

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRIS BERNARD GLOVER,

APPELLANT

APPELLATE CASE NO. 2012-211983

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT.
EXHIBIT #27 (PHOTO OF CIGARETTE PACKS)**

1 STATE OF SOUTH CAROLINA) IN COMMON GENERAL
2 COUNTY OF RICHLAND) SESSIONS COURT
3)
4 STATE OF SOUTH CAROLINA,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 TYRIS GLOVER,) 2012-GS-40-854 & 0857
9 DEFENDANT.)

10

11

APRIL 26 THROUGH 27, 2012

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RICHLAND, SOUTH CAROLINA

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B-E-F-O-R-E:

15

HONORABLE R KNOX MACMAHON, JUDGE; AND JURY

16

17

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

18

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25

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1 what about the cigarettes?

2 MR. MACNEALY: Your Honor, regarding the
3 cigarettes and I'll pass up the case law both to the state
4 and to Your Honor. Just quickly, it will be Dickerson,
5 Terry V. Ohio and Arizona V. Hicks. Your Honor, I make the
6 motion to suppress the four packs of cigarettes that were
7 found on my client.

8 Your Honor, without a consent to search and
9 there's been and in the incident report there's no
10 indication that there was a consent to search without a
11 warrant and without a clear showing that this was a searched
12 conducted pursuant to an arrest based on probable cause.
13 The officers are limited, Your Honor, to a Terry Frisk
14 assuming at that pointer, of course, the terry provides the
15 officers had reasonable suspicion of a -- criminal active.

16 Your Honor, according to the incident report my
17 client was identified by Officer Schmatte on patrol it does
18 not give the time. I'm assuming Officer White shows up on
19 the scene according to the incident report at 9:30.
20 Dispatched at 9:30 and arrives at 9:33. At some point
21 thereafter Officer Schmatte arrives is the one who initially
22 approaches my client either by vehicle and that is not very
23 clear. I'm assuming by vehicle, Your Honor, all they have
24 at that point is, I'm assuming, the owner of the bar calling
25 in, you know, that they've watched -- the next morning they

1 saw a video, ran their video. Saw a gentleman in their bar
2 and assuming that the owner would have identified as a black
3 male, assuming the owner would have said gentleman was
4 wearing a ball cap and approximately riding a bicycle
5 because all of those things are going to be on video.

6 At that point, Your Honor, there's no fingerprint
7 evidence. That's not -- the fingerprint report it's not
8 completed until the very next day. So, what Officer Schmidt
9 is working off of, Your Honor, is somebody, a black guy,
10 wearing a ball cap and riding a bicycle.

11 Now, there's not a very uncommon sight here in
12 Columbia, South Carolina given our exceptional transit
13 system. There's a lot of black males. A lot of guys don't
14 have vehicles and there's a lot of black males riding
15 bicycles. And now what narrows down from was that -- Mr.
16 Schmidt's lying. This gentleman was wearing a ball cap and
17 a white shirt. Regardless of what the reasoning was he
18 might have had at that point a reasonable suspicion. I
19 argue, Your Honor, he did not have probable cause at that
20 point. There's no indication in the incident report, Your
21 Honor, that there was any consent given by my client to
22 search his person or bag. What we get from the incident
23 report observed the listed subject a short time later at
24 which time he fit the description of the suspect riding a
25 bicycle along the 2300 block of Millwood Avenue. Officer

1 made contact with the subject; he detained and mirandized
2 him. The subject had in his possession two pack of Newport
3 Cigarettes and two pack of Campbell Whites and had the
4 receipt. So, they make no mention there was no receipt,
5 Your Honor.

6 Your Honor, just quickly on the case law and the
7 reason why I think they are both relevant. Minnesota V.
8 Dickerson, the facts involved this, officers noticed a
9 person acting suspiciously in light of the fact -- that fact
10 a person just left a building known for cocaine trafficking
11 was stopped, stopped, the person to investigate further.
12 Officers conducted a pat-down search which was justified
13 under terry to ensure the person was not carrying a weapon.
14 And as we know, Your Honor, terry advises that this search
15 must be strictly limited to that which is necessary to
16 discover weapons which might be used to harm an officer or
17 others nearby. The question raised in Dickerson, Your
18 Honor, was whether police officers may seize non threatening
19 contraband detected during the protective pat-down search.
20 The court resolved that an officer may seize contraband
21 requiring an officer have probable cause to believe the item
22 is, in fact, contraband; however, the supreme court ruled in
23 Dickerson that the officer overstepped his bounds in seizing
24 the crack found on that person as it went beyond the scope
25 of the pat-down search. Justice -- in the -- opinion, Your

1 Honor, says there's no precedence for physical search of the
2 person thus temporarily detained for questioning sometimes,
3 of course, a temporary detention of a suspicious character
4 would be elevated to a full custodial arrest for probable
5 cause. At that point it's clear that the common law would
6 admit that not just a protective frisk but a full physical
7 search incident to the arrest. When; however, the detention
8 did not arise to a level of a full blown arrest but was not
9 supported by the degree or cause -- for that purpose be
10 appears to be no clear support common law for physically
11 searching the suspect.

12 Your Honor, that turn to the next relevant case is
13 Arizona V. Hicks and that -- the facts the police responds
14 to shots that are fired from a house. They entered the
15 house which looking for the shooter and weapons. While in
16 the -- in that dwelling they noticed some stereo equipment
17 that the officers had a suspicion that were stolen. The
18 officers moved the equipment to gain assess to serial
19 numbers and check if it's been stolen just conducting a
20 search and seizer of those items. The Hicks court ruled
21 that probable cause is required to invoke the plan view
22 doctrine mere reasonable suspension is not enough.

23 Your Honor, the incident report itself, I guess,
24 explains the rational of the officer here. They find on my
25 client four packs of cigarettes. Now, the -- what does four

1 packs -- three of them are unopened. I believe one is
2 completely used pack of cigarettes. There's no way at that
3 time and I would submit even at this time that it can be
4 proven that those packs of cigarettes came from Sharky's or
5 anywhere else.

6 They make mention there's no receipt. Well, Your
7 Honor, I don't keep receipts on me for many -- for any
8 number of items that I buy. So, I think what we're working
9 off of is simply we have a gentleman on a bicycle, a black
10 male wearing a ball cap, white shirt, perhaps, at that time
11 reasonable suspicion arises and I might be willing to
12 concede that point if that; if that's, the case then at that
13 point he's only limited to a Terry Frisk. And if it sees in
14 plain view was known to be contraband that may be seized at
15 that time. Cigarettes, Your Honor, are not contraband.
16 That should be excluded in my opinion but even if Mr.
17 Schmidt had a reasonable suspicion that three of those four
18 packs came from Sharky's I don't see how -- that certainly
19 does not arise to probable cause at that point which would
20 be necessary to seize those items. This is not more than
21 likely that the cigarettes came from Sharky's. I would be
22 willing to bet, Your Honor, that we're not going to know by
23 the end of this case whether three of those four packs came
24 from Sharky's. It's simply that my client had four packs of
25 cigarettes. He likes to smoke. We can gain that is more

1 than likely as well.

2 So, I would argue, Your Honor, that the officer --
3 officers involved may have been warranted to do a Terry
4 Frisk based off of reasonable suspicion, based off the I.D.
5 on the video. Again, they do not have any fingerprints at
6 this time. They do not have probable cause; however, to go
7 beyond that and if they opened the bag and they see
8 cigarettes to seize those cigarettes and at that point, Your
9 Honor, I do not believe that probable cause is present.

10 THE COURT: All right, solicitor.

11 MS. ALL: Yes, Your Honor. I believe the
12 appropriate motion here would have been one for a
13 suppression presentation hearing. Would Your Honor like to
14 hear testimony from the state's witnesses?

15 THE COURT: Yes, ma'am. How long is this going to
16 take?

17 MS. ALL: It should be very brief.

18 THE COURT: All right. Call your first witness.

19 THE CLERK: Raise your right hand.

20 THEREUPON,

21 KEVIN SCHMIDT,
22 after having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Have a seat in the witness
24 stand please. State your name for the record.

25 THE WITNESS: Kevin Schmidt.

1 DIRECT EXAMINATION

2 BY MS. ALL:

3 Q Officer Schmidt, what do you do for a living?

4 A I'm a patrol officer for Columbia Police Department.

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

7 A Almost two and a half years now.

8 Q And in what capacity were you employed with them on the
9 incident date of June 28th, 2011?

10 A Ma'am?

11 Q What capacity -- in what capacity were you employed
12 with Columbia Police Department on the incident date of
13 June 23, 2011?

14 A Probably about a year and a half.

15 Q Can you explain to the court how you became to be
16 involved in this case?17 A I heard a call go out about a burglary just occurred.
18 I actually went to Sharky's with David White and
19 Officer Jackson. I viewed the camera. I observed a
20 black male wearing a white shirt, blue jeans, hat. He
21 also had a limp. And I was told during training a good
22 way to identify someone is by a limp because no one has
23 the same walk.24 Q If we could just -- real quick, when you said you
25 viewed the camera, can you explain to the court what

1 you observed and your level of intimacy with the
2 surveillance footage?

3 A I watched it exactly how it went. I saw him push
4 opened the doors, go inside, start rummaging through
5 things. I couldn't see exactly what he took but I saw
6 him leave the scene as soon as I ended up watching the
7 film I left the scene and started circulating for him
8 and that's when I made contact with him.

9 Q How good could you see him in the video?

10 A Clearly.

11 Q Could you see his face?

12 A Face was not so detailed but his clothing and his walk
13 was.

14 Q Could you recognize his height and built of his
15 characteristics?

16 A Yes.

17 Q Okay. And how soon after observing the video did you
18 make contact with the defendant?

19 A Ten, 15 minutes.

20 Q Where did you make contact with him?

21 A Millwood Avenue. I believe it's going to be the 2300
22 block.

23 Q Can you estimate about how long after the incident
24 occurred was it that you made contact?

25 A I'm to sure to be honest.

1 Q Okay. What time was it? Do you remember about what
2 time it was that you made contact with him on Millwood?

3 A Probably about an hour after shift so about 8 o'clock
4 give or take.

5 Q Okay. And what was he wearing?

6 A A hat, a white shirt, blue jeans.

7 Q What kind of hat was it?

8 A I know it's a dark color hat, blue or black.

9 Q Did you recognize him from the video?

10 A Yes.

11 Q And can you tell us how?

12 A The clothing description and also his walk.

13 Q Did he have anything with him that was similar to what
14 you sen with him in the video?

15 A The book bag and also I believe he rode off on a
16 bicycle.

17 Q Was he pushing a bicycle?

18 A Yes.

19 Q Okay. Did he have a book bag with him?

20 A Ma'am?

21 Q Did he have a book bag with him?

22 A Yes.

23 Q Can you explain how you made contact with the
24 defendant?

25 A I observed him walking on the street. I got out with

1 him. I asked him his name. I got him to walk towards
2 me to see if he had the same limp as this person on the
3 film. After I made contact with him I didn't even
4 detained him. I asked if I could pat him down and I
5 asked if I could look in his bag to see if he had
6 anything in there. He give me verbal consent and
7 that's when I observed the cigarettes.

8 Q Okay. Did he walk the same way; was his limp the same?

9 A Yes, ma'am.

10 Q You've testified that you asked him consent, you can
11 explain what you said?

12 A I asked him if I could search through his bag and see
13 if there's anything in there.

14 Q What did he say back?

15 A Okay, go ahead.

16 Q And did he give you the bag?

17 A Ma'am.

18 Q Did he hand you the bag?

19 A The bag was sitting in front of my car.

20 Q And what happened next?

21 A I looked through the bag, saw the cigarettes. As soon
22 as I saw the cigarettes I called White and Jackson and
23 asked what kind of cigarettes were taken from the bar
24 because they were still there. It matched the
25 cigarettes.

1 Q Can you explain how the book bag came to be sitting on
2 the front of your car?

3 A I asked him to take it off and put it on there.

4 Q So he put it on the front of the car himself?

5 A Yes.

6 Q And he gave you verbal consent to search the book bag?

7 A Yes, ma'am.

8 Q Okay. And when Officer White responded with Officer
9 Jackson what happened next?

10 A I think they observed his walk as well then we ended up
11 detaining him and calling investigator.

12 Q Okay. When the investigator responded what happened to
13 the defendant after that?

14 A From my knowledge after placed in the car. I believe
15 the investigator talked to him briefly and then they
16 ended up transporting him to headquarters.

17 Q When was the last time you saw the book bag?

18 A That incident day.

19 Q Were you aware of what kind of cigarettes had been
20 stolen from the incident location?

21 A Not until I called Jackson and confirmed it with them.

22 Q When did you become aware that they were the same?

23 A When they told me that the pack of cigarettes were the
24 ones taken or they matched the ones that were taken out
25 of there.

1 MS. ALL: Okay. Beg the Court's indulgence.

2 BY MS. ALL:

3 Q No further questions. Please answer any questions
4 defense counsel has for you.

5 THE COURT: Thank you, solicitor.

6 Mr. Macnealy.

7 CROSS-EXAMINATION

8 BY MR. MACNEALY:

9 Q Officer Schmidt, explain to me this consent. Because
10 you said you arrived at the scene. You asked my client
11 to walk for you?

12 A Yeah. I told him to come here toward me. I --

13 Q You told him or did you ask you?

14 A I asked him to come near me.

15 Q You said you told him, is that what you just say?

16 A Well, I asked him to.

17 Q So, you're changing you're testimony? You said you
18 told him to, isn't that correct?

19 A Yes.

20 Q Thank you. Is telling somebody to do something
21 essential as an officer, if you tell somebody to do
22 something, is that -- are you excepting voluntary
23 consent at that time?

24 A Yes.

25 Q You do?

1 A Yes, especially if they match the description of
2 someone who just broke into a business.

3 Q So, your testimony as an officer when you tell somebody
4 to do something they're giving you voluntary and free
5 consent at that point, that person is?

6 A Well, if I tell them to come here and they come here.

7 Q Right. But that's not voluntary and free consent, do
8 you understand what the term means voluntary and free
9 consent?

10 A No, I do not.

11 Q Okay. As a person as a lawyer up now and you asked me
12 to go consider purchasing property or sign on the
13 dotted line, okay. If I agree to do that would you
14 agree at that point in an arms length deal that I'm
15 giving my voluntary free consent to sign on that dotted
16 line?

17 A Yes.

18 Q Okay. Now, in the streets of Columbia if a black man
19 is approached by a white cop and told walk the line for
20 me is that the same thing as that arms length deal?

21 A No.

22 Q Thank you. So, he didn't, he didn't, give you consent,
23 did he?

24 A He gave me consent to search the bag.

25 Q Is it after you told him to walk the line?

- 1 A I didn't tell him to walk the line. I told him to walk
2 towards me.
- 3 Q But you told him?
- 4 A Yes, sir.
- 5 Q Okay. And after telling him what to do you told him to
6 open the bag too, didn't you?
- 7 A No, I did not.
- 8 Q You didn't?
- 9 A No, I did not.
- 10 Q But you felt like he was in arms length deal and had
11 free and voluntary consent?
- 12 A No.
- 13 Q After you told him to walk towards you, do you feel
14 that he had that free and voluntary consent at the
15 time?
- 16 A He could have walked away.
- 17 Q He could have? After you told him to walk towards you
18 so you could see his limp? What would you have done
19 had he said no?
- 20 A I would have kept trying to talk to him and if not I
21 would have came towards him.
- 22 Q The truth is, at that point you and Officer White
23 already had your hands on him, is that correct?
- 24 A No.
- 25 Q That's not correct? Office White was there, wasn't he?

1 A He showed up after I looked through the bag.

2 Q So, it was just you on the scene at that time?

3 A Yes.

4 Q And it's your testimony after you told him to walk
5 towards you then you asked him politely to open up the
6 bag and he consented, that's your testimony?

7 A No. I asked if I could look through the bag and he
8 said yes.

9 MR. MACNEALY: No further questions, Your Honor.

10 THE COURT: Redirect?

11 MS. ALL: No further questions, Your Honor.

12 THE COURT: Thank you. Thank you very much,
13 officer, you may step down.

14 All right. Any further testimony in this regard,
15 solicitor?

16 MS. ALL: No, Your Honor.

17 THE COURT: All right. Mr. Macnealy, you have any

18 --

19 MR. MACNEALY: Yeah, Your Honor. I am sticking
20 with my motion, Your Honor. Again, it's not in the incident
21 that there was consent to search. The officer's testimony
22 brings real question to whether there was consent, given the
23 fact he told my client to walk towards him and then says he
24 politely asked him to open the bag. Your Honor,
25 circumstances suggest that my client was not given a free

1 and voluntary consent at that time. The circumstances
2 suggest that the most -- reasonable suspicion that my client
3 was the one who entered and exited Sharky's that morning but
4 basked off just a description of a person at that point all
5 they have is reasonable suspension. They do not have
6 probable cause more than likely it's this gentleman, more
7 than likely these packs of cigarettes came from Sharky's
8 because there's no receipt. All -- makes sense, Your Honor,
9 I argue he did not give consent and I believe to suppress
10 those cigarettes. Thank you.

11 THE COURT: All right, solicitor.

12 MS. ALL: Thank you, Your Honor. In fact, when
13 Officer Schmidt saw the defendant as he testified he was
14 able to identify him by his physical characteristics what
15 little he could discern facially. In the video his clothing
16 and more specifically his distinctly unique walk. So, he
17 detained -- he made contact with him and then he asked for
18 consent to search for which the probable cause and the
19 reasonable suspicion arguments are irrelevant. He was by
20 himself as he testified he said, hey, come here and then
21 asked for consent to search the book bag and Mr. Glover
22 granted it. There's absolutely no Forth Amendment Violation
23 here and there's no issue. Mr. Macnealy's arguments are
24 irrelevant and unfounded and not reflected in the testimony
25 that Officer Schmidt gave.

1 THE COURT: All right. Thank you. Anything
2 further, Mr. Macnealy?

3 MR. MACNEALY: No, Your Honor. Thank you.

4 THE COURT: All right. I'm going to deny the
5 motion to suppress the cigarettes. It appears the officer's
6 testimony was that he went to the scene where a recent
7 burglary had occurred and he viewed a video. On that video
8 he observed a black male wearing a white shirt, a hat, dark
9 in color blue jeans, limp rummaging through the scene.
10 Further, he indicates he observes the particular walk of
11 this individual and that he had a book bag and a bicycle.
12 And within a brief period of time after observing the video
13 the officer testified within ten or 15 minutes he observes
14 the defendant pushing the bicycle at the 2300 block of
15 Millwood Avenue. He stops at that location, tells, tells
16 the defendant to walk towards him. The reason he is
17 confronted that defendant is because of his clothing, the
18 defendant's clothing, including the shirt, hat and blue
19 jeans. And the officer doesn't front him up very closely at
20 that time. He has him towards him which could confirm or
21 exclude him. The officer's reasonable suspicion at that
22 time upon him observing him walk he relates that back to the
23 limp that he observed that individual. Got by the bicycle,
24 he got the book bag.

25 The book bag is then placed on the patrol vehicle.

1 The officer then asked him for verbal consent to look into
2 the bag. The officer's testimony is that the defendant says
3 okay, go ahead. At that point is where he sees the
4 cigarettes. I think this is different from both Minnesota
5 versus Dickerson and Arizonans versus Hicks with the serial
6 number. I think he had verbal consent and quite frankly I
7 think not only did he have reasonable suspicion I think
8 after confirming all of this information that he's confirmed
9 even prior to looking into the book bag he had probable
10 cause to place the individual under arrest for the recent --
11 the burglary.

12 All right. Other motions, Mr. Macnealy?

13 MR. MACNEALY: No, Your Honor. Thank you.

14 THE COURT: Any from the state?

15 MS. ALL: No, Your Honor.

16 THE COURT: All right. Bring our jury please.

17 (The jury returned to the
18 courtroom at 12:57.)

19 THE COURT: All right. We're going to do openings
20 right now but I'll release the jury for lunch.

21 MR. COOPER: Yes, sir, whatever is convenient. He
22 just informed me.

23 THE COURT: Can he wait that period of time?

24 MR. COOPER: He's got to go now.

25 THE COURT: All right. Mr. Bailiff, I apologize.

1 THE COURT: Thank you. Thank you, Mr. Cooper.

2 Solicitor, you may call your first witness.

3 MS. GARFIELD: Your Honor, pursuant to your prior
4 ruling I will ask all law enforcement witnesses to leave at
5 this time to be sequestered.

