: Yes, it is.
11 THE CLERK: Please be seated.
12 THE CLERK: Juror 59, is this your verdict?
13 JUROR 59: Yes, it is.
14 THE CLERK: Is this still your verdict.
15 JUROR 59: Yes, it is.
16 THE CLERK: Please be seated.
17 THE CLERK: Juror 147, is this your verdict?
18 JUROR 147: Yes, it is.
19 THE CLERK: Is this still your verdict.
20 JUROR 147: Yes, it is.
21 THE CLERK: Please be seated.
22 THE COURT: Counsel, any further motions to
23 releasing the jury?
24 MR. D'AGOSTINO: Not as to releasing the jury,
25 Your Honor.

1 MS. HOLT: Nothing from the State, Your Honor.

2 THE COURT: Ladies and gentlemen, I thank you on
3 behalf of the State of South Carolina and York County
4 for your jury service. I can tell that you have been
5 careful and conscientious and you have paid close
6 attention. I know that jury service is a burden on
7 everyone, but we really appreciate you fulfilling your
8 obligations and coming and working so hard.

9 There are no further trials for the week, so your
10 jury service for the week is complete. The rules I
11 have given you, you are now released from those
12 restrictions. If you want to discuss this case with
13 anyone, you can. You can discuss it with family or
14 friends. Occasionally, when lawyers want to get
15 better at their profession like everyone else does,
16 they may contact you and ask you for advice on how
17 they performed. You are under no obligation to speak
18 to them, but if you would like to, it's perfectly
19 fine.

20 So you are released from your obligations, and
21 your jury service is complete, Ladies and Gentlemen.
22 Thank you very much.

23 (Jury exits the courtroom.)

24 THE COURT: All right. You can take the
25 defendant into custody, please.

1 You don't need to take him all the way into the
2 back. Just take him in the back and hold him there,
3 please.

4 Counsel, do you all want to stay and do
5 sentencing now, or would you rather do it tomorrow
6 morning?

7 MR. D'AGOSTINO: I would like to do the
8 sentencing tonight, Your Honor. I would also like to
9 make a post-trial motion as well.

10 THE COURT: Okay.

11 MR. D'AGOSTINO: I would renew my motion for
12 directed verdict, notwithstanding the judgment of the
13 jury of guilty, for the reasons previously stated.

14 THE COURT: I am going to deny the motion for the
15 reasons previously stated.

16 ***

17 SENTENCING HEARING

18 THE COURT: Is there a sentencing sheet prepared?

19 MS. HOLT: There is. I have provided it to
20 opposing counsel.

21 MR. D'AGOSTINO: May we be heard on sentencing?

22 THE COURT: Yes, sir.

23 MR. D'AGOSTINO: I would like to hand up
24 something as it relates to my client.

25 THE COURT: All right. I have read it.

1 I will be happy to hear from the State.

2 MS. HOLT: Thank you, Your Honor. Your Honor, is
3 Jeffrey Jack Dauer on Indictment 2017-GS-46-03041,
4 Indecent Exposure. It carries up to three years
5 and/or a discretionary fine. The State is asking
6 today for Your Honor to suspend three years on a two-
7 year probationary sentence. We are asking for the
8 defendant to be placed on the Sex Offender Registry.
9 In lieu of the Sex Offender Registry status, we would
10 ask for sex offender counseling. Given the nature of
11 the crime, and Your Honor has heard all of the facts
12 of this case, so I am not going to go into anything in
13 detail of what occurred. You have heard all the
14 facts.

15 I do think it is warranting of some type of
16 police mechanism to ensure that this doesn't
17 continually occur. Usually, when you have fact
18 patterns of this nature and you have this kind of a
19 crime, these are not isolated incidents. Certainly, I
20 believe this is the first time he got caught, but they
21 are not generally isolated offenses.

22 So we would ask for a three year suspended on
23 two-year probation with Sex Offender Registry.

24 THE COURT: Does he have any prior record?

25 MS. HOLT: I do not believe so.

1 MR. D'AGOSTINO: He has no record, Your Honor.

2 THE COURT: Ms. Holt, given the report I have
3 from the psychologist, what is the basis for the
4 State's request to put him on the registry? I know
5 it's optional for this offense, but what is the basis
6 for the request?

