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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

TYRIS B. GLOVER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000900

APPENDIX

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #30: SURVEILLANCE VIDEO

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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
12 RICHLAND, SOUTH CAROLINA
13

14 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 FOR THE PLAINTIFF:
19 BRITTON ALL, ESQ.
20 DOLLY JUSTICE GARFILED, ESQ.

21 FOR THE DEFENDANT:
22 JEREMY MACNEALY, ESQ.
23 JAMES COOPER, ESQ.
24
25

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1 (The following proceedings were
2 held on April 26, 2012.)

3 THE COURT: All right. Anything before we bring
4 up our jury from the state, solicitor?

5 MS. ALL: No, Your Honor.

6 THE COURT: The defense?

7 MR. MACNEALY: No, Your Honor.

8 THE COURT: All right. Bring them up here please.

9 MR. MACNEALY: Your Honor, in terms of pretrial
10 motions I guess you want to handle that after picking the
11 jury?

12 THE COURT: All right. That will be fine.

13 BAILIFF: Your Honor, the jury's present.

14 THE COURT: Thank you. Thank you very much.

15 All right. Solicitor, you may call your next case
16 for trial.

17 MS. ALL: Your Honor, the state calls Tyris
18 Glover.

19 THE COURT: All right. Thank you.

20 Ladies and gentlemen of the jury panel, if you
21 would please give me your complete and undivided attention.

22 The state has called the case of the -- the cases of Tyris
23 Bernard Glover.

24 There are two indictments in this case. The
25 indictments are not evidence. The indictments are the

1 formal charging documents by which an individual is placed
2 on notice of the charges that have been brought against him
3 or her. They contain mere allegations and are in no way
4 allegations, excuse me, are in no way evidence of the
5 allegations contained therein.

6 We're about to begin a procedure to select a trial
7 jury for the trial of this case. As part of that I will ask
8 you certain questions. Based on the questions that I will
9 herein after ask you I will read these indictments to you,
10 2012-GS-40-00854, The State versus Tyris Bernard Glover
11 reads that Tyris Bernard Glover did in Richland County on or
12 about June 28th, 2011 enter without consent and with the
13 intent to commit a crime therein a building located at 636
14 Harden Street and the defendant, Tyris Bernard Glover, did
15 have a prior record of two or more convictions of burglary
16 or housebreaking or a combination of both in violation of
17 section of 16-11-312(B) of The Code of Laws of South
18 Carolina that is an indictment for burglary in the second
19 degree.

20 The next Indictment, 2011, excuse me,
21 2012-GS-40-00857 reads that Tyris Bernard Glover did in
22 Richland County on or about June 28th, 2011 take, possess or
23 carry away, transferred to another or cause to be carried
24 away or transferred the property of Sharky's, to wit
25 cigarettes, liquors and or merchandise in violation of

1 16-13-30 of The Code of Laws of South Carolina that is the
2 charge of larceny of property.

3 The state in this case is represented by Assistant
4 Solicitor All and Assistant Solicitor Garfield.

5 If you would please stand, introduce yourself to
6 the jury panel and any other member of the solicitor's staff
7 that will assist you in the prosecution of this case.

8 MS. GARFIELD: Good morning. I'm Dolly Justice
9 Garfield and I'm an assistant solicitor here in Richland
10 County.

11 MS. ALL: Morning. My name is Britton All I'm an
12 assistant solicitor for Richland County.

13 This is our support staff paralegal Ms. Angela
14 Trap.

15 THE COURT: Thank you. Thank you very much.
16 The defendant is represented by Mr. Macnealy and
17 Mr. Cooper.

18 If you'd please stand, introduce yourself to the
19 jury panel and your client.

20 MR. MACNEALY: Hello. My name is Jeremy Macnealy.
21 I'm an assistant public defender here in Richland County.

22 MR. COOPER: My name is James Cooper I'm also a
23 public defender in Richland County.

24 This our client, Mr. Tyris Glover.

25 THE COURT: Stand up. Stand up for me please.

1 MR. COOPER: Well, Your Honor, can I take up a
2 quick matter of law?

3 THE COURT: Sure. Approach.

4 (Whereupon, a bench conference
5 was held off the record.)