6 THE COURT: All right.

7 MS. ALL: Your Honor, the state calls Ron Hubbard.

8 THE COURT: All right. If you come around and be
9 sworn please.

10 THEREUPON,

11 RON HUBBARD,

12 after having been duly sworn, testified as follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Ron Hubbard.

15 DIRECT EXAMINATION

16 BY MS. ALL:

17 Q Afternoon, Mr. Hubbard. Will you please state your
18 occupation?

19 A I am the general manager of Shark's of Columbia
20 Incorporated and Red Hot Tomatoes.

21 Q Okay. And so that's your employer, Sharky's?

22 A Yes, ma'am.

23 Q What is your current position with them?

24 A I am the general manager.

25 Q How long have you been the general manager?

- 1 A Two years now.
- 2 Q What is the address of Sharky's?
- 3 A [REDACTED]
- 4 Q And what county is that in?
- 5 A Richland County.
- 6 Q How long have you worked for Sharky's?
- 7 A About six years.
- 8 Q In what capacity were you employed before becoming
- 9 general manager?
- 10 A The -- I use to be a school teacher so I was a
- 11 bartender bar, back and doorman during those four
- 12 years.
- 13 Q Okay. Were you the general manager on June 23rd, 2011?
- 14 A Yes I, was.
- 15 Q Okay. Can you describe for the jury a little bit about
- 16 the lay out of the bar and the style?
- 17 A Yes, ma'am. The bar is basically designed from an old
- 18 New Orleans style restaurant where it's got french
- 19 quarter doors which are two sets of doors and there's
- 20 four of them including the main entrances. There is --
- 21 they're windowed up so that during the summer months
- 22 you can open them up and allow patrons to walk out, get
- 23 fresh air, smoke a cigarette things of that nature.
- 24 Q So, how many points of exit and entry are they total?
- 25 A Seven.

1 Q Okay, and can you describe where they are located?

2 A Yes, ma'am. There's the four doors that you can exit
3 out through the french court doors and then there's the
4 main entrances door that's located between all of the
5 doors and then there's a back exit through the office
6 and then there is a stairwell that leads you to the
7 second story of the establishment.

8 Q We're here today because of June 28th, 2011 at which
9 time you were general manager. Do you remember if that
10 was a weekday or a weekend?

11 A It was a Monday morning I believe.

12 Q Okay. And what is the standard procedure for staff on
13 weekday mornings?

14 A We come in between the hours of around 9:15 to 9:30.
15 We unlock the doors. Usually the cleaning crew will
16 also has a key is there cleaning. On a Sunday night we
17 only have the lower bar opened so there would be no
18 need for them to go upstairs. We come through, we
19 check the pack of cigarette or the cigarette machine
20 it's a single sized about this big (indicating) and
21 holds five packs of cigarettes on three rows so a total
22 of 45 I believe.

23 Q And where is that located?

24 A Right directly behind the bar and we only check that
25 first because it's the easiest thing when you're

1 walking to the back of the office you just glance to
2 see many cigarettes you're going to have to bring from
3 your inventory back.

4 Q And why would you be walking to the back office.

5 A Because in the very far back of the building is where
6 our office is located, where we keep all of the money,
7 the paperwork from the night the receipts from all of
8 the credit card machines and the registers.

9 Q Okay. Who would we be?

10 A At that time it was my two assistant GMs one named Elan
11 Union and the other named John wells.

12 Q Okay.

13 A And sometimes the owner Scott.

14 Q Okay. Can you describe the standard procedure for
15 locking up Sharky's after close?

16 A Yes, ma'am. The standard procedure is that after you
17 turn off all the lights you go and you bar the french
18 door quarters because there direct lock because they're
19 considered fire emergency exits.

20 Q So what do you mean by bar?

21 A We have two by fours that are placed across kind of
22 like an old mid evil castle style that would lock them
23 in place so that they can't be opened. And then the --
24 you put the money in the office, lock it up and then
25 you go and you lock the front door.

1 Q Okay. So are there hooks on the doors through which
2 you slide the two by four?

3 A Yes, ma'am.

4 Q And that being because the doors open?

5 A Inward and outward.

6 Q Okay.

7 A Two sets inward and two sets outward.

8 Q Okay. So, when the bar is there you're not able --

9 A You can't open it.

10 Q Okay. Go over a little bit more the procedure with
11 putting the cash in the cash register, the credit card
12 receipts.

13 A The way that works is this after every transaction is
14 rang up we run the receipt which is a statement on the
15 credit, I mean, on the registers that tell you exactly
16 what department is pressed. So, for instance if
17 department one was pressed and that was a beer then it
18 would say one beer and then it would be the amount. If
19 you had it multiple times it would tell you the amount
20 you're required to have.

21 So, department seven with have been for instance
22 cigarettes and it would have told you how many were
23 sold that night to make sure that you don't, you don't,
24 have any kind of disloyalty amongst your staff.

25 Q While the bar is opened where do the bartenders keep

- 1 the cash?
- 2 A They keep it in the cash register.
- 3 Q And where does the cash go after the bar closes?
- 4 A After they bar closes they go into a locked box. They
- 5 are always part of the exact same amount every single
- 6 time. 200 wraps of fives, four fifty warps of 100s, I
- 7 mean, of ones and 100 roles of quarters.
- 8 Q Where is the lock box located?
- 9 A It goes into the office as well.
- 10 Q And where is the office within Sharky's?
- 11 A It's in the very far back room.
- 12 Q Okay. Is it noticeable, the door?
- 13 A No, ma'am.
- 14 Q Is the office locked at night?
- 15 A Yes, ma'am.
- 16 Q Is there -- how is that door locked?
- 17 A It's locked -- deadbolt locked.
- 18 Q Okay.
- 19 A And only myself, the owner and my general manager staff
- 20 along with three other individuals have the keys.
- 21 Q Okay, and when you explained the procedure of taking
- 22 the inventory and when you lock up, would there be a
- 23 way for you to know how many cigarettes were kept in
- 24 the bar in inventory before the bar closed that night?
- 25 A Yes. We also filled the machine up to the in the

1 correct order. So, it's always full to the max that it
2 could hold and then if somebody removes one then they
3 ring it up and then the next morning we look the
4 paperwork it will say the cigarettes one sold or two
5 sold and then we have an inventory sheet that tells us
6 what we been pulling for the entire month pretty much
7 and we have cartons of cigarettes in the office and
8 then we remove the ones we need to and then we restock
9 the machine and we do that every morning.

10 Q So, when you come in every morning how many packs of
11 cigarettes are in that cigarette box?

12 A Should be 45 if depending on if they sold any.

13 Q Okay. I'm going to hand you what's been marked State's
14 Exhibits one and two.

15 (State's Exhibits one and two
16 marked for I.D.)

17 BY MS. ALL:

18 Q Do you recognize these?

19 A Yes, ma'am. This is the front of Sharky's with the --
20 do you want me to show the jury?

21 THE COURT: Not until it's in evidence.

22 BY MS. ALL:

23 Q Not quite yet.

24 A With the french doors.

25 Q Okay.

1 A As well --

2 Q Do you recognize what's depicted in those photograph?

3 A Yes, ma'am.

4 Q Is it a fair and accurate representation of what the
5 photographs are of on June 28, 2011?

6 A Yes, ma'am.

7 MS. ALL: Your Honor, at this time the state seeks
8 to move State's one and two into evidence.

9 MR. MACNEALY: No objection.

10 THE COURT: One and two is in evidence without
11 objection.

12 (State's Exhibit 1 and 2
13 admitted into evidence.)

14 BY MS. ALL:

15 Q Now, if you can describe what's depicted in these
16 photographs for the jury?

17 A The --

18 MS. ALL: Permission to publish them to the jury,
19 Your Honor?

20 THE COURT: Yes, ma'am.

21 BY MS. ALL:

22 A In this photo right here (indicating) this is the
23 general layout of the build itself as you can see the
24 two french doors right here (indicating) on the side
25 and there's one also over here (indicating) these are

1 the ones that have the bars that have been pushed down
2 and locked. This is the main entrance where you have
3 to have a key to get in there are only certain ones of
4 us have -- or manager's card and this door over here
5 (indicating) is the --

6 Q Okay. And the other photograph?

7 A It has a small locking box on it that we put out for
8 the happy hour bartenders everyday around -- before we
9 leave so that we don't have to be back up there at 3:30
10 to allow them in. The combination changes every day
11 pretty much and we allow -- we alert the happy hour
12 bartender what it will be so that there's no one will
13 ever have access to it at any given time.

14 Q Okay. Can you describe what happened on the morning of
15 June 28th, 2011?

16 A Yes, ma'am. I arrived to work and upon walking in the
17 cleaning crew was standing outside and I wasn't paying
18 that much attention because they usually clean the
19 windows and things like that. And as soon as I walked
20 in I discovered that there were liquor bottles that
21 were strewed around. There were some kind of wire --
22 speaker wiring that we had that was strewed through the
23 bar and there was the cigarette machine had been open
24 and the door was completely and it was completely
25 empty. And it just pretty much looked like the

1 cleaning crew hadn't cleaned at all. So, at that point
2 I went and talked to the cleaning crew to see what was
3 going on and they informed me it was like that when
4 they arrived. And in that case it became obvious that
5 someone had, in fact, been in there that shouldn't have
6 been.

7 Q Okay. I'm going to hand you what's been premarked
8 State's Exhibits three and four; do you recognize these
9 items?

10 A Yes, ma'am.

11 Q Have you seen them before?

12 A Yes, ma'am.

13 Q Is it is a fair and accurate representation of the
14 scene as you recall it on June 28th, 2011.

15 A Yes, ma'am.

16 MS. ALL: At this time the state moves exhibits
17 three and four into evidence.

18 MR. MACNEALY: Without objection, your Honor.

19 MS. ALL: With permission --

20 THE COURT: State's three and four are in evidence
21 without objection.

22 (State's Exhibit 3 and 4
23 admitted into evidence.)

24 MS. ALL: Yes, Your Honor. Permission to publish
25 them to the jury?

1 THE COURT: Yes, ma'am.

2 MS. ALL: Thank you, Your Honor.

3 BY MS. ALL:

4 Q Can you describe to the jury what's shown in those
5 pictures?

6 A Yes, ma'am. If you notice on this picture (indicating)
7 this is how the door is actually located. There's
8 latches right here where this two by four is resting
9 inside of it. So, and it's our way of keeping it
10 locked.

11 Q Okay. And the other photograph, what does that show?

12 A This is, this is, a two by four (indicating) that we
13 use to hold the it in place throughout the evening.

14 Q When you --

15 A Or --

16 Q I'm sorry. When you arrived where was that two by four
17 located?

18 A It was located on the side of the door.

19 Q So, is that where it was when you got there?

20 A Yes, ma'am.

21 Q So those photographs do they represent what you saw
22 when you arrived?

23 A Yes, ma'am.

24 Q Okay. Was the bar in the door when you arrived at the
25 location that morning?

- 1 A No, ma'am.
- 2 Q Do you know whether the bar had been put in the night
3 before?
- 4 A No, ma'am.
- 5 Q Who worked the night before?
- 6 A It would have been a manager named Troy Davis.
- 7 Q Okay. So, it would have been Mr. Davis's
8 responsibility to --
- 9 A Yes, ma'am.
- 10 Q Okay. But when you arrived that bar was not closing
11 the door?
- 12 A No, ma'am.
- 13 Q Okay. Was the door ajar like that?
- 14 A Yes, ma'am.
- 15 Q Do the doors close by themselves?
- 16 A The -- no, ma'am. And this particular door
17 (indicating) is if you push this one opened because
18 it's not considered a fire emergency exist the left
19 side here (indicating) will scrape against the pavement
20 and it's almost impossible to close it back unless it's
21 pushed up against it because it's almost unbalanced at
22 the bottom.
- 23 Q Can you say for certain that the door had been locked
24 the night before by the general manager?
- 25 A No, ma'am.

1 Q Okay. I'm going to show you what's been premarked
2 State's Exhibits five through 12, if you can take a
3 look at these items.

4 A Okay.

5 Q Do you recognize them?

6 A Yes, ma'am.

7 Q Are they a fair and accurate representation of the
8 scene on June 28, 2011?

9 A Yes, ma'am.

10 MS. ALL: The state moves to enter Exhibits 5
11 through 12 into evidence.

12 MR. MACNEALY: Without objection, Your Honor.

13 THE COURT: Five through 12 is in evidence without
14 objection.

15 (State's Exhibits 5 through 12
16 admitted into evidence.)

17 MS. ALL: And permission to publish to the jury.

18 THE COURT: Yes, ma'am.

19 BY MS. ALL:

20 Q Mr. Hubbard, can you summarize what those photographs
21 show?

22 A Yes, ma'am. This is the general layout (indicating) of
23 the portion of where the bar is actually located.

24 The -- clearly like the trash is still located the
25 cleaning crew did not even attempt to go in once they

1 saw what had appeared --

2 Q So, these pictures show what it looked like when you
3 got there that morning?

4 A Yes, ma'am.

5 Q Okay.

6 A And then in this picture (indicating) it is a picture
7 of the cigarette machine that we have located. Here's
8 a little bit view on that one. And there's Newports,
9 Campbells, Marlboros three, three, and three and it
10 goes down. It's a row of five each. So, and they were
11 all missing.

12 And then this was the scene of the cash register
13 (indicating) that we have located in the back where the
14 mounted piece had been ripped off or removed.

15 Q And you are -- you testified earlier that all cash is
16 closed in a lockbox prior to leaving, right?

17 A Yes, ma'am.

18 Q Did you check to see whether the cash was in the office
19 when you got there?

20 A Yes, ma'am, we did.

21 Q So, all of the cash was accounted for?

22 A Yes, ma'am.

23 Q Is that because none of it was in the cash register
24 that night?

25 A Yes, ma'am. Because it was already removed before

1 everyone left the building and locked up.

2 Q Okay. Is that how the cash register looks normally?

3 A No, ma'am.

4 Q What happened to it?

5 A It appears that in an attempt to -- someone attempted
6 to pull out the draw because you have the key to
7 manually unlock it so that when it is turned on that's
8 the only way it opens. There's no way to open it if it
9 is turned off. It's a prevention in robbery and it is
10 the bottom part so it appears someone put their hands
11 up under the draw that they could get their fingers
12 under and pulled it out and --

13 Q With --

14 A And pulled it with such force it broke the bottom part.

15 Q Would there have been any money inside?

16 A No, ma'am.

17 Q Would they have known that before they ripped it apart?

18 A No, ma'am.

19 Q Okay, go ahead.

20 A And that's it. And in this picture (indicating) the --
21 as you can see they -- this is the entire bottom
22 portion of it where the little lock switch right there
23 would have kept anything that was in there locked away.

24 Q Okay. So upon discovering your business in this
25 condition what did do you next?

1 A I contacted the owner and then I contacted dispatch --
2 I believe I called 911 as well as I contacted several
3 officers that we've worked with in the past to see if
4 they were located in the area. I was more concerned
5 because I didn't know at what time this happened for
6 the safety of the rest of the staff that was there that
7 morning.

8 Q Okay. And at about what time did you contact police?

9 A Around 9:30.

10 Q Okay. What did do you next?

11 A After that we sat, we sat, outside and waited for the
12 police officers to arrive and then at that point my
13 owner also arrived and then we proceeded to go and
14 watch the video of what transpired.

15 Q Okay. Now, can you, can you, talk about the video a
16 little bit?

17 A Yes, ma'am. In our, in our, bars we have a total of
18 almost 32 cameras throughout outside and inside. And
19 I'm the chief operating of the cameras. I spent many
20 of times -- may hours in there watching film on our
21 employees that they're doing anything suspicion and
22 I've also been responsible for several cases with the
23 CPD helping them using our cameras.

24 Q You're like the great eye in the sky?

25 A Yes, ma'am. That's what it feels like but it takes --

1 it's very strenuous because usually it takes around 30
2 minutes to three hours to actually watch everything
3 because I go back from the last know -- when something
4 happened and watch it the entire time.

5 Q Can you fast forward?

6 A You can fast forward it up to a speed of 32 frames per
7 second but usually you can't see anything so you want
8 to usually want to do it at about six.

9 Q Okay. Did you view that surveillance footage on
10 playback with the police?

11 A Yes, ma'am.

12 Q Okay. And what time frames did you check?

13 A The -- I watched from the beginning of the night at 9
14 o'clock p.m. all the way up until I walked into the
15 building so 9:30 p.m -- a.m.

16 Q Okay. So, can you describe this operating system who
17 has control over the footage, how you access it?

18 A There's only two individuals that have complete control
19 over the footage and it's me and the owner. It's
20 password protection and the only time we ever release
21 it is for subpoenas by a lawyer from certain incidences
22 or if the police come and need it for a case.

23 Q Okay.

24 A And we do it then.

25 Q Are the cameras on all the time?

1 A Yes, ma'am, all the time.

2 Q Are they in color, black and white?

3 A They depend. They switch to night vision if it's dark
4 and most of the time there are in color.

5 Q Okay. Is that video usually time stamped?

6 A Yes, ma'am.

7 Q Was it in good operating condition on the night -- for
8 the day of June 28, 2011?

9 A Yes, ma'am.

10 Q Do you recognize this item? I'm handing you what's
11 been premarked State's Exhibit 30?

12 A Yes, ma'am.

13 Q What is it?

14 A This is the copy of the surveillance video that the --
15 made for, excuse me, the day of the case.

16 (State's Exhibit 30 marked for
17 identification.)

18 BY MS. ALL:

19 Q Have you seen it before?

20 A Yes, ma'am.

21 Q Have you seen the footage that on it?

22 A Yes.

23 Q Has it changed in anyway?

24 A Not that I'm aware of.

25 Q Is it a fair and accurate representation of he

1 surveillance footage as you viewed it on that day?

2 A Yes, it is.

3 MS. ALL: Okay. At this time the state seeks to
4 enter State's Exhibit Number 30 into evidence.

5 MR. MACNEALY: Without objection, Your Honor.

6 THE COURT: That's number 30?

7 MS. ALL: 30.

8 THE COURT: State's 30 is in evidence.

9 (State's Exhibit 30 admitted
10 into evidence.)

11 BY MS. ALL:

12 Q And so you watch the video on June 28, 2011, is that
13 right?

14 A Yes, ma'am.

15 Q And who watched it with you?

16 A I believe it was me, myself, the owner of the bar and
17 three officers.

18 Q What does that video show? What did you see?

19 A You see a African American male passing by the bar and
20 stops and looks inside and then pushes on the doors and
21 gets in. And then proceeds to walk throughout the bar,
22 goes the entire length of the bar and then comes back
23 to the door and then returns again and goes to the very
24 far back of Sharky's where we have the office.

25 Fortunately the lights were turned off and so when the

1 lights are turned off you can't see anything in there.

2 So, the male proceeded to leave again from the
3 back and then go behind the bar and removed liquor
4 bottles and the packs of cigarettes and then go and
5 play with the cash register. And then from there he
6 proceeds to leave and, and, attempt to find I believe
7 he found a bucket or he was looking for boxes so that
8 he could carry things out in. In one case he filled a
9 box up with, I mean, a bucket full of taller 24 ounce
10 Bud Lite cans that he had left at the scene. And then
11 at one point in the video I believe you can see a
12 couple walks by with a dog. The dog starts s barking
13 inside the bar and then they proceed to walk off fast
14 and then that's when the person inside the bar decides
15 to leave very quickly and --

16 Q Okay. You testified that you watched from nine p.m.
17 until you arrived which would be about what time?

18 A About around 9:30, 9:15, 9:30.

19 Q Okay. Being about 12 hours, correct?

20 A Yes, ma'am.

21 Q What was the time stamp on this video during this span
22 that the suspect was in the business?

23 A It's hard for me to recall this time but it was
24 around -- it was between the -- it was daylight time it
25 was between the hours of seven to 8:30.