7 MS. HOLT: The nature of the offense.

8 THE COURT: Given that it's yes or no on this
9 offense, what is the basis for asking to put him on
10 the registry?

11 MS. HOLT: Your Honor, it's simply the fact that
12 I believe there should be some type of mechanism in
13 place to ensure that this doesn't occur again; some
14 type of mechanism to ensure this doesn't continue to
15 occur. I don't believe facts of this nature generally
16 tend to be isolated.

17 THE COURT: So the State is requesting Sex
18 Offender Registry or sex offender counseling.

19 What is sex offender counseling?

20 MS. HOLT: Your Honor, my understanding is that
21 he would not then be put on the registry, but he would
22 attend counseling like anything else so probation
23 would have a mechanism in place to ensure that he go
24 to counseling, just like if he were on probation and
25 were to go into drug counseling - if this were a drug

1 ago, you need to start getting treatment again.

2 This is not that person. He is not someone who
3 needs any of that counseling or anything else. He has
4 always, every time I have asked him to be in court, in
5 my office, he has been there Johnny on the Spot, more
6 so than any client. He is very engaged in his trial.

7 We appreciate the time and consideration of the
8 Court. We would ask the Court to not give him any
9 active time; just probation or probation terminated on
10 payment on whatever fine is appropriate. No Sex
11 Offender Registry. No sex offender counseling.

12 MS. HOLT: Your Honor, he does have credit for
13 one day.

14 THE COURT: Mr. Dauer, is there anything you
15 would like to say, sir?

16 THE DEFENDANT: I appreciate any consideration
17 you can give, sir.

18 THE COURT: I am going to take a short recess and
19 consider the sentencing.

20 (Brief recess.)

21 THE COURT: Thank you. You may be seated. I
22 have been thinking a lot about this case. I thought
23 about it, of course, as the case was proceeding, how
24 would I sentence if he was convicted?

25 The factors I have considered is obviously the

1 nature of the offense. This is a discretionary Sex
2 Offender case. Given that there are no aggravating
3 factors to me and -- the fact that the offense was
4 committed, but beyond that, there are no aggravating
5 factors. Further, given the report from the forensic
6 psychologist, I see no basis for imposing Sex Offender
7 Registry. So I am not going to do that.

8 Given the lack of record, I am going to impose
9 the maximum suspended sentence. So the sentence of
10 the Court will be three years suspended on three years
11 probation.

12 If the defendant would please rise.

13 State of South Carolina v. Jeffrey Jack Dauer,
14 Indictment 2017-GS-46-03041. The charge is Indecent
15 Exposure. The sentence of the Court is Mr. Dauer is
16 committed to the custody of the South Carolina
17 Department of Corrections for a period of three years
18 provided upon the service of one day. The balance is
19 suspended with probation for three years.

20 Mr. Dauer is to have substance abuse counseling
21 and random drug and alcohol testing while he is on
22 probation.

23 Mr. Dauer, probation has already left for the
24 day. They informed me to tell you to report to the
25 probation office at 8:30 tomorrow morning.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You understand if you don't report,
4 that will be a serious problem. Your attorney will
5 explain to you where the probation office is.

6 Thank you.

7 * * *

8 - - -END OF TRANSCRIPT- - -

9

10

11

12

CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Union County, South Carolina, on the 10th day of January, 2020.

I do further certify that I am not related, of counsel, or of interest to any party hereto.

This, the 21st day of June, 2020.


Kymberlee M. Williams, CSR/RPR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Appellate Case No. 2020-000533

The Honorable William A. McKinnon

RECEIVED

MAY 11 2021

SC Court of Appeals

The State,

Respondent,

v.

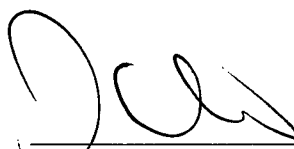
Jeffrey Jack Dauer,

Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 5, 2021



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