6 THE COURT: Thank you. Thank you very much.

7 All right. Ladies and gentlemen of jury panel, is
8 any member of the jury panel related by blood or marriage or
9 close personal friends or have any business or professional
10 relationship him with any of the attorneys involved in this
11 case, that being either Assistant Solicitor All or Assistant
12 Solicitor Garfield or Mr. Macnealy or Mr. Cooper, if so
13 please stand.

14 (There was no response.)

15 Does any member of the jury panel or any member of
16 your immediate family ever been represented by or prosecuted
17 by Assistant Solicitor All or Garfield or Mr. Macnealy or
18 Mr. Cooper, if so please stand.

19 (There was no response.)

20 Any member of the jury panel related by blood or
21 marriage or close personal friends or have any business or
22 professional relationship with the named defendant in this
23 case Tyris Bernard Glover, if so please stand.

24 (There was no response.)

25 I read or published to you the indictment. It

1 alleged an incident of burglary and larceny which occurred
2 on or about the 28th day of June of 2011 at a location known
3 as Sharky's on Harden Street in the City of Columbia County
4 of Richland. Does any member of the jury panel have any
5 knowledge about the case, if so please stand.

6 (There was on response.)

7 Does any member of the jury panel have any bias or
8 prejudice towards the party that being the state or the
9 defendant, Mr. Glover, or towards the subject matter
10 involved in the case, if so please stand.

11 (There was no response.)

12 Has any member of the jury panel heard or know
13 anything about the case from any source whatsoever, if so
14 please stand.

15 (There was no response.)

16 I'm going to call a list of names of potential
17 witnesses in the trial of this case.

18 Mr. Bailiff, would you please lock the back door?
19 I don't want anyone in or out during this procedure. Thank
20 you.

21 I'm going to call a list of names of potential
22 witnesses in the trial of this case. The question, of
23 course is, does any member of the jury panel related by
24 blood or marriage, close personal friends, have any business
25 or professional relationship with any of these individuals

1 whose names I will now call. I would ask the witnesses if
2 you're present when your names are called if you'd please
3 stand and face the jury panel.

4 I would advise the jury panel that the witnesses
5 are not required to be present during this proceeding;
6 therefore, names may be called and no one stands.

7 Investigator JP Williams, Columbia Police
8 Department. Investigator Williams to my front right.

9 Thank you.

10 Ron Hubbard.

11 Mr. Hubbard is behind you, ladies and gentlemen.

12 Thank you. Thank you, Mr. Hubbard.

13 Kermit Scott. This is Officer Scott, Columbia
14 Police Department to my front.

15 Thank you, Officer Scott.

16 Officer Kevin Schmidt also behind you in the back
17 of the courtroom, ladies and gentleman.

18 Thank you, officer.

19 And Officer Jeff Brink. It does not appear
20 Officer Brink is present.

21 Again, is any member of the jury panel related by
22 blood or marriage or close personal friends with any of
23 those individuals whose names I just called, if so please
24 stand.

25 (There was no response.)

1 The next Zack Jackson with the Columbia Police
2 Department does not appear to be present.

3 PJ Nelson with the Columbia Police Department does
4 not appear to be present.

5 The custodian of the records this is a position.
6 I don't have a named individual but the custodian of the
7 records of the Orangeburg County Clerk of the Court. I can
8 tell you the clerk's first name. Right now her last name
9 escapes my memory. But someone holding that position is
10 custodian of the record Orangeburg Clerk of Court.

11 MS. ALL: Excuse me, Your Honor. That's
12 Ms. Winnifa Clark. We will be having Ms. Bernetha Gleen,
13 the Criminal Clerk of Court from Orangeburg County coming.

14 THE COURT: That's Ms. Glean?

15 MS. ALL: Is Bernetha Gleen.

16 THE COURT: All right. Does any, does any, member
17 of the jury panel related by blood or marriage or close
18 personal friends of Ms. Gleen employed with the Orangeburg
19 County Clerk of Court, if so please stand.

20 (There was no response.)

21 Then the custodian of the record Richland County
22 Clerk of Court.

23 MS. GARFIELD: It will be Mr. Jim Truitt, Your
24 Honor.

25 THE COURT: And that will be Mr. Truitt. Mr.

1 Truitt might be responsible for y'all being on jury duty
2 this week.

3 (Laughter.)