1 Q Okay. Is your business opened at that time?

2 A No, ma'am.

3 Q Does anybody other than your employees have permission
4 to be in there at that time?

5 A Just the cleaning crew but that's it.

6 Q Do even your employees have permission to be in there
7 when the business is closed?

8 A No, ma'am.

9 Q Okay. Did you recognize the individual?

10 A I did not know who he was before this trial.

11 Q Do you see him in the courtroom today?

12 A Yes.

13 Q Could you point him out please?

14 A (Indicating) I believe it's the --

15 MS. ALL: Let the record reflect that the victim,
16 Mr. Hubbard, is pointing at the defendant Mr. Tyris Glover.

17 BY MS. ALL:

18 Q Were you able to see facial features on the video about
19 how clear is it?

20 A The -- it's -- you're probably looking at 75 percent
21 chance clear.

22 Q Okay.

23 A To 80 percent, you know, depending on the light what
24 frame you're actually looking at.

25 Q Okay. Prior to looking at the surveillance footage

1 were you able to inventory the damage to and the items
2 missing from Sharky's?

3 A We were able to inventory somewhat when you're dealing
4 with large quantities of alcohol it's unable to tell
5 exactly how much was removed from the bottles.. The
6 cigarettes were the main thing that we were able to
7 really distinguish.

8 Q Okay. Did you observe the defendant on the video near
9 the cigarettes box?

10 A Yes, ma'am.

11 Q Did you see him remove the cigarettes from the box?

12 A No. The way the camera is and the angle that it comes
13 down to the cigarette you can tell when someone takes
14 packs of cigarette out or if they open that up but he
15 was so close to the machine that it was hard to see
16 exactly what all he was grabbing out of there.

17 Q Okay.

18 MS. ALL: Beg the Court's indulgence.

19 BY MS. ALL:

20 Q Mr. Hubbard, I'm going to hand you what's been
21 premarked State's Exhibits 18, 19, 20 and 21. Do you
22 recognize these photographs?

23 A Yes, ma'am.

24 Q Have you seen them before?

25 A Yes, ma'am.

1 Q Are they a fair and accurate representation of the
2 scene as you saw it on June 28, 2011?

3 A Yes, ma'am.

4 MS. ALL: States moves State's Exhibits 18, 19, 20
5 and 21 into evidence.

6 MR. MACNEALY: Without objection, Your Honor.

7 THE COURT: 18 through 21 is in evidence without
8 objection.

9 MS. ALL: Permission to publish them to the jury?

10 THE COURT: Yes, ma'am.

11 (State's Exhibits 18, 19, 20 and
12 21 admitted into evidence.)

13 BY MS. ALL:

14 Q Can you describe those photos to the jury. You alluded
15 to a box earlier.

16 A Yes, ma'am. This is one of the plastic -- boxes that
17 we receive our cups in and we usually have them behind
18 the bars and this one had been emptied and if you
19 notice there is a liquor bottle that's inside that has
20 a pour spout sticking out of it which is what we use to
21 monitor how much we're giving patrons when they are
22 having their drinks and at no time would there be a
23 bottle that would be sitting anywhere except from
24 behind the bar that didn't have a pour spout in it.
25 All of those would be sealed. It's against DHEC policy

- 1 to reseal a bottle. So this had been -- it was placed
2 behind the bar.
- 3 Q And what picture number was that?
- 4 A Eighteen.
- 5 Q Okay.
- 6 A And then in 19 as you can see there's a Crown Royal
7 bottle and a then a Jim Dean bottle and then four of
8 the tall 24 ounce beers we had talked about and then
9 this is the pictures of when the officers removed the
10 bottles to fingerprint them.
- 11 Q Okay, and where are those bottles and Bud Lite can
12 usually kept by the staff?
- 13 A The bottles are always kept behind the bar no matter
14 what. We do not allow anybody to carry any bottles
15 from behind there unless it's completely empty.
- 16 Q The big liquor bottles?
- 17 A Yes, ma'am.
- 18 Q Okay.
- 19 A Which they are recycled and the cans would have been in
20 a locked cooler or a locked beer cage if there weren't
21 behind the bar.
- 22 Q Okay. How would one gain access to that locked beer
23 cage?
- 24 A It's a combination lock on it. So, and it would have
25 been in the pitch black dark.

- 1 Q Okay.
- 2 A So, they would of had to have pretty much guessed what
- 3 they were doing to get it out of any of the other
- 4 places except for behind the bar.
- 5 Q Do you recall if there was condensation on those beer
- 6 cans?
- 7 A Yes, there was. And I believe -- and if you look up
- 8 here you can see where it started condensating at the
- 9 bottom.
- 10 Q Okay. And we talked about people having permission to
- 11 access Sharky's. Was the defendant ever an employee of
- 12 Sharky's?
- 13 A No, ma'am.
- 14 Q Had you ever seen him before prior to this incident?
- 15 A Just no -- I just -- no we probably haven't.
- 16 Q Okay. So after you spoke with police what happened
- 17 next?
- 18 A After that one of the officers left the room to go and
- 19 look for him because they figured that he would still
- 20 be within the area. And then we got a call probable 15
- 21 minutes later saying that they had found a person
- 22 matching the description and then they left.
- 23 Q Okay. And the video can you see both outside and
- 24 inside the bar?
- 25 A Yes, ma'am.

1 Q Okay. And what city is Sharky's in?

2 A Columbia.

3 Q And the county?

4 A Richland County.

5 Q Okay.

6 MS. ALL: Just -- Court's indulgence.

7 THE COURT: Yes, ma'am.

8 BY MS. ALL:

9 Q Okay. Mr. Hubbard, if you can answer any questions for
10 defense counsel please.

11 A Yes, ma'am.

12 Q Thank you.

13 THE COURT: Thank you.

14 Mr. Macnealy.

15 CROSS-EXAMINATION

16 BY MR. MACNEALY:

17 Q Mr. Hubbard --

18 A Yes, sir.

19 Q When you get inventory at Sharky's tell me a little bit
20 about your inventory system?

21 A Okay. The -- do you want the entire inventory like for
22 instance liquor, beer, cigarettes, you want --

23 Q I guess just the liquor, beer and cigarettes.

24 A Okay. The way the liquor works it's done on a system
25 called Pace Your Inventory System and it is like if you

1 saw a bar scan gun, it's called a hand gun unit with a
2 weight attached to it. Everyday we go -- or every --
3 depending on the weekdays and busyness we go take the
4 bottles and you put each bottle on a scale and you scan
5 the bar code and then you click it into the inventory.
6 You do it with every single bottle that we own.
7 Usually it's around probably 50 to 60 bottles and then
8 you go and you put it back into the computer. You scan
9 it from the computer, I mean, from the device into the
10 computer and it gives you an amount of numbers, until
11 the last time it was weighed until the weight that it
12 just gave you it tells you how many drinks have been
13 missing depending on what you put into it what a drink
14 is consistent of which is a one point five ounce pour.
15 So, for instance if you sold 13 drinks between the
16 first inventory taken the last inventory taken that it
17 should come up 13 drinks, it's not then that means that
18 somebody was over pours.

19 Q Okay. That sounds fairly accurate in terms of the
20 electronic system what you have and do not have in your
21 establishment?

22 A Yes, sir.

23 Q Would you say it's pretty accurate?

24 A Yes, sir.

25 Q Okay. Are you able to do a print out from that system

1 that would give you kind of a spread sheet?

2 A Yes, sir. We don't, we don't, print them out but we go
3 into there and it's called a report and it gives you
4 the reports and it list them in alphabetical order
5 the -- every liquor that we have and then the last time
6 it was taken on inventory and then the new inventory
7 date and then what was poured between it and usually
8 for instance say it was a 24 ounce, if it's a 24 ounce
9 bottle then you're going to see 24 drinks taken almost.

10 Q Okay.

11 A And it gives you numbers by like that, like up to the
12 point. And then it gives you a total amount at the end
13 so like you can compare it to yourself, let's say if
14 you sold for instance 34 bars and you look on there and
15 see 34 bars were sold.

16 Q Do you remember the name of the officer who first
17 arrived on scene at Sharky's?

18 A No, I do not.

19 Q What did he look like?

20 A I believe he was African American rather big, a large
21 individual and then someone with him a white male and
22 then I know one by name that showed up after that.

23 Q And you testified earlier this was a Monday morning was
24 it Monday morning or Tuesday morning?

25 A I was under the impression it was a Monday morning.

1 Q All right.

2 A But like I said this was --

3 Q A while back?

4 A Yes, sir.

5 Q Okay. Do you remember speaking with an Officer White?

6 A I don't remember speaking with him per se. My owner

7 pretty showed up at this point and was handling all of

8 it. I contacted the one officer and told him that I

9 needed him to come down because we had a break in also

10 and then from there -- that point on we pretty much

11 just went and looked at what all was going on in the

12 bar.

13 Q Did the -- did you ever receive a copy of the police

14 report that was written?

15 A I did not personally. I -- we have a lot of files like

16 incident reports that come over. It is possible that

17 they did brought it up at one point and put it in there

18 or gave it to the owner.

19 Q Prior to trial had you seen the incident report drafted

20 by Officer White?

21 A No, sir.

22 Q Okay. How -- what, what, amount of inventory did you

23 report to Office White or whatever was first on scene

24 that was missing how much inventory?

25 A We reported that the cigarettes were missing out of the

1 inventory. The bottles of liquor they wouldn't let us
2 touch yet until they had finished their work with them
3 and everything like that so we didn't give them an
4 estimate on that we were more discussing the cigarettes
5 and the broken cash register and the, the, adjusting
6 the fact the break in.

7 Q How many packs of cigarettes did you report missing?

8 A 45.

9 Q 45?

10 A (The witness nodded head.)

11 Q You don't recall if -- you told the officer or the
12 owner told the officer about six bottles of liquors
13 also being missing?

14 A No, sir. I do not recall -- like I said Scott pretty
15 much came in and took over from there because he just
16 --

17 Q So, if the incident report says there were 45 packs of
18 cigarettes six bottles of liquor I'm assuming you
19 didn't tell the officer that your boss must have?

20 A Yes, sir.

21 Q Okay. Were those items ever returned?

22 A The liquor bottles were left there. For some reason
23 the liquor bottles were not removed from the bar
24 physically. They were just strewed around the bar.
25 Two of them were in that box. I believe one was a Jack

1 Honey that was just sitting randomly out on a shelf, I
2 mean, out on a little bench.

3 Q Okay. So, no liquor bottles were actually missing, is
4 this correct?

5 A No, sir.

6 Q So, if the incident report drafted by Officer White
7 indicating that 45 packs of cigarettes were stolen and
8 six bottles of liquor were stolen that would be
9 inaccurate?

10 A Yes, sir.

11 Q Did you turn over an inventory report or records
12 showing receivables of exactly that amount missing?

13 A No.

14 Q Okay. And you previously testified that from the video
15 you were able to I.D. Tyris Glover from that video, is
16 this correct?

17 A Yes, sir.

18 Q You can tell, we're all going to watch this video
19 shortly?

20 A (The witness nodded head.)

21 Q You can see from that video this man sitting here
22 (indicating) is the same one on that video?

23 A I believe it's camera -- it's going to be the camera
24 angle that would be located outside of the bar when he
25 gets back on his bike and he's riding away he's riding

1 towards the camera.

2 Q So, the camera angle when he's on the bike coming
3 towards the camera?

4 A Yes, sir. And then there's also several still shots
5 where he's walk through the bar and he gets pretty
6 close to the cigarette machine.

7 MR. MACNEALY: Beg the Court's indulgence.

8 THE COURT: Yes, sir. Certainly.

9 MR. MACNEALY: No further questions, Your Honor.

10 THE COURT: All right. Thank you.

11 Redirect?

12 MS. ALL: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. ALL:

15 Q Mr. Hubbard, you testified that you watched all the
16 surveillance footage from when the bar closed until
17 when you opened it that morning?

18 A Yes, ma'am.

19 Q Did you see any other person enter the bar at any time
20 other than Mr. Glover?

21 A Before he walked in?

22 Q At anytime?

23 A The -- just the cleaning crew.

24 Q Okay.

25 A And myself.

1 Q Are there cameras recording every entry point?

2 A Yes, ma'am, except for the, the, fire door at the very
3 back.

4 Q Okay.

5 A But that kind of records if it records anybody that's
6 going to walk by it.

7 Q So, having watched of the surveillance footage from
8 when your staff closed the bar the day before and when
9 your cleaning crew arrived at the bar that morning.

10 A (The witness nodded head.)

11 Q Did anyone other than Tyris Glover appear on that
12 surveillance footage?

13 A No, ma'am.

14 Q Mr. Macriely asked you about the liquor bottles you and
15 I discussed what was missing, can you explain to the
16 jury again why the cigarettes were reported missing and
17 yet you, you, waiver around the liquor bottles?

18 A Well, the liquor bottles was because with the handling
19 from the, the, person that took -- messed with the
20 bottles and the bartenders that night and with the
21 police and some of the bottles were knocked over it was
22 a fairly accurate portrayal of what all was taken out
23 of there at that point in time. Whereas the cigarettes
24 we know there was zero ring up, known was there but
25 they were all missing the next morning.

1 Q Were the cigarettes there when your general manager
2 closed the bar the night before?

3 A Yes, ma'am.

4 Q Where there any cigarettes there when you arrived the
5 next morning?

6 A No, ma'am.

7 MS. ALL: Beg the Court's indulgence please.

8 THE COURT: Yes, ma'am.

9 BY MS. ALL:

10 Q No further question, Mrs. Hubbard. Thank you.

11 THE COURT: Recross?

12 MR. MACNEALY: Just briefly, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. MACNEALY:

15 Q Mr. Hubbard, I just want to be clear. When the court
16 and the jurors watch this video they're going to be
17 able to see the face of Tyris Glover that you identify
18 as Tyris Glover?

19 A Yes.

20 Q Okay.

21 MR. MACNEALY: No further question, Your Honor.

22 THE COURT: Thank you. Thank you very much,

23 Mr. Hubbard, you may step down.

24 MR. MACNEALY: Your Honor, may we approach, I'm
25 sorry.

1 THEREUPON,

2 KEVIN SCHMIDT,

3 after having been duly sworn, testified as follows:

4 THE CLERK: Thank you. Have a seat in the witness
5 stand please. State your name for the record.

6 THE WITNESS: Kevin Schmidt, Columbia Police
7 Department.

8 DIRECT EXAMINATION

9 BY MS. ALL:

10 Q Good afternoon, Officer Schmidt. Where are you
11 employed?

12 A Columbia Police Department.

13 Q How long have you been with the Columbia Police
14 Department?

15 A I've been with Columbia Police Department for about two
16 and a half years now.

17 Q What is your previous law enforcement experience?

18 A Closest thing would be security for three years before
19 I turned 21.

20 Q Okay. And in what capacity were you employed on
21 June 28th, 2011?

22 A I had been employed for about a year and a half.

23 Q Okay. Were you on patrol?

24 A Yes, ma'am.

25 Q What are your present duties?

- 1 A Still the same thing patrol officer in south region.
- 2 Q Were you employed in that capacity on the date of have
3 incident?
- 4 A Yes, ma'am.
- 5 Q And what are your duties involve with that position?
- 6 A Patrol south region mainly. My main area is Gondolas
7 Gardens and Five Points.
- 8 Q Is Sharky's located in the south region?
- 9 A Yes, ma'am.
- 10 Q Is Sharky's in Richland County?
- 11 A Yes, ma'am.
- 12 Q How did you come to become involved in the incident at
13 Sharky's?
- 14 A I heard the call get dispatched out to Sharky's that
15 being my area I responded along with other officers --
- 16 Q Well, now, slow down for us for us lay people, what
17 does a call being dispatched mean?
- 18 A Dispatch will be on the air and call a unit and say
19 there's a unit nearby. She will tell us hey, head to
20 this address we just had so and so happen. So this
21 type situation a burglary had just occurred is what the
22 call came out as.
- 23 Q Okay. And so when you received that had dispatch what
24 did do you?
- 25 A I drove to Sharky's.

1 Q And why did you go to Sharky's?

2 A I heard they have surveillance of who did and I wanted
3 to see who exactly did. See I if knew them from
4 working with previous people on the street. Once I
5 work you get to know people in your area. So, I was
6 trying to see if I knew who it was.

7 Q And what did you see upon your arrival?

8 A I made contact with the other officers and we went and
9 watched the film and on film I observed a black male
10 with wearing a white T-shirt, blue jeans and a dark in
11 color hat push opened the front doors one of the
12 windows -- kind of like a window door type deal.

13 Q Uh-huh.

14 A Pushed it open and started rummaging through behind the
15 counter moving things and I believe he actually went
16 upstairs as well.

17 Q Okay. Well, let's go, let's go, through just to make
18 sure everything looked the same when you got there. Do
19 you remember about what time you arrived?

20 A No, I not do.

21 Q Okay. I'm going to show you State's Exhibit 3 it's a
22 photograph of the french doors at Sharky's. Is that
23 the condition that they were in when you arrived?

24 A Yes.

25 Q Okay. I'm now showing you State's Exhibit 8 which is a

1 picture of that empty, empty, cigarette box behind the
2 bar. Was that how it appeared when you arrived?

3 A I did not observe that.

4 Q Okay. And now showing you the cash register State's
5 Exhibit 9 did you observe the condition when you
6 arrived?

7 A No, I did not.

8 Q Okay. Did you make contact with Mr. Hubbard?

9 A I believe so. I believe he was one of the people in
10 the video room that was pulling back the film for
11 myself and other officers.

12 Q Okay. What did you observe in the video room?

13 A Just a monitor with -- just displayed what was
14 happening on when he pushed open the doors.

15 Q Okay. About how long was the video that you watched?

16 A I don't know.

17 Q All right. Well, let me remind you, we'll watch it
18 together here.

19 I'm going to show you State's Exhibit 30 which is
20 the surveillance footage. Have you viewed this video
21 before?

22 A The date of the incident.

23 Q Okay. Was that the last time you saw it?

24 A Yes, ma'am.

25 Q Okay.

1 MS. ALL: Your Honor, can we have permission to
2 have the witness to step out of the box so he can see the
3 video a little bit better?

4 THE COURT: Sure.

5 (Whereupon, the video was played
6 for the jury.)

7 BY MS. ALL:

8 Q Mr. Schmidt, I thought we could just watch this
9 together. Mr. Hubbard testified that there were
10 several different camera angles, is s that right? Did
11 you watch more than one video?

12 A Yes.

13 Q Okay. So you watched more than one angle?

14 A Yes, ma'am.

15 Q And as there is more than one angle some of the video
16 might overlap. Court you tell us what you observed
17 here?

18 A A black male ridding a bicycle past Sharky's.

19 Q Okay. Did you happen to catch what color the bicycle
20 was?

21 A No, I could not tell.

22 Q And, Officer Schmidt, I will also ask that you note, in
23 the bottom left-hand corner, can you tell us what that
24 says?

25 A 7:08 a.m.

- 1 Q And the date?
- 2 A June 28th, 2011.
- 3 Q Is this in the same condition it was when you watched
- 4 it?
- 5 A Yes.
- 6 Q Okay. And that timestamp would reflect what?
- 7 A I guess when the incident occurred.
- 8 Q And could you describe here, is that Sharky's that he's
- 9 approaching?
- 10 A Yes, ma'am. The ones with all the blue doors is the
- 11 Sharky's building.
- 12 Q Okay. Would that have been a window?
- 13 A Quite possibly, one of those french doors. I know they
- 14 have the main doors and then I believe they have three
- 15 sets of french doors next to it.
- 16 Q Is there a door where he just left the camera screen?
- 17 A I don't know. I know there's a back alleyway but I'm
- 18 not too sure if there's a door back there.
- 19 Q And you can describe this camera angel and what it's
- 20 showing?
- 21 A It appears to be showing you have the front entrance to
- 22 your top left, bar and you also have the front bar on
- 23 the first level.
- 24 Q If you will direct your attention to the left side of
- 25 the screen can you describe what's happening here?

1 A It appears he pushed open the french doors and he's now
2 walking inside the store after they were closed.

3 Q Did you notice anything particular about his walk when
4 you first watched this video?

5 A I noticed he had a distinguished walk all through
6 training I told by other officers that if you learn
7 someone's walk because everyone has a different walk,
8 if you learn someone's walk you can identify them
9 walking away from you and I noticed he had a
10 distinguished limp when he was walking.

11 Q Would this be behind the bar?

12 A Yes.

13 Q Officer Schmidt, while we wait, obviously it's dark
14 inside the bar. Does this appear consistent with night
15 vision mode?

16 A Yes.

17 Q That would explain why it was this color?

18 A Uh-huh.

19 Q Are you able to discern what's on his hat?

20 A Not exactly.

21 Q I think this part it gets closer. Tell me if you're
22 able to at this point.

23 A It looks like a New York, a Y inside of an N.

24 Q Can you see what he's carrying there, officer, right
25 here?

- 1 A It looks like cigarettes.
- 2 Q This is State's Exhibit 7 that you referred to earlier.
- 3 Can you describe what it to the left of the red bull
- 4 display shown here (indicating) where he was just
- 5 standing?
- 6 A Ma'am?
- 7 Q Can you describe in the picture that you just discussed
- 8 what is to the left of that red bull display?
- 9 A Oh, it looks like a computer monitor.
- 10 Q The gray box.
- 11 A Oh, the gray box. It looks like a set of keys, a key
- 12 lock box.
- 13 Q What does he have there in his left hand?
- 14 A A bucket.
- 15 Q Did he have that when he entered?
- 16 A No, he did not.
- 17 Q Did you notice what he just put right there?
- 18 A A bottle of liquor.
- 19 Q Was that liquor bottle still there when you arrived?
- 20 A I do not know.
- 21 Q Can you describe what direction is he facing here?
- 22 A Towards Harden Street.
- 23 Q Ad what side of the bar is facing Harden Street?
- 24 A What's side of the bar?
- 25 Q Would that be the area where people would walk by and

1 would be able to see him?

2 A Yes.

3 Q And there he exited and was he carrying anything?

4 A Appeared to be a bag with items in it along with the
5 bucket with the liquor still inside.

6 Q And this angle, it should be showing what?

7 A From this angle it looks like if you're looking in
8 through the french doors you see the back of the bar.

9 Q And the timestamp reflects?

10 A June -- 28, 2011, 7:07 a.m.

11 Q And that's as you testified the timestamp on the video
12 before this was the same when it started?

13 A Yes.

14 Q This would be the same time frame different angle?

15 A Yes.

16 Q Okay. And that walk, can you describe his walk?

17 A That was the limp I was talking about. He had a
18 distinguished limp.

19 Q What's he appear to be doing?

20 A Taking items, looking at what he would want to take.

21 Q Can you describe the prospective --

22 MR. MACNEALY: Your Honor, I object to reference
23 to Mr. Glover.

24 MS. ALL: I'm sorry.

25 THE COURT: All right. You can rephrase the

1 question.

2 BY MS. ALL:

3 Q What does the black male in the video appear to be
4 doing?

5 A Taking items possibly liquor.

6 Q Okay.

7 A A lot of liquor stored -- the bars down there have
8 shelves of liquor. It appears that he's looking at
9 what he wants to take and grabbing some of them.

10 Q You can now review State's Exhibit 6 and match up where
11 he would be standing at the bar.

12 A Ma'am?

13 Q Can you view State's Exhibit 6 and match up about where
14 he would be standing at the bar?

15 A Right about here (indicating).

16 Q Would that be in front of the cash register?

17 A Cash register and the liquor (indicating) shelves of
18 liquor.

19 Q Thank you. With you describe what the suspect is doing
20 here?

21 A I'm not too sure.

22 Q What is he spreading out?

23 A Looks likes a towel.

24 Q And what is he doing now?

25 A I can't tell. It looks like he's messing with

1 something.

2 Q Is he now walking towards the exit?

3 A Yes.

4 Q Mr. Glover is now reentering the bar and when does he
5 appear to you –

6 MR. MACNEALY: Your Honor, I object to the use of
7 Mr. Glover's name.

8 THE COURT: That's sustained. Restate your
9 question.

10 BY MS. ALL:

11 Q The suspect has now reentered the bar and what does he
12 appear to be doing here?

13 A Ducking under the wall.

14 Q Can you describe the wall that's along here
15 (indicating) what's along this wall that he's looking
16 toward?

17 A The way he's looking towards now is out the front door
18 of Sharky's out towards Harden Street.

19 Q Okay. And again, the timestamp at the lower left-hand
20 corner?

21 A June 28, 2011, 7:08 a.m.

22 Q And what is this camera angle facing on this one.

23 A The front door of Sharky's towards Harden Street.

24 Q So that street is?

25 A Harden.

1 Q Okay. Officer, Schmidt, would this be the footage
2 towards the end of the incident according to timestamp?

3 A Yes.

4 Q Explain to the jury what appears to be happening here.

5 A The suspect appears to be hiding from something.

6 Q If you could direct your attention to the doors and
7 windows. Describe what is happening here.

8 A Someone walking a dog found the door to be opened.

9 Q And here?

10 A Appears the person is checking the door to see if it is
11 unlocked or not.

12 Q And here, on the left (indicating)?

13 A Grabbing the items and leaving the store with them --
14 the business rather.

15 Q I'm going to show you one more video. And would that
16 be the same door from which he was just standing?

17 A Yes.

18 Q If you play close attention to the bicycle and the
19 items on the handlebars here.

20 A Looks like a bucket and the rag.

21 Q Thank you. That's it. Thank you for your patience.

22 (End of video.)

23 BY MS. ALL:

24 Q And, Officer Schmidt, was that the same video you saw
25 at Sharky's that day?

1 A Yes.

2 Q Were you able to discern from both the night footage
3 and -- from the night vision footage and from the color
4 footage that had more light to it what the defendant --
5 what the suspect was wearing?

6 A Yes.

7 Q And what was that?

8 A A dark in color hat with the white T-shirt and blue
9 jeans.

10 Q Were you able to discern anything about his physical
11 appearance or his build?

12 A He had that limp that I first noticed and --

13 Q And at what point did you leave the bar?

14 A Right after I left -- right after I watched the video I
15 left the bar.

16 Q Okay. And what did you do next?

17 A I started circulating the area around the bar and
18 places where individuals may go and hide.

19 Q Okay. Were you in your patrol car?

20 A Yes.

21 Q And if you could tell us what happened next?

22 A I went up Gervais Street and went down, took a right
23 onto Millwood and I saw the defendant pushing a
24 bicycle. I parked the car on the side of the road. I
25 got out with him. I told him to walk over towards

1 because if the individual didn't have that
2 distinguished limp I was going to ahead and leave and
3 let him go about his business. Once I saw that he had
4 his limp I asked him if I could look through his bag.
5 Another thing I like to do in case he didn't have
6 anything from the store again I was going to let him
7 go. After I asked if I could search the bag he gave
8 his consent. I searched through the bag and found a
9 couple packs a cigarettes, maybe, three or four of
10 them. Upon further investigation I found out that they
11 were the same ones matching the ones that were missing
12 from Sharky's.

13 Q Okay. If you would backtrack a little about when you
14 were on Millwood. About how far were you from the bar?

15 A Maybe a half a mile.

16 Q Okay. And how much later was it after you had left the
17 bar?

18 A Fifteen minutes tops.

19 Q Why did you pull over?

20 A The individual matched the description to a T.

21 Q What was it about the defendant that matched the
22 description in the video?

23 A The dark in color hat, the white T-shirt and the blue
24 jeans pushing a bike.

25 Q Okay. I'm going to hand you what been premarked

1 State's Exhibits 21 -- or 22, 23 and 24. Do you
2 recognize these items?

3 A Yes I, do.

4 Q Have you seen them before?

5 A Yes.

6 Q Do they fairly and accurately represent -- depict the
7 scene as you saw it on that day?

8 A Yes.

9 MS. ALL: At this time the state moves to enter
10 State's Exhibits number 23, 22, and 24 into evidence.

11 THE DEFENDANT: Without objection, Your Honor.

12 THE COURT: All right. That's 22, 23 and 24?

13 MS. ALL: Yes, Your Honor.

14 THE COURT: In evidence without objection.

15 (State's Exhibit 22, 23 and 24
16 admitted into evidence.)

17 MS. ALL: And permission to publish them to the
18 jury?

19 THE COURT: Yes, ma'am.

20 BY MS. ALL:

21 Q Can you describe what's depicted in State's Exhibit
22 Number 22, on the back, yeah.

23 A This would be the bicycle that he was pushing
24 (indicating).

25 Q Okay. Was that the same bicycle that he was pushing

1 down the street?

2 A Yes.

3 Q Was it the same bicycle you had seen in the video to
4 the best of your ability to identify it?

5 A To the best of my knowledge.

6 Q Okay. Can you identify State's Exhibit 23, please?

7 A This is the book bag that he was carrying on his back
8 when I first initially got out on him.

9 Q Okay. And so in having seen as you testified the
10 clothing and his gape and his physical appearance and
11 build matching, at what point were you able to search
12 the book bag?

13 A When I asked him if I could search the book back he
14 gave me consent to search.

15 Q And if you could just limit your testimony to the
16 relevant things to this trial here, what did you find
17 inside his book bag?

18 A The cigarettes.

19 Q Okay. And State's Exhibit 24, if you can describe
20 State's Exhibit 24 to the jury please.

21 A These are the identifies that I found inside the bag
22 back, packs of cigarettes.

23 Q And the brands.

24 A Looks like Campbells and Newport.

25 Q Do you remember if any of them were opened or unopened?

1 A I do not know.

2 Q Okay.

3 MS. ALL: I'm sorry. Beg the Court's indulgence.

4 BY MS. ALL:

5 Q And could you describe the -- because you just kind of
6 skimmed over it, when you made contact with the
7 defendant in what way you intimated that contact?

8 A I pulled over my vehicle. He walking on the sidewalk
9 on Millwood. I pulled over my vehicle and told him to
10 come here. And that's when I started talking to him
11 from there.

12 Q Were you by yourself in the car?

13 A Yes, I was.

14 Q How far away when you, when you, said come here?

15 A He was able six feet away.

16 Q As he approached you what did you see?

17 A I noticed he had the same limp from the individual on
18 the camera.

19 Q And what struck you about that limp as being distinct?

20 A I've never seen anyone walking around after working in
21 that area for a long period of time haven't seen anyone
22 walking that had that same distinctly limp.

23 Q Okay. I'm going to show you what's been premarked
24 State's Exhibit 26, do you recognize this item?

25 A Yes.

1 Q Have you seen it before?

2 A Yes.

3 Q When did you see it last?

4 A The last time I saw it is when I was out with the
5 defendant.

6 Q Has it changed in anyway?

7 A No, ma'am.

8 MS. ALL: Your Honor, state moves to enter State's
9 Number 26 into evidence.

10 MR. MACNEALY: Without objection.

11 THE COURT: 26 in evidence without objection.

12 (State's Exhibit 26 admitted
13 into evidence.)

14 BY MS. ALL:

15 Q Now, showing you what's been premarked State's Exhibit
16 Number 27, do you recognize these items?

17 A Yes.

18 Q Have you seen them before?

19 A Yes.

20 Q Can you describe what they are?

21 A Various packs of cigarette packs that I found inside
22 the book bag.

23 Q Are they the same items entered in the picture?

24 A Yes.

25 Q Have they changed in anyway?

1 A No, they have not.

2 MS. ALL: State moves to introduce State's Exhibit
3 Number 27 into evidence.

4 MR. MACNEALY: Just pursuant to own precious
5 motion, Your Honor.

6 THE COURT: State's 27 is in evidence subject to
7 previous motions.

8 MR. MACNEALY: Thank you, Your Honor.

9 (State's Exhibit 27 admitted
10 into evidence.)

11 BY MS. ALL:

12 Q And now showing number 29, do you recognize this item?

13 A Yes.

14 Q Have you seen it before?

15 A Yes, I have.

16 Q When was the last time you saw it?

17 A When I was out with the defendant.

18 Q Is this the bike the defendant was pushing down the
19 street?

20 A Yes, it was.

21 Q Has it change in anyway?

22 A No, ma'am.

23 MS. ALL: State now moves State's Number 29 into
24 evidence.

25 MR. MACNEALY: Without objection, Your Honor.

1 THE COURT: 29 is in evidence without objection.

2 (State's Exhibit 29 admitted

3 into evidence.)

4 BY MS. ALL:

5 Q Okay. Officer Schmidt, what did you do after you
6 searched the book bag and found the cigarettes inside?

7 A I continued my investigation to find out what was taken
8 from the bar. Once I realized that the cigarettes
9 matched the same that was found in his book bag I
10 detained the suspect and called into my supervisor
11 investigator.

12 Q And what happened next?

13 A Investigator arrived on scene. I talked to him and I
14 believe they transported him to headquarters.

15 Q Okay.

16 MS. ALL: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 BY MS. ALL:

19 Q What was the defendant wearing when you stopped him on
20 Millwood Avenue?

21 A He was wearing a dark color in hat, a white T-shirt and
22 blue jeans?

23 Q Was it the same clothing you seen him wearing in the
24 video?

25 A Yes.

1 Q And he matched the physical description as the person
2 in the video.

3 A Yes.

4 MS. ALL: No further questions, Your Honor.

5 BY MS. ALL:

6 Q Please answer any questions the defense has.

7 THE COURT: Thank you. Thank you, solicitor.

8 Mr. Macnealy.

9 MR. MACNEALY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MACNEALY:

12 Q Officer Schmidt, when was the first officer that
13 responded -- or who was the first officer that you saw
14 that Sharky's when you arrived?

15 A Officer Jackson and Officer White.

16 Q Okay. Did you familiarize yourself with the incident
17 report prior to this trial?

18 A No, I did not.

19 Q So, the incident date this happened June 28th of last
20 year refresh your memory at all?

21 A It did.

22 Q Like what refreshed your memory?

23 A The whole incident together.

24 Q Okay. So, you didn't have to read the incident report?

25 A No, I did not.

1 Q Had you ever seen the incident report filed for this
2 case?

3 A No.

4 Q You never seen the incident report?

5 A No, I have not.

6 Q Okay. You know what drafted incident report?

7 A No, I do not.

8 Q Did Officer White draft the incident report?

9 A I do not know.

10 MS. ALL: Objection, Your Honor, relevancy and
11 asked and answer?

12 THE COURT: Kind of the same question, two angles
13 but I will allow you to answer it. You can ask your next
14 question --

15 MR. MACNEALY: Thank you, Your Honor --

16 THE COURT: Mr. Macnealy.

17 BY MR. MACNEALY:

18 Q Officer White was on the scene at this time, correct?

19 A Yes.

20 Q And he was present at the time you arrived, is this
21 correct?

22 A At Sharky's, yes.

23 Q And who at the -- when it's all said and done, who
24 reported or took Mr. Glover to be booked?

25 A To be booked I do not know.

- 1 Q So, you're not sure if it was Officer White?
- 2 A No, I do not.
- 3 Q Okay. Is Officer White currently working with the
- 4 Columbia Police Department?
- 5 A No.
- 6 Q Do you know why?
- 7 A No, I do not.
- 8 Q Is your car equipped with video, sir?
- 9 A Now it is, yes.
- 10 Q Now it is. When was it equipped with video?
- 11 A I do not recall.
- 12 Q You do not recall.
- 13 A (The witness shakes head.)
- 14 Q You don't know when the video was installed yet you
- 15 remember everything that happen June 28th and you did
- 16 not have to read an incident report but you do not know
- 17 when the video was put in your car, correct?
- 18 A Yes, we have new vehicles and we swish out vehicles. I
- 19 never drive the same vehicle.
- 20 Q By that time -- so you're -- were you certain that your
- 21 car was not equipped or was equipped?
- 22 A I do not know.
- 23 Q Which car were you driving at that time?
- 24 A I do not know.
- 25 Q Are city police vehicles -- are video equipment in

1 these vehicles are they suppose to be activated upon
2 activation of blue lights?

3 A Yes.

4 Q Did you activate your blue lights at all during these
5 incident?

6 A I do not know.

7 Q You don't know, is that correct?

8 A Yes.

9 Q When you approached Mr. Glover were you in your parole
10 car at the time?

11 A No, I was out of my parole car.

12 Q Where was the patrol car at that time?

13 A Parked on the side of the road.

14 Q How far from Mr. Glover.

15 A About 6 foot.

16 Q Thank you. Was there blue lights activated?

17 A I do not recall.

18 Q Well, walk me through this then. You pull over to
19 Mr. Glover, correct?

20 A Yes.

21 Q Okay. Your lights you're not sure if they're activated
22 or not?

23 A Yes.

24 Q Had you approached Mr. Glover?

25 A I walked -- exited my vehicle. Walked around vehicle,

- 1 told me Mr. Glover to come towards me.
- 2 Q You told him to him to come towards you, is that
- 3 correct?
- 4 A Yes.
- 5 Q Is this an order?
- 6 A Yes.
- 7 Q Was Mr. Glover riding his bike at that time?
- 8 A No.
- 9 Q He wasn't?
- 10 A No.
- 11 Q You saw the video, correct?
- 12 A Yes.
- 13 Q Was does the video show?
- 14 A It shows him riding off on a bike.
- 15 Q After ordering my client to come towards you you then
- 16 testified just a few minutes ago that you asked him for
- 17 consent to look into his bag, is this correct?
- 18 A Yes.
- 19 Q You feel after you gave an order that that gentleman
- 20 (indicating) was given a free and voluntary consent to
- 21 you?
- 22 A Yes.
- 23 Q You know what free and voluntary is?
- 24 A Yes.
- 25 MS. ALL: Objection, Your Honor, this is outside

1 the scope and irrelevant.

2 THE COURT: Sustained.

3 MR. MACNEALY: Your Honor, I just explained
4 there's a different testimony provided right now that was
5 provided earlier.

6 THE COURT: Consent is not a jury issue, it a
7 legal issue. You can certainly cross examine if you think
8 that there's prior inconsistent statements under Rule 611 --
9 not 611, six -- well, you know the rule 613.

10 MR. MACNEALY: I guess I just want to point out
11 for the record, Your Honor, that prior to he did not know
12 what free and voluntary is and now he says he does.

13 THE COURT: It's not an issue for the jury.

14 MR. MACNEALY: Okay. Thank you, Your Honor.

15 THE COURT: It's a legal issue. 613 is
16 impeachment.

17 BY MR. MACNEALY:

18 Q Mr. Schmidt, after ordering Mr. Glover to walk towards
19 you. After he consented according to your testimony
20 and he opened the bag for you you said you saw four
21 packs of cigarettes I think your words were during
22 direct examination matching that which was found --
23 that which was belonging to Sharky's, is that correct?

24 A Once I searched the book bag and found the cigarettes
25 after the investigation I found they were the same type

1 of cigarettes at Sharky's.

2 Q All right. Same type. I just want to make sure. Did
3 you see 45 packs of cigarettes in that bag?

4 A No, I did not.

5 Q Those cigarettes I think they are already put into
6 evidence, I'm not sure where they are at. Were these
7 the four that were in that bag?

8 A Yes.

9 Q There were no more than that?

10 A Not to my knowledge.

11 Q Okay. Would you say these two packs are unopened?

12 A Yes.

13 Q Would you say this pack is open and barley used?

14 A Yes.

15 Q And would you say this pack is opened and completely
16 used?

17 A Yes.

18 Q Officer White in his incident report indicates that you
19 reported to him that when you opened the bag up you saw
20 four packs and notices there was no receipt, is that
21 what you reported to Officer White?

22 A Yes.

23 Q Do you carry around receipts for everything?

24 A No.

25 Q But that was peculiar to you at that time?

1 A No, if -- I was just seeing if he had any proof that he
2 had brought those cigarettes like he was saying.

3 Q Just particularly noted in the incident report but it
4 wasn't peculiar to you?

5 A No.

6 Q But you reported that to Officer White?

7 A Yes.

8 Q Okay. Did you ever find 45 packs of cigarettes?

9 A No, I did not.

10 Q Did you ever find six bottles of liquor?

11 A No.

12 MR. MACNEALY: Beg the Court's indulgence.

13 THE COURT: Yes, sir. Certainly.

14 BY MR. MACNEALY:

15 Q Officer Schmidt, tell us about which time you arrived
16 at Sharky's?

17 A I don't recall. I believe from my best knowledge it
18 was around 8 o'clock, 8:30.

19 Q And you can tell us for the record about what time you
20 approached my client?

21 A About 15 minutes afterwards. I didn't look at my clock
22 when I got out with him.

23 Q About 15 minutes after you arrived?

24 A After watching the video.

25 Q After watching the video. All right. After watching

1 the video. Let's back that up. About how long, how
2 long, were you in there, in Sharky's establishment?