4 I don't know. I don't know who's responsible for
5 that but I have seen him around throughout the week but
6 that's Mr. Truitt.

7 And Investigator Anthony Walker with the Richland
8 County Solicitor's Office.

9 Again, is any member of the jury panel related by
10 blood or marriage or close personal friends with any of
11 those individuals whose names I just called and or who stood
12 before you, if so please stand.

13 (There was no response.)

14 Any additional witnesses, solicitor?

15 MS. ALL: No, Your Honor. That will be all.

16 THE COURT: Mr. Macnealy?

17 MR. MACNEALY: No, Your Honor.

18 THE COURT: Thank you. Anything requested voir
19 dire from the state, solicitor?

20 MS. ALL: No, Your Honor, just yours.

21 THE COURT: Mr. Macnealy?

22 MR. MACNEALY: No, Your Honor, that's fine. Thank
23 you.

24 THE COURT: All right. And finally, ladies and
25 gentleman, final question, each of you know yourselves best.

1 You know this involves an incident of burglary and larceny
2 from a location known as Sharky's on Harden Street in West
3 Columbia -- Harden Street Columbia in Richland County. Does
4 any member of the jury panel know any reason whatsoever why
5 you feel like you could not be a fair and impartial juror in
6 the trial of this case for both the state and Mr. Glover, if
7 so please stand.

8 (There was no response.)

9 Thank you. Thank you very much. No one stands.
10 The jury is qualified.

11 The strikes, solicitor are?

12 MS. GARFIELD: I believe ten and five.

13 MR. MACNEALY: Yeah, it is.

14 THE COURT: All right. All right. The strikes
15 are as the solicitor stated, the defense agreed five for the
16 state, ten for the defense.

17 Madam Clerk, would you give the jury panel
18 instructions and give us the jury please.

19 THE CLERK: Yes. Thank you, Your Honor.

20 Ladies and gentlemen of the jury panel, as I call
21 your number please come down. Bring all your belongings
22 with you. Stand here in front of the microphone
23 (indicating) facing the table of the state and the defense
24 and give us your occupation.