3 A About ten minutes.

4 Q Then 15 minutes after leaving the establishment you
5 made contact with my client?

6 A Yes.

7 Q How long was this conversation between you and my
8 client?

9 A I cannot recall.

10 Q Do you have a proximation?

11 A No.

12 Q Would five minutes be accurate?

13 MS. ALL: Your Honor, this calls for speculation.

14 He's already asked and answered.

15 THE COURT: Overruled.

16 BY MR. MACNEALY:

17 Q Would five minutes be accurate?

18 A I don't know.

19 Q Would an hour be closer?

20 A I don't know.

21 Q You remember everything that happened but you don't
22 remember how long you met with Mr. Glover (indicating).

23 A Yeah. I did not check my watch.

24 Q You don't have any sense of time how long that was, is
25 that what you're saying?

1 A No, I do not.

2 MR. MACNEALY: Beg the Court's indulgence.

3 THE COURT: Certainly. Yes, sir.

4 BY MR. MACNEALY:

5 Q Just for clarification and I think you might have
6 testified to this already but the 15 minutes that
7 you -- the ten minutes that you were in Sharky's is
8 when you were watching the video?

9 A Yes.

10 MR. MACNEALY: No further questions, Your Honor.

11 THE COURT: All right. Thank you.

12 Redirect, solicitor.

13 REDIRECT EXAMINATION

14 BY MS. ALL:

15 Q Officer Schmidt, when you observed the video at
16 Sharky's did y'all fast forward through parts of it?

17 A Yes.

18 Q How long ago was this incident?

19 A About a year.

20 Q You know how many suspects you've stopped and made
21 contact with since that time?

22 A No way of telling.

23 Q Can you begin to count?

24 A No, ma'am.

25 Q Did you take notes on this incident?

- 1 A No, ma'am.
- 2 Q Did you generate a report?
- 3 A No, ma'am.
- 4 Q Is that because you weren't the lead --
- 5 A Yes --
- 6 Q The lead officer on the trial?
- 7 A Yes.
- 8 Q Is that because somebody else wrote a report?
- 9 A Yes.
- 10 Q Is that because there was a lead investigator?
- 11 A Yes.
- 12 Q Why did you ask Mr. Glover if he had receipts for the
- 13 cigarettes.
- 14 A Because he stated to me that he brought them.
- 15 Q What you would have done if he had produced receipts?
- 16 A I would have let him go.
- 17 MS. ALL: Beg the Court's indulgence.
- 18 THE COURT: Yes, ma'am.
- 19 BY MS. ALL:
- 20 Q And what -- do you remember what shift you were working
- 21 at that time?
- 22 A It was day shift.
- 23 Q And how many hours is that shift?
- 24 A Twelve and a half.
- 25 Q And what time did you come on?

1 A 6:30.

2 Q No further questions.

3 MR. MACNEALY: Very briefly, Your Honor.

4 THE COURT: Certainly.

5 RECROSS-EXAMINATION

6 BY MR. MACNEALY:

7 Q You didn't take any notes but Officer White did,
8 correct?

9 A I don't know.

10 Q You don't know if Officer White wrote up an incident
11 report?

12 A No, I do not.

13 Q Let me ask you --

14 A I know he wrote up the incident report but I don't know
15 if he took notes.

16 Q Okay. So, you know he wrote up an incident report?

17 A Yes.

18 Q What's, what's, the purpose of an incident report?

19 A Okay. When it comes to court it can be a refresher for
20 you.

21 Q A refresher but you didn't take the time to do that
22 today did you?

23 A No, I did not.

24 Q When an officer writes an incident report are you
25 trained to make it accurate?

1 A Yes, but I did not write the incident report.

2 Q Officer White did?

3 A I believe so.

4 Q Okay.

5 MR. MACNEALY: No further question, Your Honor.

6 THE COURT: Thank you very much, officer. You may
7 step down.

8 All right, solicitor, call your next witness
9 please.

10 MS. GARFIELD: State calls Investigator Kermit
11 Scott.

12 THE COURT: All right, sir, if you come around to
13 be sworn please.

14 THEREUPON,

15 KERMIT SCOTT,

16 after having been duly sworn, testified as follows:

17 THE CLERK: Thank you. Have a seat in the witness
18 stand please. State your name for the record.

19 THE WITNESS: Kermit Scott.

20 DIRECT EXAMINATION

21 BY MS. GARFIELD:

22 Q Investigator Scott, where are you employed?

23 A With the City of Columbia Police Department, ma'am.

24 Q How long have you been employed with the City of
25 Columbia?

- 1 A For a total of nine and a half years, ma'am.
- 2 Q And any previous law enforcement?
- 3 A Yes, ma'am. I did two years in Afghanistan working
- 4 with The Department of Defense and The Department State
- 5 as a trainer in Afghanistan?
- 6 Q And what are your duties with the Columbia Police
- 7 Department?
- 8 A Currently, I am a police officer after returning back
- 9 from Afghanistan.
- 10 Q And what were your duties last summer?
- 11 A Last summer I worked with crime scene, as a crime scene
- 12 investigator.
- 13 Q How many years you worked with crime scene
- 14 investigator?
- 15 A For approximately six, ma'am.
- 16 Q Can you explain to the jury what a crime scene unit
- 17 does?
- 18 A A crime scene unit their responsibilities are to one,
- 19 document the scene, photograph the scene, collect
- 20 evidence and analyze evidence.
- 21 Q And when you talk about analyzing evidence what types
- 22 of evidence do you analyze?
- 23 A Anything from fingerprints and in our particular case
- 24 we might do marijuana and drugs, drug analysis for our
- 25 department.

1 Q You also collect evidence for DNA purposes?

2 A Yes, ma'am. We send that out to an outside agency.

3 Q And what kind of training have you had for such work?

4 A Well, I've had basic crime scene investigative

5 training. I've had 40 hours of FBI training on

6 fingerprint analysis and ridgeology basic ridgeology

7 and also advantage ridgeology which also goes into palm

8 identification and also foot identification.

9 Q Foot identification?

10 A Yes, ma'am.

11 Q And approximately how many fingerprints would you say

12 you prepared in your career?

13 A Thousands.

14 Q Can there --

15 A Tens of thousands.

16 Q Tens of thousands. And have you ever been qualified --

17 have you ever testify in court before?

18 A Yes, I have. Several times.

19 Q Approximately how many times?

20 A Probably ten or 11 times on burglary cases.

21 Q Have you ever been qualified as an expert in latent

22 print comparisons?

23 A Yes, I have, ma'am.

24 MS. GARFIELD: Your Honor, at this time I would

25 like to introduce Investigator Scott as an expert in latent

1 print examination.

2 THE COURT: Any questions as to qualifications,
3 Mr. Macnealy, Mr. Cooper?

4 MR. MACNEALY: No, Your Honor.

5 THE COURT: All right. Thank you.

6 Just a moment, solicitor.

7 MS. GARFIELD: I'm sorry.

8 THE COURT: Can you give me just one moment?

9 MS. GARFIELD: Oh, certainly.

10 THE COURT: All right. Ladies and gentlemen of
11 the jury panel, normally a person cannot give opinion
12 testimony. Normally when a person testifies they must
13 testify as to what they either saw, heard or sensed by smell
14 or something of that nature. Something that we perceived
15 through one of our human senses; however, there is an
16 exception when someone is qualified because of education or
17 experience or training they are permitted to give their
18 opinion in certain areas if the court qualifies them that
19 way.

20 This witness Investigator Kermit will be qualified
21 in the area of latent fingerprint analysis and identification
22 to give opinion testimony in that area. It does not mean
23 that you must accept the opinion but it is evidence for you
24 the jury to use in anyway you see fit.

25 Thank you, solicitor. You may proceed.

1 MS. GARFIELD: Thank you, Your Honor.

2 BY MS. GARFIELD:

3 Q Investigator, before we go into what you did on this
4 case. Can you explain to the jury how one goes about
5 trying to find fingerprints?

6 A Well, one of the first things that you do is that
7 you -- we are called to the scene after a crime occurs.
8 Some party might mostly the officer on the street or
9 one of the investigators will call us to the scene. We
10 first of all make contact with that officer or that
11 investigator to find out what type of crime has been
12 committed. Once we do that I can begin to establish
13 the crime scene itself, take photographs of the scene
14 before moving anything.

15 The night thing we'll do I will go back in and try
16 to identify the point of entry. We make sure that the
17 evidence right there that we can see is identified and
18 then we start looking for latent prints, blood which is
19 usually DNA and also any type of other physical
20 evidence that may have been left at the scene.

21 Q And when you refer to photographs all these photographs
22 that are in court today did you take them?

23 A Yes, ma'am, I did.

24 Q And after you photographed the scene.

25 A Yes, ma'am.

1 Q Did you -- well, stop -- strike that. Let me back up.
2 I'm going to show you some photographs. There have
3 been numerous ones admitted. These are already into
4 evidence, photographs number seven. Was there anything
5 in that photograph that caused you to process anything?

6 A Yes, ma'am, it was.

7 Q Okay. And can you explain to the jury what you did?

8 A What we're looking at is on the inside of the bar area
9 that I --

10 Q Do you mind standing up --

11 A Yes, ma'am.

12 Q So all the members of the jury --

13 A What we're looking at is inside the bar area. As you
14 notice right there (indicating) this is where the box
15 where the cigarettes, cigarettes, were contained inside
16 the, the, bar area. And also we have -- what we have
17 is the cooler area. This is where the beer or soda
18 things like that will be put inside the cooler. We
19 noticed that the cooler area all right, had been opened
20 and it was still opened. And then we also noticed that
21 the cigarette case was also opened. Had been pried
22 open. So, these are the two things I noticed in this
23 area.

24 Q And did you try to dust for fingerprints?

25 A Yes I, did, ma'am. On these two items, right. A lot

1 of times, right, a lot of times, right, due to the
2 condensation on the refrigerated items, right. You
3 have water which a lot of times you're not going to get
4 brings prints back because the condensation, right,
5 refuses the print itself with the oils from the skin.

6 Also from the material here (indicating) it was
7 also a metal product. We went ahead and tried to
8 process it. No identifiable latent prints were lifted
9 from that scene because when you do it sometime you get
10 a smear mark, okay. A smear mark is no more than you
11 cannot identify the ridge detail. If you look at your
12 fingers itself you will see ridges or lines that run
13 inside your fingers. We don't call them lines. We
14 call them ridges, okay. You can see those, they create
15 different patterns. That is what we're looking for and
16 if those are definitive or defined then we will utilize
17 those for identification purposes.

18 Q Were you able to find any type of print off --

19 A No, ma'am, not off these items here.

20 Q Off those items. Okay. I'm going to also show you a
21 series of pictures that have already been introduced
22 into evidence State's Exhibit 18, 19, 20 and 21.

23 A Yes, ma'am.

24 Q Do you recognize these photographs?

25 A Yes, ma'am.

1 Q And can you just go through those --

2 A Yes, I will, ma'am.

3 Q With the jury, explain what those are and what you did.

4 A Also inside the -- this is inside the Sharky's Bar as
5 you come through the front door looking directly into
6 the back of the, back of the, business there's a set of
7 stairs that go down. This box was sitting here, okay.
8 Also process the top of the box, right, with a magnetic
9 powder. We have different powders which one is a black
10 botanic ash powder. We also have what we call a
11 magnetic powder something like you find sort of in a
12 Etch-A-Sketch. You take that, right, and you put it
13 across the item and try to identify or define the
14 latent prints itself. None with it on this area
15 (indicating).

16 Inside that box were these beer cans that you can
17 probably see from the photograph where you see, you
18 see, water, water, condensation on the cans themselves,
19 okay. We weren't able to get anything off those,
20 right. So we went ahead and bypassed those.

21 This is a Crown Royal bottle, right. A bottle of
22 liquor, right. That was also, right, processed, right.
23 And as you can probably see, right, you have some of
24 the dust on the label itself, right. Again, no
25 identifiable prints were lifted from this particular

1 item.

2 Q But you did make an attempt?

3 A I did make an attempt on all of those items, yes,
4 ma'am.

5 This here is a Jim Bean bottle also was processed
6 the same way with magnetic powder, right, to define and
7 see if there were identifiable prints. None was also
8 lifted.

9 Q Now, you tested several items and did not get any
10 prints --

11 A Yes, ma'am.

12 Q Is that common in your course of business?

13 A Yes, ma'am. You can -- there's nothing to say that you
14 can touch something and a print is going to be left
15 but; however, right, you can touch another item, right,
16 and due by your sweat and the oils from your glands
17 come out and you might deposit a print. Okay, some are
18 define some are not so define. Some, right, you might
19 be able to leave a print and while processing the print
20 itself is not so define that it could be utilized as a
21 print for comparison.

22 Q All right. Investigator, I'm going to show you some
23 other pictures that have not been introduced into
24 evidence.

25 A Yes, ma'am.

1 MS. GARFIELD: Beg the Court's indulgence.

2 BY MS. GARFIELD:

3 Q These have been marked as State's Exhibit 13 through
4 17.

5 A Yes, ma'am.

6 Q First, it you will just look at these to yourself.

7 A Yes, ma'am.

8 Q And tell me if you can identify those photographs.

9 A Yes, ma'am. I can identify these items.

10 Q What is --

11 A I mean, these photographs.

12 Q What are those photographs reflecting?

13 A These photographs, ma'am --

14 Q Don't show them to the jury yet.

15 A Oh, don't show them. Okay.

16 Q I'm sorry.

17 A These are the photographs from the inside of Sharky's
18 business, right. As you again, enter into the business
19 from the, from the, front door going toward the rear of
20 the business you will see a set of stairs that go down.
21 There's a railing like such (indicating) that goes
22 down, down the stairs like a little handrail. The, the
23 picture that -- the picture will depict a bottle that
24 is sitting on top of this, this, bandiest at the edge.
25 I was informed by the manager that morning that a --

1 the suspect had moved this item from the back of the
2 bar area and had placed it on the on the handrail
3 itself. And I also processed that as you can see so
4 it's also in the photographs.

5 Q And what you see in the photographs is that what you
6 saw this day?

7 A Yes, ma'am.

8 MS. GARFIELD: Your Honor, at this time I would
9 like to introduce these exhibits into evidence, 13 through
10 17.

11 (State's Exhibit 13 through 17
12 admitted into evidence.)

13 THE COURT: Mr. Cooper?

14 MR. COOPER: No objection.

15 THE COURT: 13 through 17 admitted into evidence
16 without objection.

17 MS. GARFIELD: May I publish to the jury?

18 THE COURT: Yes, ma'am.

19 BY MS. GARFIELD:

20 Q After photographing this bottle of bourbon --

21 A Yes, ma'am --

22 Q Investigator, what did you do?

23 A After processing the bottle of bourbon I noticed that
24 on the, on the, side of the bottle, right, I identified
25 a -- developed a latent print on the side; two latent

1 prints on the side of the bottle. At which time I went
2 ahead and lifted the print off the bottle, placed it
3 onto a latent card which is a two -- which should be
4 identified as item 1-1 and 2-1.

5 Q I'm going to show you what's marked as State's Exhibit
6 Number 31, do you recognize this small packet?

7 A Yes, ma'am, I do.

8 Q Can you explain to the jury what that small packet is?

9 A This small packet, ma'am, contains two latent cards,
10 right, which is the print. A latent is no more than a
11 print that was lifted off of an item, right, and then
12 placed into evidence so that it can be processed or
13 analysis that could be preformed on it.

14 Q And that is -- your name is on the front of that?

15 A Yes, it is, ma'am.

16 Q And it hasn't been altered in anyway?

17 A No, ma'am.

18 MS. GARFIELD: Your Honor, at this time I would
19 like to introduce State's Exhibit Number 31.

20 MR. COOPER: Without objection, Your Honor.

21 THE COURT: 31 is in evidence without objection.

22 MS. GARFIELD: Thank you, Your Honor.

23 (State's Exhibit 31 admitted
24 into evidence.)

25 BY MS. GARFIELD:

1 Q Would you please open that document and explain to the
2 jury what's inside and what it means.

3 A I'm going to stand up again.

4 Q Please.

5 A Okay. What we use is -- no more than the powder that
6 we talked about earlier whether it's magnetic or white
7 powder et cetera. Okay, to develop a print. Once a
8 print is developed you use a clear latent lift -- to
9 lift that latent off of that item it is then placed
10 onto the white card which is back here (indicating).
11 Then when -- on the back of the card I identify there
12 that latent was taken from and I draw a -- picture,
13 right. You see the artiest, the artiest, capabilities
14 here but it shows the item and where the print was
15 lifted off of that item.

16 This one here was lifted on the Jack Daniel's
17 bottle on the front label and two -- one was lifted off
18 Jack Daniel's bottle on the side of the bottle.

19 Q Were they both deemed to be legible?

20 A Yes, ma'am. We could use both of these for analysis
21 purpose and we also did that.

22 Q Okay. Are there different types of fingerprints?

23 A Yes, ma'am, there are.

24 Q Can you explain to the jury the types --

25 A As you -- as most people have heard, right, and I know

1 you heard I got the swirl which is a lot of people we
2 have what is called the world print. We have a left
3 loop. We have a right loop and we have a arch print.
4 These are the basic fingerprint type patterns that we
5 have. Then you have subcategories categories of them,
6 right, that we have to be aware of and also use
7 analysis on.

8 Q And does any two people have the same fingerprints?

9 A There has not been to date any two people with the same
10 identical fingerprint.

11 Q Were you able --

12 A To date.

13 Q I'm sorry. At sometime later that day were you able to
14 or sometime later in your investigation were you able
15 to compare that fingerprint to a fingerprint belonging
16 to the defendant?

17 A Yes, ma'am, I was.

18 Q And I need to get these marked.

19 (State's Exhibit 34 through 36
20 marked for identification.)

21 BY MS. GARFIELD:

22 Q I'm going to hand you what's been marked or I.D.
23 purposes at this time.

24 A Yes, ma'am.

25 Q State's Exhibits Number 34, 35 and 36 are you familiar

- 1 with what's inside these folders without publishing to
2 the jury?
- 3 A Yes, ma'am.
- 4 Q And what are those indicative of?
- 5 A What this is is a -- is the latent prints itself and a
6 known print which is used for comparison purposes. One
7 you will find, right, that there is no marking on,
8 right, you should have the two prints themselves on the
9 side -- side-by-side, one-to-one comparison. The other
10 one will be a -- the same prints but then you would
11 have the print the ridge details identified.
- 12 Q And the fingerprint that was compared to the latent one
13 that you took off the bottle?
- 14 A Yes, ma'am.
- 15 Q Whose print was it compared to?
- 16 A It was compared and come back to a hit to Mr. Glover.
- 17 Q And what particular finger of Mr. Glover?
- 18 A It was the right hand, the number four finger, right,
19 which is your ring finger?
- 20 Q The latent print that you lifted off the liquor bottle
21 in Sharky's.
- 22 A Yes, ma'am.
- 23 Q Is it your expert opinion that it matches the
24 defendant?
- 25 A Yes, ma'am, it is.

1 THE WITNESS: Officer Paul Nelson.

2 DIRECT EXAMINATION

3 BY MS. GARFIELD:

4 Q Investigator Nelson, tell the jury where you're
5 employed.

6 A Columbia Police Department.

7 Q And what are your duties with the Columbia Police
8 Department?

9 A I work in the crime scene unit.

10 Q And can you explain to the jury what that entails.

11 A Photography, collection of evidence, fingerprints,
12 latent lifts, developments and also identifying
13 fingerprints.

14 Q How long have you been doing this for the Columbia
15 Police Department?

16 A I've been doing fingerprints since 1997.

17 Q And approximately that's what over 15 years about 15
18 years?

19 A Yes.

20 Q And proximately how many crime scene would you say
21 you've investigated?

22 A Thousands.

23 Q Can you share with the jury how many fingerprints
24 you've compared?

25 A 10,000s, 15,000s.

1 Q And do you sometime not make matches?

2 A Sometimes, yes.

3 Q And have you ever -- what kind of training did you -
4 have you been -- have you done to know how to compare
5 fingerprints and crime scene analysis?