25 Number 121 (black female).

1 PROSPECTIVE JUROR: My occupation is executive is
2 assistant.

3 THE CLERK: What says the state?

4 MS. ALL: Please seat the juror.

5 THE CLERK: What says the defense?

6 MR. MACNEALY: Please seat the juror.

7 THE CLERK: Have a seat in the jury box please.

8 BAILIFF: This way, ma'am.

9 THE CLERK: Number 196 (white female).

10 PROSPECTIVE JUROR: I'm a bartender.

11 THE CLERK: What says the state?

12 MS. ALL: Please seat the juror.

13 THE CLERK: What says the defense?

14 MR. MACNEALY: Please excuse the juror.

15 THE CLERK: Have a seat in the back of the
16 courtroom please.

17 Number 253 (black male).

18 PROSPECTIVE JUROR: Advertising sale's manager.

19 THE CLERK: What says the state?

20 MS. ALL: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the
22 courtroom please.

23 Number 299 (white male).

24 PROSPECTIVE JUROR: I'm the vice president of
25 community amusements.

1 THE CLERK: What says the state?

2 MS. ALL: Please seat the jury.

3 THE CLERK: What says the defense?

4 MR. MACNEALY: Please seat the jury.

5 THE CLERK: Have a seat in the jury box please.

6 Number 161 (black male).

7 PROSPECTIVE JUROR: Construction worker.

8 THE CLERK: What says the state?

9 MS. ALL: Please excuse the jury.

10 THE CLERK: Have a seat in the back of the
11 courtroom please.

12 Number 48 (black male).

13 PROSPECTIVE JUROR: Emergency operations
14 specialist.

15 THE CLERK: What says the state?

16 MS. ALL: Please seat the juror.

17 THE CLERK: What says the defense?

18 MR. MACNEALY: Please excuse the juror.

19 THE CLERK: Have a seat in the back of the
20 courtroom please.

21 Number 131 (black female).

22 PROSPECTIVE JUROR: Retail management.

23 THE CLERK: What says the state?

24 MS. ALL: Please seat the juror.

25 THE CLERK: What says the defense?

1 MR. MACNEALY: Please seat the juror.
2 THE CLERK: A seat in the jury box please.
3 Number 42 (white female).
4 PROSPECTIVE JUROR: I'm a nurse.
5 THE CLERK: What says the state?
6 MS. ALL: Please seat the juror.
7 THE CLERK: What says the defense?
8 MR. MACNEALY: Please seat the juror.
9 THE CLERK: Have a seat in the jury box please.
10 Number 132 (black female).
11 PROSPECTIVE JUROR: Unemployed.
12 THE CLERK: What says the state?
13 MS. ALL: Please excuse the juror.
14 THE CLERK: Have a seat in the back of the
15 courtroom please.
16 Number 262 (white female).
17 PROSPECTIVE JUROR: Compliance coordinator.
18 THE CLERK: What says the state?
19 MS. ALL: Please seat the juror.
20 THE CLERK: What says the defense?
21 MR. MACNEALY: Please excuse the juror.
22 THE CLERK: Have a seat in the back of the
23 courtroom.
24 Number 24 (black female).
25 PROSPECTIVE JUROR: I'm an accountant.

1 THE CLERK: What says the state?

2 MS. ALL: Please seat the jury.

3 THE CLERK: What says the defense?

4 MR. MACNEALY: Please seat the juror.

5 THE CLERK: Have a seat in the jury box please.

6 Number 111 (white male).

7 PROSPECTIVE JUROR: Insurance adjustor and --

8 THE CLERK: What says the state?

9 MS. ALL: Please seat the juror.

10 THE CLERK: What says the defense?

11 MR. MACNEALY: Please excuse the juror.

12 THE CLERK: Have a seat in the back of the
13 courtroom please.

14 Number 23 (white female).

15 PROSPECTIVE JUROR: Customer service
16 representative at Staples.

17 THE CLERK: What says the state?

18 MS. ALL: Please seat the juror.

19 THE CLERK: What says the defense?

20 MR. MACNEALY: Please seat the juror.

21 THE CLERK: Have a seat in the jury box please.

22 Number 138 (black male).

23 PROSPECTIVE JUROR: Police officer.

24 THE CLERK: What says the state?

25 MS. ALL: Please excuse the juror.

1 THE CLERK: Have a seat in the back of the
2 courtroom please.

3 Counsel, as I review the strikes for the state I
4 have four. For the defendant I have four.

5 Number 210 (white female).

6 PROSPECTIVE JUROR: I'm the executive director for
7 the juvenile -- for the YMC.

8 THE CLERK: What says the state?

9 MS. ALL: Please seat the juror.

10 THE CLERK: What says the defense?

11 MR. MACNEALY: Please seat the juror.

12 THE CLERK: Have a seat in the jury box please.

13 Number 83 (white male).

14 PROSPECTIVE JUROR: I.T.

15 THE CLERK: What says the state?

16 MS. ALL: Please seat the juror.

17 THE CLERK: What says the defense?

18 MR. MACNEALY: Please seat the juror.

19 THE CLERK: Have a seat in the jury box.

20 Number 149 (black female).

21 PROSPECTIVE JUROR: Cashier at Wal-Mart.

22 THE CLERK: What says the state?

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

24 MS. ALL: Please seat the juror.

25 THE CLERK: What says the defense?

1 MR. MACNEALY: Please seat the juror.

2 THE CLERK: Have a seat in the jury box please.

3 Number 37 (white male).

4 PROSPECTIVE JUROR: Parking maintenance
5 supervisor.

6 THE CLERK: What says the state?

7 MS. ALL: Please seat the juror.

8 THE CLERK: What says the defense?

9 MR. MACNEALY: Please seat the juror.

10 THE CLERK: Have a seat in the jury box please.

11 Number 269 (black female).

12 PROSPECTIVE JUROR: Unemployed.

13 THE CLERK: What says the state?

14 MS. ALL: Please seat the juror.

15 THE CLERK: What says the state?

16 MR. MACNEALY: Please seat the juror.

17 THE CLERK: Have a seat in the jury box please.

18 Number 261 (white female).

19 PROSPECTIVE JUROR: Interior design.

20 THE CLERK: What says the state?

21 MS. ALL: Please seat the juror.

22 THE CLERK: What says the defense?

23 MR. MACNEALY: Please excuse the juror.

24 THE CLERK: Have a seat in the back of the

25 courtroom please.

1 Number 80 (white male).

2 PROSPECTIVE JUROR: Retired USA.

3 THE CLERK: What says the state?

4 MS. ALL: Please seat the juror.

5 THE CLERK: What says the defense?

6 MR. MACNEALY: Please excuse the juror.

7 THE CLERK: Have a seat in the back of the
8 courtroom please.

9 Number 41 (white female).

10 PROSPECTIVE JUROR: I'm retired. I was the
11 delinquent task manager in Richland County Treasurer's
12 Office.

13 THE CLERK: What says the state?

14 MS. ALL: Please seat the juror.

15 THE CLERK: What says the defense?

16 MR. MACNEALY: Please seat the juror.

17 THE CLERK: Have a seat in the jury box please.

18 THE COURT: One alternate.

19 THE CLERK: Number 165 (white female).

20 PROSPECTIVE JUROR: I'm a church hostess in charge
21 of -- functions and I'm also a preschool teacher.

22 THE CLERK: What says the state?

23 MS. ALL: Place seat the juror.

24 THE CLERK: What says the defense?

25 MR. MACNEALY: Please excuse the juror.

1 THE CLERK: Have a seat in the back of the
2 courtroom please.

3 Number 188 (black male).

4 PROSPECTIVE JUROR: Floor tech.

5 THE CLERK: What says the state?

6 MS. ALL: Please excuse the juror.

7 THE CLERK: Have a seat in the back of the
8 courtroom please.

9 Number 254 (white male).

10 PROSPECTIVE JUROR: Financial planner.

11 THE CLERK: Does the state challenge for cause?

12 MS. GARFIELD: (The attorney shakes head.)

13 THE CLERK: What says the defense?

14 MR. MACNEALY: Please excuse the juror.

15 THE CLERK: Have a seat in the back of the
16 courtroom please.

17 Number 278 (white female).

18 PROSPECTIVE JUROR: Art Teacher Lexington District
19 Four.

20 THE CLERK: Does the state challenge for cause?

21 MS. ALL: No, ma'am.

22 THE COURT: What says the defense?

23 MR. MACNEALY: Please seat the juror.

24 THE CLERK: Have a seat in the jury box.

25 THE COURT: Any motions regarding the jury

1 selections process from the state?

2 MS. ALL: No, Your Honor.

3 THE COURT: Defense?

4 MR. MACNEALY: No, Your Honor.

5 THE COURT: All right. Thank you very much.

6 Ladies and gentleman of the jury panel,

7 momentarily I'm going to ask you to step with your bailiff

8 to go to your jury room. During this brief recess please do

9 not discuss the case with anyone. You may not discuss the

10 case with your fellow jurors, family, friends or anyone else

11 until you've heard all the evidence, all of the testimony in

12 the case, the closing arguments by the attorneys and the

13 instructions on the law by the court and then directed by

14 the court the begin your deliberations with your fellow

15 jurors in your jury room. I must give some further

16 instructions to your colleagues concerning their juror

17 service for the remainder to of the week. I may have a

18 pretrial matter or two to take up with the attorneys outside

19 of your presences but I will get you back out here as

20 promptly as I can. With those instructions if you will

21 please now go and exit to your back left of with your

22 bailiffs. Thank you very much.

23 (The jury retires from the

24 courtroom at 11:51 a.m.)

25 THE COURT: All right. Ladies and gentlemen of

1 the jury panel that were not fortunate enough to be selected
2 for the trial of this case, I'm going to ask you to report
3 back to your juror assembly room. The clerk will give you
4 further instructions concerning your jury service for the
5 remainder of the week, if I do not have an opportunity to
6 serve with you any further this week it's been my pleasure
7 and privilege to be with you in Richland County. Thank you.
8 Thank you very much. You may we report down to your jury
9 assembly room on the first floor.

10 (The remainder of the jury panel
11 retires from the courtroom at
12 11:53 a.m.)

13 THE COURT: All right. Any pretrial matters from
14 the state, solicitor?

15 MS. ALL: Yes, Your Honor. We ask for a little
16 bit of guidance and motion for clarification on the
17 prosecution of the property third and subsequent crime. We
18 wanted to make sure that we would submit prior property
19 crimes to the clerk of court just to clarify with defense
20 counsel that we were on the same page that the prior
21 convictions were not just for sentencing purposes but rather
22 elemental.