6 A Several training here in the State of South Carolina by
7 SLED also by other -- that are in the fingerprint
8 field.

9 Q Do you do this on a yearly basis or what is the
10 protocol?

11 A Yearly basis but yearly basis would be analyzing
12 fingerprints on a daily basis but training is once
13 you're shown you get it from there and go with it.

14 Q Have you ever testified in court before?

15 A Yes, I have.

16 Q And have you ever been qualified as an expert?

17 A Yes, I have.

18 Q Have you been qualified as an expert in latent print
19 comparisons?

20 A I have.

21 MS. GARFIELD: Your Honor, at this time I would
22 like to introduce Mr. Nelson as an expert in latent print
23 comparisons.

24 THE COURT: Mr. Macnealy, Mr. Cooper?

25 MR. COOPER: Well, at this time we don't object,

1 Your Honor.

2 THE COURT: Thank you very much.

3 Again, ladies and gentlemen of jury panel,
4 normally when a person testifies they must testify as to
5 either what they say, heard or sensed by smell or something
6 of this nature; however, there is an exception when someone
7 is qualified because of education or experience or training
8 in some particular field art or science they're permitted to
9 give their opinion in certain areas if the court qualifies
10 them that way and this witness, Investigator Nelson, will be
11 qualified in the area of latent fingerprint analysis to give
12 opinion testimony in that area. That does not mean that you
13 must accept the opinion but it is evidence for you to use in
14 anyway you, the jury, sees fit.

15 Thank you, solicitor, you may continue.

16 MS. GARFIELD: Thank you, Your Honor.

17 BY MS. GARFIELD:

18 Q Investigator Nelson, where Sharky's was broken into
19 last summer, did you do any crime scene investigation
20 at Sharky's?

21 A No, I did not.

22 Q Did you have an opportunity to compare a fingerprint
23 that was lifted from Sharky's?

24 A Yes.

25 Q And who lifted that fingerprint?

1 A My copartner Kermit Scott.

2 Q And I'm going to show you what's been marked as State's
3 Exhibits, for identification purposes, 34, 35, 36; can
4 you take a look at these documents and tell me if you
5 recognize those?

6 A I do.

7 Q And can you explain to the jury what each one of those
8 are without showing it to them first can you -- did you
9 make those?

10 A I did.

11 Q And exactly what's inside those folders?

12 A This is the laten lifted from the scene off a liquor
13 bottle and the known handprint that I rolled on April
14 the ninth of Mr. Glover's fingerprint.

15 Q And you made those?

16 A Yes, I did.

17 Q And what's in the other folders?

18 A These are the identifying matches that I did from
19 comparing them after enlarging them and putting them on
20 eight by ten I identified the points of interest for
21 verification.

22 Q And those enhancements are in each of those folders?

23 A Correct.

24 Q Have they been changed in anyway since you produced
25 that?

1 A No.

2 Q And that is a blown up photograph of the fingerprint
3 taken from Sharky's?

4 A Correct.

5 Q Compared to a blown up fingerprint that you took from
6 the defendant?

7 A Correct.

8 MS. GARFIELD: Your Honor, at this time I would
9 like to introduce these exhibits into evidence.

10 MR. COOPER: May I just take a quick look at them?

11 THE COURT: Certainly.

12 MR. COOPER: I don't object, Your Honor.

13 THE COURT: All right. This is 34, 35 and 36,
14 solicitor?

15 MS. GARFIELD: Yes, sir.

16 THE COURT: Into evidence State's 34, 35 and 36.

17 MS. GARFIELD: Thank you.

18 THE COURT: Without objection.

19 (State's Exhibits 34, 35 and 36
20 admitted into evidence.)

21 MS. GARFIELD: Thank you.

22 Investigator Nelson, it's probably easier if you
23 step down with the court's permission.

24 THE COURT: You may step down, yes, sir.

25 BY MS. GARFIELD:

1 Q If you would just -- I hand you State's Exhibit Number
2 34 and if you can explain to the jury what you did and
3 how you made this match?

4 A Sure. It's on April the 9th when I -- Mr. Glover down
5 here at the courthouse --

6 Q And you're referring to a fingerprint?

7 A A fingerprint card.

8 MS. GARFIELD: Your Honor, at this time I would
9 like to have the fingerprint card marked.

10 (State's Exhibit 37 marked for
11 identification.)

12 BY MS. GARFIELD:

13 Q Exhibit Number 37, this is a fingerprint card?

14 A Correct.

15 Q And that's the one that you took of the defendant?

16 A Correct.

17 Q It hasn't been changed in anyway?

18 A No.

19 MS. GARFIELD: Your Honor, at this time I would
20 like to introduce State's Exhibit Number 37 into evidence.

21 MR. COOPER: No objection.

22 THE COURT: 37 is in evidence without objection.

23 (State's Exhibit 37 admitted
24 into evidence.)

25 BY MS. GARFIELD:

1 Q Thank you. If you would go ahead and explain to the
2 jury what did for your comparison purposes.

3 A What I did with the liquor from the scene at Sharky's
4 from the liquor bottle and from the known fingerprint
5 that I did I scanned the image in and one to one ratio
6 and then I presented and saved it and I then put it
7 onto a picture, a photograph.

8 Q Now, Investigator, aren't there different kinds of
9 fingerprints like there are different kinds of blood
10 type?

11 A Correct.

12 Q Okay. You can just briefly explain to the jury the
13 different kinds of fingerprints?

14 A Okay, correct. With this particular pattern that we're
15 looking at I identified which would be sufficient to
16 comes in from the right and also goes back out to the
17 right and that with be a right. Just as you can see
18 here comes in from the right and goes out to the left.

19 Q And like blood types are there any particular
20 fingerprints that are rare?

21 A There are one called accidentals fingerprints that
22 comes --

23 COURT REPORTER: Judge, could you ask him to speak
24 up please?

25 BY MS. GARFIELD:

1 A Two to three percent --

2 Q Actually, Investigator --

3 THE COURT: Keep your voice up please.

4 BY MS. GARFIELD:

5 Q Why don't you come over here (indicating) so the court
6 reporter -- thank you?

7 A But there are some rare fingerprints that are referred
8 to as accidentals.

9 Q What kind of finger -- and this is a right?

10 A This is a right --

11 Q Okay. Explain to the jury how you determine this to be
12 a match?

13 A From the -- using the card from the latent on finger
14 number four I was able to positively identify the right
15 ring finger.

16 Q And can you show the jury the characteristics? You
17 might want to refer to your other exhibit.

18 A Right. With that I was able with this right pattern
19 with fingerprint number, finger number four, ring
20 finger I was able to identify certain characteristics
21 of points within the fingerprint which was ended ridges
22 and bifurcations and from here transferred over one
23 time bifurcations (indicating) end in edges.

24 Q How many characteristics were there between the two
25 prints?

1 A 14 points.

2 Q And is there any specific number of characteristics
3 required to make a match?

4 A Here in the United States there's no set standard.

5 Q And you are comfortable with your match in this case?

6 A Yes.

7 Q And in your expert opinion, did you find the print that
8 was lifted from Sharky's to match the print taken from
9 the defendant?

10 A Yes.

11 Q And can you go to your next exhibit to show the jury
12 what that entails?

13 A This is to further my verifications I charted it. I
14 presented it showing where exactly the ridges and
15 bifurcations start from -- around 14.

16 MS. GARFIELD: Your Honor, at this time I would
17 like to publish these documents to the jury.

18 THE COURT: Certainly.

19 MS. GARFIELD: Please publish these exhibits to
20 the jury.

21 BY MS. GARFIELD:

22 Q Okay. Go ahead and take the stand.

23 A (The witness complies.)

24 Q Investigator Nelson, in your field of work are there
25 any -- do you have any specific guidelines in how many

1 characteristics are necessary to make a match?

2 A No, I don't. If I have three to go with I'm going to
3 go with it.

4 Q And you're comfortable with 14?

5 A Yeah. Yes, yes.

6 Q Is 14 a good number for?

7 A Yes.

8 Q And it's your expert opinion these are matches to the
9 defendant?

10 A Right. Yes, correct.

11 Q Thank you, Investigator Nelson. And you -- oh, I'm
12 sorry. You didn't have anything else to do with the,
13 with the, investigation in this case, correct?

14 A No, just verifying.

15 Q You didn't go to Sharky's? You didn't collect any
16 evidence?

17 A No, I did not.

18 Q You didn't interview any witnesses?

19 A No.

20 Q You were just instructed to compare two prints?

21 A Correct.

22 Q And in your line of work those print comparisons when
23 you make a match are other people in your unit subject
24 to peer review?

25 A Yes.

1 THEREUPON,

2 J.P. WILLIAMS,

3 after having been duly sworn, testified as follows:

4 THE CLERK: Thank you. You may have a seat in the
5 witness stand.

6 DIRECT EXAMINATION

7 BY MS. ALL:

8 Q Good morning, Sergeant Williams, where do you work?

9 A I work at the Columbia Police Department.

10 Q And how long have been with the Columbia Police
11 Department?

12 A A little over 16 years.

13 Q What's your position there now?

14 A I am currently the sergeant over the property crimes
15 investigative unit and the burglary investigative unit.

16 Q And what are your duties; what does that mean?

17 A I'm the -- sergeant is the rank of where you become a
18 supervisor at the police department. When I was
19 promoted to sergeant I got moved to the street for a
20 number of years and then I moved back to investigation
21 because I was originally an investigator. I was
22 working burglaries and working property crimes when I
23 was an investigator.

24 Q And what was your position on June 28th, 2011?

25 A I was an investigator at that point and I worked mainly

1 burglaries.

2 Q Did you have any specialties or training at that point
3 and up to now?

4 A Yeah. I -- I don't remember all of the specific
5 classes I've gone to. I've gone to interview,
6 interrogations classes. I've gone to investigative
7 classes through the South Carolina Criminal Justice
8 Academy, variation seminars circuit cases just about
9 ten years I've been in investigations.

10 Q Were you involved in your capacity as an investigator
11 in the incident at Sharky's?

12 A Yes, I was.

13 Q In what city and county is Sharky's located?

14 A It's in the City of Columbia, Richland County.

15 Q And how did you become to be involved in the incident
16 at Sharky's?

17 A When I was investigator I would get assigned cases.
18 You get assigned cases from reports that officers take
19 on the street and also get assigned cases that are
20 active where the street officer go and think they found
21 a possible suspect in the case. In this case that was
22 what it was. The street officer had reported a
23 burglary earlier they had gotten out to. They
24 identified a suspect in that burglary so they called my
25 then sergeant or supervisor at that time it was

1 Sergeant -- and he called me on the phone because I was
2 on my way into the work and said, Can you go and handle
3 this for me? So I responded out to Millwood and Shore
4 Street where the defendant, Mr. Glover, was at and the
5 other parole officers were involved were at.

6 Q And can you describe to us just a little bit so that we
7 understand what an investigator's job is, what their
8 role is and what the Columbia Police Department when
9 they're called in.

10 A Right. And there's lots of different scenarios
11 sceneries that could make place but in this specific
12 scenario what takes place as a reporting officer or a
13 parole officer at the crime scene, patrol cars and
14 uniform when people call in for police help they call
15 to our 911 dispatch and they dispatch an appropriate
16 unit according to the region and according to what area
17 that officer may ride.

18 A parole unit or uniformed officer is actually
19 sent to the location first. They determine what if any
20 crime has taken place. They document that crime
21 through a report and then once that crime has been
22 documented it gets turned over to investigators or an
23 investigative unit depending on what type of crime it
24 is, if there's leads, if there's not leads there's lots
25 of different scenarios that could take place at that

1 time.

2 Q So, when you arrived at the arrest location what had
3 happened up to that point?

4 A Through my investigation I determined what had
5 happened. We had officers that responded to the scene
6 like I mentioned earlier. They were dispatched through
7 our 911, responded to the scene, met with the manager
8 who was on the scene who give them basic details of
9 what had taken place. What he thought was stolen, that
10 someone had entered his business. And that he observed
11 the video of someone entering the business and taking
12 items from inside the business. All of that was
13 relayed to the reporting officer and they -- their
14 responsibility is to document that on the report.

15 Various different officers viewed the video. I
16 was told by my sergeant through my investigation and
17 also learned through my investigation that they had
18 observed an individual on the video that was
19 identifiable and that they thought they had gotten out
20 with that individual at Millwood and Shore which is
21 where my then sergeant sent me to the location where
22 Mr. Glove, the defendant, was at and where the officers
23 who actually observed him and thought he was the person
24 in the video were at.

25 Q Did you make contact with the defendant on the scene?

1 A I did.

2 Q Okay. I'm going to hand you what's been premarked
3 State's Exhibit 25, do you recognize this?

4 A I do.

5 Q Have you seen it before?

6 A I have.

7 Q Does it fairly and accurately depict what's
8 photographed?

9 A Yes.

10 MS. ALL: Your Honor, at this time state moves
11 State's Number 25 into evidence.

12 MR. COOPER: Your Honor, as to this exhibit we
13 renew our previous objections to this.

14 THE COURT: All right. State's 25 is in evidence
15 subject to defense previous objections and my previous
16 rulings.

17 (State's Exhibit 25 admitted
18 into evidence.)

19 THE COURT: Is affirmed.

20 MR. COOPER: Yes, sir.

21 MS. ALL: Your Honor, your permission to publish
22 to the jury.

23 THE COURT: Yes, ma'am.

24 MS. ALL: Thank you.

25 BY MS. ALL:

1 Q Sergeant Williams, what's depicted in this photograph?

2 A In this photograph is the rear or headquarters. After
3 I left the scene where Mr. Glover was at I had
4 Investigator Kermit Scott take a -- come to our
5 headquarters because he was at the crime scene at the
6 time.

7 Once he finished up a Sharky's he responded to
8 headquarter at my request because through all of the
9 cases I've worked I found out several things that
10 people change over time even over short period of time.
11 They look different the day that you arrest them than
12 they do when they up here in court if they come to
13 court. People gain weight. They loose weight. People
14 will grow their hair out. They will shave their hair
15 off. They do different things to make themselves look
16 different so when they appear in court, we have video
17 evidence, and in my experience, you know, even if it's
18 intentional or unintentional people's looks change over
19 time. This has been, if I remember correctly, close to
20 a year since the incident took place. What's relevant
21 about this picture and why I that this picture taken
22 which I do in all my cases when we have any type of
23 video evidence, I want the jury to be able to see what
24 the person looked like the day that he was seen. The
25 day that the officer said this is the person on the

1 video. The day that I view the video and said this is
2 the person that's in the video because when you look at
3 someone after the fact and they've changed they may not
4 look exactly the same as in the video. This also gives
5 you an interpretation of what the person was wearing
6 and very specifically how the clothing fit, how their
7 clothing hung on them. A white T-shirt on someone
8 who's very thin with the pocket. Your blue jeans, they
9 are very loosely hung. A hat that fits large on their
10 head there goes over your ears. The high cheek bones
11 on the defendant in this case. A lot of these things
12 have changed, depending on what clothings you have on,
13 how much weight you have on at that time.

14 One of the specific reasons why I got this was in
15 the video these exotic clothing; the way it hung on the
16 person's body; the stance that the individual was in is
17 the -- with was the same type of stance the person was
18 standing and working in the video. The hat is the
19 exact same hat. It fits the say way on the defendant's
20 head in this picture as it did in the video. Different
21 parts of the video you can see the real high check
22 bones for a person that has less weight on them when
23 their cheek bones stick out. It's very important, it's
24 in the video when you go from by from when the person
25 in the video comes up directly into the video the hat

1 covers to about this portion (indications) of the head
2 and you can see from right below the eyebrow down and
3 one of those --

4 MR. COOPER: Your Honor, I object. This -- he's
5 coming into an, he been asked a question.

6 THE COURT: I think he's still responded to the
7 question as to the -- if, the --

8 MR. COOPER: Yes, sir.

9 THE COURT: You may continue.

10 MR. COOPER: All right. Thank you, sir.

11 BY MS. ALL:

12 A When the had is pulled down as, you know, as it was in
13 the video and the camera is up high looking down
14 there's several frame-by-frame in there you can see
15 right below the eye where the cheekbones were high up
16 on the person but you can also see you may not be able
17 to see from this distance but you can see when you look
18 at the picture when it's turned into evidence you can
19 see the high distinctive cheekbones on the defendant in
20 this picture when he had less weight on him at the time
21 of the arrest. All of those things combined when
22 you're watching the video is why I had this picture
23 taken because to me it's very relevant to see the
24 person on the day of the arrest. That's very relevant
25 to me.

1 Again, just through all of the cases I've had
2 people change. They don't look the same as you will
3 report as they did on the day of the incident and it's
4 very important for me for, for the jury and when you're
5 on cases to understand what I was looking at the day
6 that I observed the defendant and the day that I
7 observed the video and not the way the defendant looks
8 today.

9 Q Does that picture reflect what the defendant looked
10 like exactly what he looked like when you made contact
11 with him on Millwood?

12 A Yes, ma'am.

13 Q Do you have a -- just an estimate about how much longer
14 after the incident had occurred judging by the
15 timestamp on the video it was that you made contact
16 with him on Millwood?

17 A If I remember correctly one of the main timestamps on
18 the video was 7:20, if that's correct without reviewing
19 it. This would have been -- I'd be fully speculating
20 it was at whatever point I cleared Short and Millwood.
21 I have to speculate. I don't document those times
22 down.

23 Q Was it the same day?

24 A Yes. It was the same day and it was as soon as we
25 could get a picture of him that's when I took the

1 picture. Once I responded to the scene and reviewed
2 the video and made the determination that we were going
3 to place him under arrest that was the next thing that
4 I did was have him -- or actually I talked to Kermit
5 Scott and asked him if he was available and he said he
6 was finishing up on the scene. I asked him to meet me
7 at headquarters and he drove to headquarters and the
8 officers drove the defendant to headquarters and his
9 picture was taken.

10 Q After you spoke with the officers that were on scene
11 where the defendant had been detained what did you --
12 and were briefed did you make contact with the
13 defendant?

14 A I did.

15 Q Can you describe the contact that you made?

16 A As I stated earlier when I was called by my sergeant to
17 respond to the scene at the time. I arrived on scene.
18 Mr. Glover was in the back of the parole car at that
19 time dressed and appearing the same way he does in this
20 picture. I don't remember exactly at what point at one
21 point he was asked to step out of the vehicle so I
22 could observe Mr. Glover from head, from head, to toe
23 not sitting down.

24 Thank you.

25 (Counsel handed the witness a

1 cup of water.)

2 So, I could see him from head-to-toe, you know, to
3 see his mannerism, to see his demeanor, see how his
4 clothes fitting him standing up because that was the
5 way he was in the video.

6 Q Did you get to see the defendant walk?

7 A Yes, I did. At one point, when he was taken out of the
8 car I believe he said he was hot. The officer was
9 offered him water, allowed him out of the car, remove
10 his handcuffs from the back to the front because it was
11 a hot day that day. Again they gave him water, you
12 know, removed his handcuffs around so it would be a
13 little bit more comfortable because he had been sitting
14 there and I observed him walk. I observed him stand.
15 I spoke with him in the back of the parole car.

16 Q And at this point, had you seen the video yet?

17 A No, I had not.

18 Q Okay. So, can you tell us what you said to him and
19 what he said back?

20 A Right. Originally when I arrived on scene the first
21 thing I kind of -- I have a series of things that I do
22 that I found, you know, to make my job a little easier
23 and also get me to the facts a little quicker through
24 my years of experience. First thing I always do is go
25 and speak to whatever the officer were out with.

1 That's the first thing I do. I explain to them I'm
2 Investigator Williams with the Columbia Police
3 Department this is why I'm here today. This is why you
4 have been stopped, if the officers haven't told you. I
5 normally make a determination as if they've been
6 mirandized beforehand —

7 MR. COOPER: Your Honor, I object. May we, may
8 we, approach real quick, Your Honor?

9 THE COURT: Sure. Certainly.

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

14 BY MS. ALL:

15 Q Go ahead, Sergeant Williams with what you said to the
16 defendant.

17 A I spoke to the defendant. I explained to him that he
18 had a right —

19 MR. COOPER: Yes, Your Honor I renew my previous
20 objection.

21 THE COURT: Yeah. Just move along, solicitor, ask
22 you next question.

23 BY MS. ALL:

24 Q Okay. What was the defendant's general demeanor at the
25 scene without specifically anything that he said?

1 A His general demeanor was what I could classify as --
2 uncooperative. He basically wouldn't speak to me,
3 wouldn't --

4 MR. COOPER: I object, Your Honor.

5 THE COURT: Yes. What's the -- step up here
6 please.

7 (Whereupon, a bench conference
8 was held off the record, in the
9 presence of the jury, but out of
10 the hearing of the jury.)

11 All right, solicitor, you may ask your next
12 question.

13 MS. ALL: Thank you, Your Honor.

14 THE COURT: I sustain the objection.

15 BY MS. ALL:

16 Q Sergeant Williams, after you've been briefed by the
17 officers and assessed the status of the scene at the
18 detainment location, where did you go next?

19 A After briefly speaking to the defendant I spoke to the
20 officers again to make sure I had what they were
21 telling me correct and straight. The officers on the
22 scene and through my investigations speaking to them
23 they stated to me that this was the individual they had
24 observed on the video. I asked them specifically have
25 you reviewed the video they said yes -- some said yes.

1 Some said no. The ones that had viewed the -- reviewed
2 the video said this is the individual that was in the
3 video. So, I --

4 Q Did you arrest him at that time?

5 A No, I didn't arrest him at that time. What ends up
6 happening is, you know, I trust the police officers
7 completely but when my name goes on something I want to
8 see it, feel it, hear it myself. I don't want to make
9 that determination based upon on what someone else
10 says. So, left the scene and went to our south region,
11 headquarters, which at that time it was the same one it
12 is now on Millwood which is three, maybe, four minutes
13 from the location he was at. I was told that the
14 officer there had a copy of the video. So, I wanted to
15 see it before I made a final determination as to
16 whether or not I wanted to press charges or put my name
17 on the warrant for the defendant.

18 So, I quickly went to that location which was a
19 couple minutes ago away. I reviewed the video with
20 that officer. I reviewed just a couple sections of the
21 video and it was apprehend to me that if the defendant,
22 Mr. Glover, who was there that day was the same person
23 was on the video. I made that from a totality of
24 deductions from a lot of things that I discussed with
25 you earlier the way the clothing fit, the type of

1 clothing he had on, his hat, the way his hat fit on his
2 head, from the facial features that I could see on the
3 video, from distinctive lymph that the defendant has.
4 He's got a very distinctive stance, the way he holds
5 his arms, all of that to me the totality of all of that
6 taking place told me that that's the same person that
7 was in the video and that complied with him on the same
8 bike that I saw in the video and being not far from the
9 scene. All of those tally of all of those
10 circumstances said to me that this was the guy that was
11 in the video.

12 Q Can you describe the circumstances under which you
13 viewed the video as opposed to those who were able to
14 view it at Sharky's and your level concentration?

15 A The original time I watched the video I was in the
16 office of one of the officers who had obtained a copy
17 of it. And so it was just him and I in the office
18 nice, quiet environment. I watched the video. I
19 watched the scenes that I wanted to view. He pulled up
20 the ones where that defendant was actually in the video
21 as all of you saw earlier there's lots of sections
22 where he's not in the video. And so he kind of
23 prompted up the areas where the defendant was in the
24 video and there were several different sections that
25 showed the characteristics which I described to you and

1 I reviewed those, you know, rewinded them, played them
2 back, looked at what I wanted to look at. Concentrated
3 on the areas that I wanted to concentrate on and then
4 made my decision from there.

5 Q Do you have experience in your capacity as law
6 enforcement in observing people in videos and
7 photographs?

8 A Yes. Through my, through my, years as an investigator
9 in burglary I've done numerous cases in nature and more
10 prevalent I was assigned to our organized crime
11 narcotics division or unit for an extended period of
12 time it was six or seven years somewhere around that
13 time frame which also falls under investigation
14 division. That's essentially -- I will say that's
15 probably 60, 70 percent of our job getting video on
16 people, identifying people in the video. So over a
17 number of probably close to a decade that's what I've
18 done. I've viewed video, picked out specific
19 characteristics about people, their mannerisms, their
20 stance. As you well know anyone that has kids or
21 husband, wives if you see them walking in a crowd you
22 can identify them without looking at their face just by
23 the way they walk, the way they stand, the way they
24 hold their head, they way their arms hang. When you
25 get familiar with someone like that or when you do this

1 over a period of time you start to pick those type of
2 things out with various people and concentrate on those
3 specific details and on that date that was what I was
4 doing when I watched the video.

5 Q I'm going to hand you what's been previously marked
6 State's Exhibit Number 28, do you recognize these
7 items?

8 A Is it okay for me to pull them out?

9 Q Yes, please. Pull them out. Handle them whatever you
10 need to do.

11 MR. COOPER: We going to have to -- I object that.
12 They're not in evidence yet so I don't think they should go
13 before the jury until they're properly --

14 THE COURT: You looked down in there --

15 THE WITNESS: Yes, sir.

16 THE COURT: Don't, don't, display them until
17 they're introduced.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 BY MS. ALL:

21 A According to the evidence tag on the bag and according
22 to what I can see inside the bag these are the same
23 items that Mr. Glover was wearing that day.

24 Q Have you seen them before?

25 A Yes.

1 Q Have they been materially altered or substantially
2 changed in anyway?

3 A Not from what I can tell.

4 MS. ALL: Your Honor, at this time the state moves
5 State's Exhibit Number 25 into evidence.

6 MR. COOPER: Your Honor, I don't think proper
7 chain has been established for the purpose of evidence yet.

8 THE COURT: All right. 25 is in evidence without
9 objection State versus Kahon, K-A-H-O-N and that line of
10 cases.

11 MR. COOPER: Yes, sir.

12 MS. ALL: Thank you, Your Honor. Permission to
13 publish to the jury?

14 THE COURT: You may publish them.

15 (State's Exhibit 25 admitted
16 into evidence.)

17 MS. ALL: Thank you.

18 BY MS. ALL:

19 Q Sergeant Williams, will you please pull out these items
20 of clothing, explain their relevance in the video and
21 on the arrest seen and what you were able to observe
22 about each item.

23 A The last -- the first thing I will go over is the belt
24 as you can see in this picture you will be able to view
25 later you can't see the belt so it's really of no

1 evidentiary nature to me because it's just a long shirt
2 over the pants. I didn't see the belt in the video and
3 it's not in the picture. The second item were the
4 shoes. The shoes I really couldn't identify on the
5 video. I didn't observe those. I don't remember these
6 being shown in the video but I do remember him having
7 them on, on, that date.

8 MS. ALL: And just to clarify, for the record, I'm
9 sorry, that's exhibit 28.

10 THE COURT: Okay.

11 MS. ALL: Not 25.

12 BY MS. ALL:

13 A The blue jeans are the same that he had on that day and
14 these are the ones that were removed from him
15 (indicating.) Kind of large, a little wrinkled up now.
16 But kind of large and hung real loose on the defendant
17 as depicted in the video.

18 The T-shirt (indicating) it's actually turned
19 inside out but this is actually a pocket T which you
20 can see in the video again kind of over-sized loose
21 hanging shirt that the defendant had on. And you'll be
22 able to review the picture once they get it turned over
23 to you the big oversized blue shirt on the defendant
24 with the pocket on the front which is what I noticed on
25 it. And last, which is one of the most prevalent

1 things I've noticed was the hat, the fitted hat
2 oversized on the defendant as you see in the video and
3 on the picture. The logo on the front which depicts
4 the what is it the New York Yankees I believe it is
5 it's the N and a Y. You can see that very apparent in
6 the video when the defendant walks up to the camera and
7 it's pulled down just over his eyes (indicating) near
8 the Red Bull section on the video that was one of the
9 things you got the most close up view of.

10 Q And from where were these items recovered?

11 A These items were recovered from the defendant the day
12 of the incident.

13 Q Okay. Are those the same clothing items you saw in the
14 video?

15 A Yes.

16 Q Okay. I'm going to bring to your attention what's
17 entered into evidence as State's Exhibit 29 which is
18 this bicycle. Do you recognize this bicycle?

19 A Yes, I do.

20 Q Where had you seen it before?

21 A This was the same bicycle that appeared to be the same
22 one that was on the video and it was the same one that
23 the defendant was riding that day.

24 Q Okay. We all watched the video, if, if, you could talk
25 about the hat a little bit, is there a time when the

1 hat may have been a different color in the video?

2 A Yes. At the section in one of the videos that was shown
3 to the jury earlier there was a, there was a, section
4 on the video where there was a Red Bull sign behind the
5 counter you could see the D and then the bull in the
6 video which is one of the things I noticed which is
7 relevant to me. The outside video which is when the
8 person on the video was riding the bike down the
9 sidewalk I think we viewed him in the video here
10 (indicating) in this direction (indicating) in front of
11 Sharky's and then the very last video that you reviewed
12 was of the person on the bike going down the sidewalk
13 toward the camera which is the last one they showed.
14 If you recall from that video that was outside. It was
15 lit by the sun. It was a color camera that was lit by
16 the sun and you could see the details that the -- the
17 skin tone of the person in the video. The color of the
18 hat. The color of the shirt. The color of the shoes.
19 The color of the bike. The color of the bike wasn't as
20 obvious by watching the video but when you slow it down
21 frame-by-frame there's several frames on there that do
22 show the color of the bike and some of the same
23 characteristics of the bike.

24 The difference between that and at least one of
25 the cameras that I recall from the inside is -- the

1 problem -- all of my dealings with surveillance
2 equipment, installed it used it, equip it -- options
3 and things of the nature and through my training and
4 experience I've learned I might not be an expert on
5 that type of stuff but I've learned various things from
6 watching these types of videos. One is that when you
7 use an IR light --

8 MR. COOPER: I object to this testimony, Your
9 Honor.

10 THE COURT: All right. What's the basis of your
11 objection?

12 MR. COOPER: The objection is he's -- it is just
13 pure speculation on his part. He's just admitted that he's
14 not a expert in this and I don't think --

15 THE COURT: All right. You can lay the foundation
16 then, solicitor.

17 MS. ALL: That's fine, Your Honor. We'll strike.

18 BY MS. ALL:

19 Q Did you understand there to be a reason why sometimes
20 the defendant's hat and skin tone might have appeared
21 different in the video that was taken in the dark?

22 A Yes.

23 Q Okay. Did the defendant have towel when he was stopped
24 at Millwood?

25 A I don't believe he did but I'm 100 percent on that.

1 Q Did he have a bucket on him?

2 A No, he did not.

3 Q Did he have 45 packs of cigarettes on him?

4 A No.

5 Q Was he carrying a book bag which has been entered went
6 into evidence which is this blue book bag, State's
7 Exhibit 26, did you ever see that item in the video?

8 A No, I did not.

9 Q Why did the absence or presences of these items not
10 deter your judgment that the defendant was, in fact,
11 the suspect in the video?

12 A Just the fact that he had some different items on him
13 then what was in the video there was an amount of time
14 from the time the actual crime took place to the time
15 it was viewed, reported and he was stopped and I
16 arrived on the scene during that time frame from
17 watching the video you could observe the defendant
18 putting what I saw to be large amounts of cans and
19 bottles and things of that nature in the bucket that's
20 heavy. I wouldn't expect and through my experience in
21 dealing with burglary cases things that are heavy
22 people do not carry for very long. From my experience
23 from all the burglary cases I've worked anytime someone
24 has something very heavy they normally put it somewhere
25 near the crime scene and come back and get it. That's

1 pretty much on every case that I've work unless the
2 person has a vehicle or -- loaded it into a vehicle and
3 taken off.

4 I would have a -- I would have to assume that in
5 this specific case through all of the experiences I've
6 had that that taken place that that could have taken
7 place in this specific instance and I know that I
8 wouldn't be ridding on a bike with all of that weight
9 holding on a handlebar ridding around through the
10 neighborhood number one because it's evidence from my
11 crime. Number two it's going to be awkward to ride a
12 bike with a large amount of weight pulling you to one
13 side for anyone who's ever ridden a bike before.

14 Q After watching the video were you confident that it was
15 the defendant?

16 A Yes.

17 Q So, what did you do after watching the surveillance
18 footage at the headquarters?

19 A At our south region when I reviewed the actual video
20 evidence made the determination myself that that was
21 the same person that was in the video that they had
22 stopped on the side of the street. Again, from the
23 totality of all the circumstances that I explained to
24 you I went ahead and made the determination. To give
25 you a little bit of background, in patrol when those

1 officers arrived on the scene their responsible again
2 of taking the report, working it to a point that they
3 have now been working it. Officers have different
4 levels of experience and level of training based upon
5 what position they are in and what position they hold.
6 Parole officers wouldn't normally work a burglary case
7 because they don't have the level of experience and
8 training that an Investigator has to work those types
9 of cases. It's a more serious crime so they wouldn't
10 take a case like that. They would call an investigator
11 to come take it.

12 With that added responsibility put on me when I
13 arrived at the scene I want to make absolute sure what
14 I do before I make a decision to tell someone to arrest
15 someone else from I make absolute sure of the things I
16 see and the things that I observe took place. So, once
17 I observed and made the identification that this was
18 the same person that was in the video I called back to
19 the patrol officer on the scene or it-I believe it was
20 the supervisor on the scene and told them to go ahead
21 and place him under arrest at that time because I told
22 them not to arrest him until I viewed the video.

23 And then once he was placed under arrest at that
24 time that's when I checked with Kermit Scott asked him
25 if he was available, was he still on the scene at

1 Sharky's? He stated, yes. The defendant and the --
2 Kermit Scott met me at headquarters at the rear at
3 the -- where you see in the pictures so I could get
4 pictures of the defendant.

5 Q Why did you ask Kermit to meet you there?

6 A He was the original crime scene investigator and so I
7 wanted to instead of getting multiple different people
8 I wanted to keep the same person who processed the
9 crime scene, take the pictures of the defendant.

10 Q If I can correct myself, Officer Scott, I'm sorry. Had
11 Officer Scott been on the scene at Sharky's?

12 A Yes.

13 Q And where was he while the defendant was being detained
14 at Millwood?

15 A To my knowledge, he was at the scene for most of the
16 time. I'm not sure the exact time he arrived but when
17 I called and checked that's where he was at.

18 Q Okay. Where did y'all go next?

19 A Once they arrived at headquarters and we retrieved the
20 pictures which I thought were very prevalent to the case
21 at that point he was transported to Richland County
22 Detention Center.

23 Q Okay. Can you describe a little bit more what happened
24 at headquarters?

25 A When we arrived at headquarters again, one of the

1 things I want to do is get a head-to-toe picture of the
2 person to identify those specific characteristics that
3 I observed in the video. And I don't recall the exact
4 time at some point while we were at headquarters that's
5 when Kermit Scott informed me that he had went ahead
6 and did a print comparison and excuse me if I use the
7 inappropriate language because I'm not a CSI person. I
8 don't, I don't, know anything about fingerprints.

9 He informed me that this -- these fingerprints
10 that he had were the same as the ones that the
11 defendant had on file at that time.

12 Q Did you ever go to Sharky's?

13 A Number one, I've been to Sharky's before. I'm familiar
14 with the layout, I know where it's at. I've been
15 inside of. Number two, when I arrived on scene and
16 once I observed the video I observed the defendant. It
17 was that clear to me that that was the defendant that
18 was on the scene. To my knowledge and after further --
19 it become true that there were no other witnesses for
20 me to interview. There was no other evidence for me to
21 gather. Kermit Scott had already gathered all the
22 evidence at the scene. There was really nothing else
23 for me to do on this case. I had the evidence I had.
24 I had the fingerprints already been admitted into
25 evidence.

1 Q Yes, sir.

2 A I have the fingerprint off of a bottle that was stored
3 in an employee area that no one has access to but
4 employees.

5 I had the person on the video which I thought was
6 the defendant moving local bottles to different
7 locations in the video. Where those bottles were moved
8 in the video was where that bottle was when the Kermit
9 Scott actually took the print off of it. A print on
10 the bottle is located in the employee area that normal
11 people don't have access to a bottle that I observe a
12 person on the video which I thought to be the
13 defendant, Mr. Glover, moving from one location to
14 another--

15 MR. COOPER: Your Honor, I object, this is
16 nonresponsive.

17 BY MS. ALL:

18 Q Well, just, I'm going to hand you what's been entered
19 into evidence as State's Exhibits 13 and 18. Could you
20 describe what's in those pictures and their importance
21 to you in observing the video?

22 A Are we done with the evidence?

23 Q Yes.

24 A Okay. The -- what you probable recognize and what I
25 always remember in the video and if you can see it.

1 I'm sorry it's so small. This wall (indicating) and
2 this box (indicating) if you remember from the video
3 there was a book on the floor from behind the little
4 half way which is where the person in the video kept
5 walking to and putting items in the box. This is the
6 actual box and it was right below this wall. And if
7 you remember the person in the video kept going and
8 getting items from behind the bar and placing them in
9 various locations right where that box was at and right
10 where the half wall is at. That the items I was
11 referring to and that's the bottle I was referring to
12 that the print came off of and --

13 Q What did you observe happened to that bottle in the
14 video?

15 A I -- in the video as all of you saw you can't read a
16 label on the video. What I base my determination on is
17 where multiple bottles were being taken from the
18 employee area to this location being placed in this box
19 being placed at the bucket that you saw on the video.
20 These items were not there before the person in the
21 video moved them to this location. They were there
22 once that person moved them and they were there once
23 this person left. They were there once Kermit Scott
24 got to the scene and once the manager got to the scene
25 it was the same stuff you observed in the video being

1 moved by the person in the video.

2 Q And where were the prints recovered from?

3 A The prints were recovered from the actual bottle that
4 was sitting there.

5 Q And in your through analysis of the video did you see
6 anybody else touch that bottle?

7 A No.

8 Q I'm going to hand you what's been entered into evidence
9 as State's Exhibit 7 seven, if you could describe to
10 the jury what this shows?

11 A This is a picture that you've already seen before.

12 This is the cigarette area that the cigarettes were
13 taken out from. This was behind the bar (indicating),
14 if you remember the video which I was referring to
15 earlier that was bright, the camera that was sitting
16 right here (indicating) and if you he was right
17 down that partially that Red Bull sign, you saw the
18 person in the video kept walking back and forth.

19 Walking toward the video -- walking toward the camera
20 and walking away from the camera, taking items from
21 down here (indicating) walking out and then going to
22 that half way and placing items there. This location
23 is where all the liquor bottles are stored (indicating)
24 which is what was taken to this location and further
25 down to -- these were the items where they were removed

1 and taken to the half wall which you observed in the
2 video.

3 Q Did you observe the defendant -- or could you describe
4 where the camera would be in prospective of that
5 picture and where you saw the defendant --

6 MR. COOPER: Objection reference to the defendant.

7 BY MS. ALL:

8 Q Could you describe where the suspect in the video was
9 standing and where the camera would be just so we all
10 have prospective.

11 A Yeah. The camera would actually be here (indicating)
12 looking down in between the bar and the cabinetry where
13 the alcohol and things like that were stored. So,
14 where a person walks behind the bar that would be
15 angles. So, the camera would have been sitting here
16 (indicating) looking down the bar. If you remember it
17 was obscured just a little bit when he walked out down
18 here (indicating) it was because you could see that red
19 bull or what I know to be a red bull I think you see
20 the D and then the bull on the video camera from
21 looking at an angle like this. And you could see the
22 person in the video walk by the camera, kind of look
23 up. Walk by this red bull. Walking back with the head
24 down you can see just right below the eyes and down
25 that was the camera angle that they're referring to in

1 this actual picture.

2 Q Did the suspect in the video carry cigarette away from
3 that area?

4 A Yes.

5 Q Can you do the same with what's been entered into
6 evidence as State's Exhibit 9 please, showing the till?

7 A This is further down that same bar area again. As I
8 was referring to in this picture (indicating) these
9 don't marry up because they're not side-by-side. The
10 camera is here. This is where the person in the video
11 was closest to the camera (indicating). This is the
12 location that the person in the video was walking in
13 between the bar that you couldn't see quite as well
14 when they were walking away from the camera when they
15 were removing things from the cash register from the
16 till as the solicitor said and removing different
17 various items liquor bottles, things of that nature
18 from this area. You couldn't see it really clear on
19 the video because this was partially blocked by this
20 (indicating) red bull container right here (indicating)
21 but you can see once that person in the video would
22 walk by when they came by you could see the hat very
23 clearly and see the face right below the eyes very
24 clearly.