23 THE COURT: I thought they were for sentencing
24 purposes.

25 MS. ALL: Oh, okay. We understood them to be

1 elemental the research I've done has explained them to be
2 elemental.

3 THE COURT: On property crimes?

4 MS. ALL: Yes, Your Honor. Is says a conviction
5 for a specific crime one of the elements is that it be a
6 property crime and in addition the two prior convictions be
7 proven as apposed to PWID where a second or third would be
8 for sentencing purposes only.

9 THE COURT: Well, you're going to have to show me
10 the case because I have that exactly backwards in my mind.

11 MS. ALL: We will glad to leave it for sentencing
12 purposes only.

13 MR. COOPER: Well, yes, Your Honor. And if
14 they're going to do that I'm fine with that. I was, I was,
15 with Your Honor, I mean, I thought that's why you were so
16 careful to not read off third and subsequent you read off
17 larceny. Our position is that it's just for sentencing.

18 THE COURT: Well, there's two separate statues,
19 isn't? Isn't it two separate statues --

20 MR. COOPER: Yes, sir.

21 THE COURT: Cited in the indictment 16-13-30.

22 MS. ALL: Your Honor, I have the statues printed
23 off here if you'd like to reference them.

24 THE COURT: And then 16-157 which is the penalty
25 statue.

1 MR. COOPER: Yes, sir, if they, if they, prove him
2 guilty of the underline larceny then Your Honor would
3 sentence him pursuant to 16-157.

4 THE COURT: Correct.

5 MR. COOPER: But that's not for the jury, that's
6 our position.

7 MS. GARFIELD: So, just for clarification because
8 I'm the one opening we'll just go as if he's charged with
9 larceny; is that how I instruct the jury?

10 THE COURT: Sure.

11 MS. GARFIELD: Okay.

12 MR. COOPER: Yes, Your Honor. Thank you.

13 THE COURT: Now, it's different for the burglary.

14 MS. GARFIELD: Yes, sir.

15 MS. ALL: Yes. It is, yes, sir.

16 THE COURT: All right.

17 MS. ALL: With the two priors.

18 THE COURT: I thought there was a case -- all
19 right. Anything else, solicitor?

20 MS. ALL: Yes, Your Honor. At this time we move
21 to exclude any mention of former CPD Officer Damian White.
22 We were CCed on the documentation that was sent to
23 Mr. Macnealy pursuant to a subpoena for any documents from
24 internal affairs at CPD and we just wanted to make sure that
25 wasn't going to come in. We -- be calling Officer White as

1 a witness.

2 THE COURT: Mr. Macnealy.

3 MR. MACNEALY: Your Honor, yeah, I contest that
4 motion vehemently. We -- our office, not just on this case
5 but in other cases still pending involving Officer White we
6 have requested internal affairs records and I will move
7 those into the record now. May I approach?

8 THE COURT: Sure.

9 MR. MACNEALY: Your Honor, the -- Officer White
10 was the first officer on scene. His incident report that
11 we're going to be referring to time and time again in this
12 trial is his incident report. I've had other matters with
13 Officer White. I've tried to get these records. These
14 records have still not been turned over to me, still pending
15 matters involving Officer White. I believe Officer White's,
16 you know, the part I'm curious about the state -- call him.
17 Particularly given the fact he was the first officer on the
18 scene. It's his incident report. It goes without
19 referencing White I think it's detrimental to the defense's
20 case. It does not allow us to do a full complete defense
21 without referring to him and what actions the officers can
22 recollect officer Mr. White's involvement being at that
23 time.

24 THE COURT: Now, I thought, maybe, I
25 misunderstood. I thought the solicitor's motion was

1 documents concerning Officer White having to do with
2 internal affairs.

3 MR. MACNEALY: I think their motion was to exclude
4 any reference to Officer White, is that correct?

5 MS. ALL: We wish to exclude any reference to
6 Officer White in terms of these documents for internal
7 affairs. But any reference to Officer White would not be
8 relevant. He's not going to be called as a witness in this
9 case. Officer Zack Jackson was in field training with him
10 when this case happened. He was with him upon arrival at
11 each different scene and is able to testify to everything
12 that he would have seen.