25 Q Okay. Sergeant Williams, did you ever watch the video

1 after you had watched it at south region?

2 A Yes, I did.

3 Q When did you watch it again?

4 A I actually called Mr. Shealy who is one of the people
5 that's responsible for the video cameras down in Five
6 Points. I'm sure everybody has heard about him on the
7 news and all that type stuff. I give him a phone call
8 and asked for a direct copy of the video from him so
9 there would be no discrepancy as to where the video
10 came from. I called him. He had his daughter who is
11 also his employee deliver a copy personally to me at
12 headquarters that very day. I observed the video that
13 very day on my computer --

14 Q Well --

15 A Through his software like y'all did.

16 Q Okay. Why did you watch it again? Why did you review
17 it again?

18 A Because at the time I didn't want to detain Mr. Glover
19 any more than possible if he was not the person that we
20 were going to arrest for the crime. So, I reviewed the
21 video enough for me to identify the person or who I
22 felt was the defendant at the time. Then when I got
23 back to headquarters I wanted to review frame-by-frame
24 picking out very small discrepancies I explained to you
25 before with the high cheekbones. There's only a couple

1 of frames if you go through that you could see the
2 color of the bike. Different points as the light hits
3 it as the bike is moving across you can go
4 frame-by-frame on that video. It's fairly extensive
5 time and very time consuming to do that type of stuff
6 so I sat there and did that in my office later just to
7 verify the evidence that we had and look at the actual
8 still frames just to reconfirm what I already knew.

9 Q Were you left with any doubt that the burglar in the
10 video was Tyris Glover?

11 A No, I was not.

12 Q I'm sure the jury can notice that you're doing this
13 without any notes. Did you generate any notes when you
14 investigated this?

15 A No, I did not.

16 Q Why is that?

17 A As I explained to you earlier, when there's --
18 different people have different roles within the police
19 department. Parole officers are paroling. The parole
20 officers' role is to go to the scene of the crime,
21 report the crime, put the information in that report.
22 And then once that crime has been documented by a
23 reporting officer or patrolman at that point an
24 investigator gets assigned to it for follow up. In
25 this case specific case in my opinion it was very --

1 there was an overwhelming amount of evidence and there
2 was nothing else to follow up on and for me to take
3 case notes on. Everything that was done was collected
4 by Kermit Scott or it was obtained on the video. There
5 was no other evidence for me to obtain. There was no
6 one else for me to speak to so everything had been
7 done. In my opinion it was kind of an open and shut
8 case. Once I made my determination of all of these
9 facts there's really nothing else for me to
10 investigate.

11 Sometimes when you're called to the scene as an
12 investigator you may have a person who the patrolman
13 suspects or a person of interest to the Investigator.
14 At that point that person would have been released. I
15 would follow up. I would pull the person in for an
16 interview. I would, you know, try to in those
17 circumstances obtain different witnesses that saw him.
18 All of those type things comes into play and I would do
19 case notes on it. I wouldn't do a report but I would
20 do case notes on it. In this specific case pretty much
21 it was kind of handed to me with all of the evidence
22 all right in tact and what was there was there and
23 there was nothing else for me to do.

24 Q Do you recognize Tyris Glover in the courtroom today?

25 A I do.

1 Q Could you please point him out?

2 A The defendant in the white shirt sitting to my left
3 (indicating).

4 Q Thank you.

5 MS. ALL: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. ALL: Your Honor, let the record reflect that
8 Sergeant Williams did point out the defendant seated at the
9 table with his defense counsel.

10 BY MS. ALL:

11 Q Please answer any questions that Mr. Cooper has for
12 you.

13 THE COURT: Thank you, solicitor.

14 Mr. Cooper.

15 MR. COOPER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. COOPER:

18 Q You just told Ms. All that you considered this to be a
19 open and shut case, right?

20 A Yes. Just general terminology, yes.

21 Q Well, that's -- those were the words that you used,
22 right?

23 A Yes, sir. That's what I'm saying that was general
24 terminology.

25 Q You said open and shut?

1 THE COURT: All right. Madame Clerk, if you would
2 publish our verdict please.

3 THE CLERK: Thank you, Your Honor.

4 County of Richland County, State of South Carolina
5 versus Tyris Bernard Glover on Indictment Number
6 2012-GS-40-0857, as to larceny we the jury unanimously find
7 the defendant guilty.

8 On Indictment Number 2012-GS-40-0854 as to
9 burglary second degree, we the jury unanimously find the
10 defendant guilty signed by the foreperson dated 4/27/12.

11 Madame Forelady, is this your verdict and the
12 verdict of the entire jury?

13 MADAME FORELADY: It is.

14 THE COURT: Thank you.

15 Thank you. Anything further for the jury from the
16 state?

17 MS. ALL: Nothing, Your Honor.

18 THE COURT: From the defense.

19 MR. MACNEALY: Your Honor, we would like the
20 polling the jury.

21 THE COURT: All right. Clerk would you explain
22 that procedure to the jury and then poll the jury?

23 THE CLERK: Yes, Your Honor.

24 Madame Forelady, ladies and gentleman of the jury,
25 I'm going to call each of your numbers. I'm going to ask

1 any motions?

2 MR. MACNEALY: Yeah, Your Honor, just one.

3 Defense makes a motion for a new trial, that argument, that
4 basis for that in our opinion the suppression motion that we
5 made pretrial and the admittance of the cigarettes in
6 particular we feel like our stance is still that probable
7 cause was not present at that point when the officer stopped
8 Mr. Glover. We think that, in our opinion, that most they
9 had was reasonable suspicion and for officer safety and in
10 plain view of contraband.

11 And addition to that, Your Honor, the pictures and
12 even though part of your ruling limited to one picture, Your
13 Honor, you know, that was put forth and as evidence and we
14 feel like that was a given that he was detained at that time
15 at the police headquarters that was a prejudicial photo.

16 And finally, Your Honor, just the speedy
17 deliberations I think about 35 minutes, 39 minutes, maybe,
18 and the argument would be, perhaps, not a full examination
19 of the evidence, Your Honor. That the basis for the new
20 trial. Thank you.

21 THE COURT: All right. You refer to plain view
22 contraband, what were you referring to Mr. Macnealy?

23 MR. MACNEALY: I'm sorry. Yeah, the -- in the
24 case law again in the pretrial the -- what allows for under
25 the Terry Frisk is if there's contraband in plain view,

1 known contraband. At that point all we -- all the officer
2 saw was four packs of cigarettes and that was the first
3 testimony there was a match and then he clarified that it
4 wasn't the same brand. So, we're talking about four packs
5 that could have been any packs from any variety of places
6 and throughout his testimony we never heard when the 45
7 packs went. I would argue all those four packs are, Your
8 Honor, are four packs of cigarettes and they don't qualify
9 as contraband within the case law under the plain view
10 doctrine. The Terry Frisk would allow him assuming, Your
11 Honor, again I'm working under the assumption that this was
12 a -- the officer was operating under reasonable suspicion at
13 that point at the most based off of the video that he and
14 the manager had seen minutes earlier that showed a
15 gentleman, you know, wearing a white shirt with a ball cap
16 and riding a bicycle. So, it's reasonable suspicion at that
17 point that that same person was Tyris Glover. I would
18 argue, Your Honor, that that allowed under the suspicion
19 doctrine Terry Frisk Doctrine just for a, you know, a Terry
20 Frisk and plain view of contraband allowed -- did not give
21 the officer permission to seize those items at that time
22 because the defense's argument that probable cause was not
23 present, Your Honor. Thank you.

24 THE COURT: Would you hand me the photograph
25 please that you're referring to?

1 MR. MACNEALY: Yeah. I think it was State's
2 Exhibit 25 I believe, Your Honor.

3 THE COURT: Thank you. All right. I would
4 reaffirm my trial rulings in that regard. Further,
5 although, I haven't studied this case I only looked at it on
6 the outline. Since your previous arguments under Minnesota
7 versus Dickerson, Arizona versus Hicks.

8 There is a case Colorado versus Bannister 449 U.S.
9 1 (1980) where an officer stopped a automobile for speeding.
10 The officer had heard a radio dispatch of a theft of auto
11 parts and saw chrome lug nuts in an opened glove department
12 and two lug nut wrenches on the floor in plain view. The
13 driver and the companion met the description of suspect.
14 There was an arrest of the occupants and the seizure of the
15 lug nuts and wrenches was proper. That was also cited in --
16 that and Texas versus White in 1975 -- case.

17 I think the testimony from Officer Kevin Schmidt
18 was such that he did have reasonable suspicion. He had a
19 suspect within the general area within a short, reasonably
20 short, time frame matching the description of the individual
21 that he had observed on the video dressed up similarly
22 movements, similarly. There's no question that he had
23 reasonable suspicion. Further testimony was that the
24 officer indicated he asked consent to search the backpack
25 and within that backpack found four packs of cigarette. The

1 ultimate testimony was two unopened. There were two that
2 were opened and those matched the brand of cigarettes that
3 were stolen from Sharky's. I say I reaffirm my rulings. I
4 think the use and known use of the word matched goes to the
5 weight or value that the jury gives to, to, that testimony.

6 As to Photograph Number 25, it appears to be it is
7 a photograph of the defendant in the clothes that had be
8 previously described and can be observed on the video,
9 State's Exhibit Number 30 both the hat and the shirt and
10 blue jeans. I do not see any prejudicial effect in this
11 regard, in fact, I can conceive of cases in which this
12 photograph would be exculpatory because the individual
13 pictured in here might not match the individual that was
14 shown on the, on the, video.

15 As to deliberations. The time a jury deliberates
16 is within the province of the jury. There was no indicating
17 of any improper conduct by the jury. I would say the case
18 is gone on for more than a day. Every time I noticed the
19 jury they were paying attention to both the attorneys and
20 witnesses and paid very close attention to the evidence and
21 testimony as it was presented. So, I would respectfully
22 deny your motion for a new trial.

23 MR. MACNEALY: Thank you, Your Honor.

24 THE COURT: Anything further?

25 MR. MACNEALY: I don't think so. Thank you.

1 THE COURT: My reason why sentence should not be
2 imposed at this time, Mr. Macnealy?

3 MR. MACNEALY: No, Your Honor.

4 THE COURT: All right. You can have Mr. Glover
5 come around.

6 THE BAILIFF: Come around.

7 THE COURT: Solicitor, anything further?

8 MS. ALL: Only his record, Your Honor.

9 THE COURT: All right.

10 MS. ALL: Your Honor, you're head all of the facts
11 of the case. The defendant did cause \$600 of damage to the
12 cash register, stole 45 packs of cigarettes that they sell
13 at \$8 a piece and what they estimated to be at \$90 worth of
14 liquor. Obviously you heard there was no damage in forcing
15 entry.

16 The state would also like to point out that he was
17 extremely belligerent during the contact with officers. You
18 heard the testimony about his language toward the offices
19 but he also made threats to urinate in the police car.
20 Officer did everything they could to being, being, aware of
21 the heat everything they could to help him. They give him
22 bottled watter and everything but he was extremely
23 disrespectful and rude and uncooperative to a painful
24 degree. He also insisted on lighting up one of his
25 cigarettes in the parole car after they removed his

1 handcuffs to the front.

2 His record goes back to '84, petty larceny and
3 trespassing; '86, burglary second and grand larceny for
4 which he received a YOA sentence; '88, burglary third; '89,
5 burglary second for which he reserved ten years, auto
6 breaking for which he received four years and three counts
7 of grand larceny for which he received ten years suspend on
8 six years and five years probation with restitution. He got
9 13 years in '95 for a burg second nonviolent; 2004 an auto
10 breaking; 2006, receiving stolen goods; 2008, auto breaking
11 one year and six months probation, property crimes third
12 threes and burglary third first three years. And obviously
13 in 2011 as we discussed in chambers in the consideration for
14 the procedure that we discussed in chambers he had been
15 charged with auto breaking and property count -- property
16 crimes third, the state agreed to reduce it to petty larceny
17 and auto breaking and recommend time served. That was in
18 May of 2011 and this incident occurred in June of 2011 about
19 a month later. He's also got a 2004 conviction in North
20 Carolina from a trial and a guilty verdict.

21 THE COURT: All right. Thank you. Anything
22 further, solicitor?

23 MS. ALL: No, Your Honor.

24 THE COURT: You have the sentencing sheets?

25 MS. ALL: I'm getting there, Your Honor, it's

1 coming.

2 THE COURT: All right. And when you say what we
3 discussed in chambers that we would be yourself, Assistant
4 Solicitor Garfield, Mr. Macnealy and Mr. Cooper, is this
5 correct?

6 MS. ALL: And yourself, Your Honor. Yes, Your
7 Honor that's correct.

8 THE COURT: Okay. Thank you.

9 All right anything, Mr. Macnealy?

10 MR. MACNEALY: Your Honor, he's --
11 Britton, may we approach real quick?

12 MS. ALL: Sure.

13 THE COURT: Certainly.

14 (Whereupon, a bench conference
15 was held off the record.)

16 MR. MACNEALY: Sorry, Your Honor.

17 THE COURT: All right. That's quite all right.
18 I'll be glad to hear from you.

19 MR. MACNEALY: Thank you. Your Honor, I think the
20 most important thing I can say right now is that prior to me
21 meeting Mr. Glover it's my understanding that he,
22 Mr. Glover, had provided some assistance to the state -- his
23 testimony that state my client feels new puts his life in
24 jeopardy. Your Honor, this is a matter, of course, the
25 solicitor as myself, my cocounsel we spoke about in

1 chambers, if there's anything that Your Honor could do in
2 terms of sentencing to make the department of corrections
3 aware and, of course, myself and cocounsel will be giving a
4 call to the department of corrections to see if there's any
5 additional measures we can do in terms of transferring out
6 of state. But if there's anything, Your Honor, can do in
7 terms of providing a cautionary statement, perhaps, to keep
8 Mr. Glover and Samey Adams separate during that period at
9 that facility I would appreciate that.

10 And, Your Honor, I would ask that you consider the
11 fact that Mr. Glover did provide some assistance to the
12 state putting his life potentially at risk considering that
13 when you fashion a sentence, Your Honor. And, Your Honor,
14 we ask for a reasonable sentence. Thank you.

15 THE COURT: Thank you. Thank you very much,
16 Mr. Macnealy.

17 Anything you would like to say, Mr. Glover?

18 THE DEFENDANT: No, sir.

19 MS. ALL: Your Honor if I may pay for purpose for
20 sentences that this is a property crimes third carrying up
21 to ten years. These are the certified convictions for the
22 prior property crimes.

23 THE COURT: All right.

24 MS. ALL: And just to point out for the
25 defendant's benefits so that he'd be advised that burglary

1 second violent is a violent crime and carries up to 15
2 years.

3 THE COURT: Do you, do you, have the sentencing
4 sheets?

5 MS. ALL: Yes, Your Honor.

6 THE CLERK: He's signing now, Judge.

7 THE COURT: All right. Based on the evidence and
8 testimony presented, the jury having found the defendant
9 guilty of burglary second violent --

10 MS. ALL: Violent, Your Honor.

11 THE COURT: The sentencing sheet has typed in
12 nonviolent.

13 MS. ALL: Let's see 0086 and 0080, Your Honor and
14 2367.

15 THE COURT: The sentencing sheet as a CVR Code of
16 0086 and then it has, it has, he pleads to this. This,
17 isn't correct --

18 MS. ALL: Your Honor, if I my approach I will be
19 glad to amend it itself.

20 THE COURT: How about just get me a correct one
21 and let me know when it's corrected.

22 MS. ALL: Yes, Your Honor. I'm sorry.

23 (Whereupon, a short recess was
24 held.)

25 THE COURT: All right. 2012-GS-40-854, burglary

1 second violent and 2012-GS-40-0857 property offense third or
2 subsequent and you have no question Mr. Macnealy that it is
3 third or subsequent?

4 MR. MACNEALY: I do not, Your Honor.

5 THE COURT: And that it is two prior convictions
6 on the burglary. Taking into the considerations the facts
7 and circumstances of the case that's presented and the
8 defendant's substantial prior record which includes a total
9 it appears five previous burglary convictions.
10 Additionally, auto breaking three times, grand larceny,
11 receiving stolen goods; the defendant on the burglary is
12 committed to the State Department of Corrections for a
13 determinate term of 12 years.

14 On the property offense enhancement the defendant
15 is committed to the State Department of Corrections
16 determinate term of ten years. Those are to run concurrent,
17 credit for all time served. I have indicated on both
18 sentencing sheets the court requests and recommends that the
19 defendant not be housed with Samey Adams. I will follow up,
20 if you have no objections I will call Mr. Taske the general
21 counsel of the Department of Corrections, as I say, I don't
22 have any authority --

23 MR. MACNEALY: Sure.

24 THE COURT: To order that but I will also call and
25 speak with Mr. Taske in that regard.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: Anything further?

3 MR. MACNEALY: No, your Honor. Thank you.

4 THE COURT: Thank you. Thank you very much.

5 Good luck to you --

6 THE DEFENDANT: Thank you.

7 THE COURT: Mr. Glover.

8 Thank you. Thank you, solicitor.

9 MS. ALL: Thank you, your Honor.

10 END OF PROCEEDINGS

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WITNESSES

(S) JP WILLIAMS – Columbia Police
Department

ARREST WARRANT NUMBER

K689032

ACTION OF GRAND JURY

TRUE BILL

Margaret A. Dickerson
Foreperson of Grand Jury
Date: FEB 09 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-40-00854

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

159

THE STATE

vs.

Tyris Bernard Glover

**Indictment for
BURGLARY 2ND DEGREE (VIOLENT)**

SC Code: 16-11-0312(B)
CDR Code: 0086

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 RICHLAND)

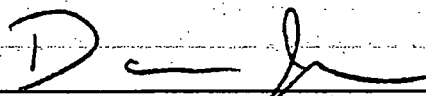
INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 8, 2012, the
Grand Jurors of Richland County present upon their oath:

BURGLARY, SECOND DEGREE
(VIOLENT)

That Tyris Bernard Glover did in Richland County on or about June 28,
2011, enter without consent and with the intent to commit a crime therein, a
building located at STREET, and the defendant, Tyris
Bernard Glover, did have a prior record of two or more convictions for
burglary or housebreaking or a combination of both, in violation of Section
16-11-0312(B), S. C. Code of Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) - Columbia Police Department- JP
WILLIAMS

ARREST WARRANT NUMBER

K689033

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

FEB 09 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-40-00857

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY 1 TERM 2012

159

THE STATE
vs.

Tyris Bernrd Glover

Indictment for
PROPERTY CRIME -3RD & SUBSEQ.

SC Code: 16-01-0057

CDR Code: 2367

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 RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 8, 2012, the

Grand Jurors of Richland County present upon their oath:

PROPERTY CRIME
(THIRD OR SUBSEQUENT OFFENSE)

That Tyris Bernard Glover did in Richland County on or about June 28, 2011, take possession of, carry away, transfer to another, or cause to be carried away or transferred, property of SHARKY'S, to wit: CIGARETTES, LIQUORS, AND/OR OTHER MERCHANDISE, in violation of Section 16-13-0030, S. C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, S. C. Code of Laws, 1976, as amended.

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

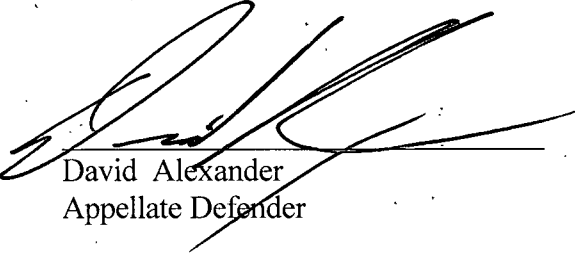


DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 22nd, 2013



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

JUL 22 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

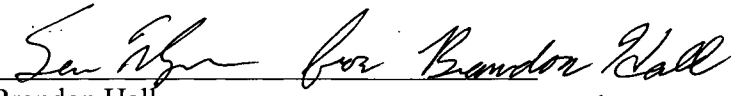
TYRIS BERNARD GLOVER,

APPELLANT

APPELLATE CASE NO. 2012-211983

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Julie Kate Keeney, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 22nd day of July, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of July, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 2, 2013.