13 He did write the incident report but we have
14 Officer Zack Jackson and we also have Officer Schmidt who
15 are with him the entire time. We also have the lead,
16 investigator, Investigator JP Williams. And frankly,
17 Officer White's testimony is just isn't needed. Further,
18 he's no longer with CPD. We didn't serve him with a
19 subpoena. We don't need his testimony in anyway and
20 anything he had to add would be duplicative.

21 MR. MACNEALY: The state may not need him but --

22 THE COURT: Let me rule. It doesn't matter
23 whether you need him or not he can ask why a witness was or
24 was not called. There's not a charge on that but he can
25 argue that. If you look at The State versus -- his first

1 name is Catfish. I can't remember his last name. Dominic,
2 State versus Dominic, Catfish was his codefendant.
3 Catfish's last name was Heartily. If you look at the, the,
4 pigment in that case, although, defendant the is not
5 entitled to a charge that failure to call a witness makes
6 some kind of burden of presumption against the opposing
7 side, the state. You can ask about Officer White.

8 MR. MACNEALY: Sure.

9 THE COURT: Now, the internal affairs records are
10 separate and distinct. I'd rule that, A, I haven't seen
11 them and B, to my knowledge they wouldn't be admissible or
12 relevant unless somebody -- unless there's an allegation
13 that officer whoever planted evidence or something like
14 that. I take it it's not -- but he can ask him about
15 Officer White. And say well, why isn't this officer here?
16 Why isn't that officer here, if he did the incident report.
17 And say, well, I don't know. He doesn't -- he may not know.
18 He didn't know -- he's no longer working with the Columbia
19 Police Department.

20 All right. Does that take care of that motion?

21 MR. MACNEALY: It does, Your Honor.

22 MS. ALL: Thank you, Your Honor. Just to be
23 clear, Mr -- defense counsel is to refrain from any
24 reference to IA at all but can ask about Officer White?

25 MR. MACNEALY: I had no plan about asking about an

1 IA records.

2 THE COURT: I agree that that is my ruling. I
3 further agree I believe that's Mr. Macnealy's position that
4 he does not intend to ask him anything about internal
5 affairs. All right. That takes care of that motion.

6 Did you have any other, solicitor?

7 MS. ALL: Yes, Your Honor. We do. Mr. Glover did
8 make a statement to law enforcement. We'd like to have a
9 Jackson v. Denno hearing.

10 THE COURT: All right.

11 MS. ALL: In regards to that.

12 THE COURT: Yes, ma'am.

13 MS. ALL: Your Honor, the state calls Investigator
14 J P Williams to the stand.

15 THE COURT: All right. Come around to be sworn
16 please.

17 THEREUPON,

18 JP WILLIAMS,
19 after having been duly sworn, testified as follows:

20 THE WITNESS: Sergeant JP Williams.

21 DIRECT EXAMINATION

22 BY MS. ALL:

23 Q Sergeant Williams, what do you do for a living?

24 A I'm currently the supervisor over the property crimes
25 and burglary units and investigative units for the City

1 of Columbia.

2 Q And you're associated with what law enforcement agency?

3 A Oh, Columbia PD.

4 Q Were you associated with them on this incident date of

5 June 28th, 2011?

6 A Yes.

7 Q In what capacity?

8 A I was an investigator in the burglary unit in that

9 capacity.

10 Q Can you please explain to the court how you became to

11 be involved in this case?

12 A I was originally called by my then sergeant,

13 Sergeant -- to respond to the scene of a possible

14 burglary suspect in custody.

15 I responded to that scene as an investigator as a

16 followup person on that case. I subsequently assumed

17 responsibility for the case and placed the charges on

18 the defendant.

19 Q Okay. And at what point did you make contact with the

20 defendant?

21 A I made contact with him when the officers had him

22 stopped originally. They held him where they

23 originally observed him at after the crime and I went

24 to that crime scene. I went to that scene. It's not a

25 crime scene and spoken to him there.

1 Q Was this the same day as the burglary?

2 A Yes.

3 Q And about how much longer?

4 A It was about -- the burglary if I remember correctly it
5 was about at 7:20 is what they have it listed. I was
6 in route to work. I report to work at 8:30. So, it
7 would have been 8:15.

8 Q Okay.

9 A Between 8:15 and 8:30.

10 Q Can you describe the physical surroundings when you
11 made contact with the defendant.

12 A There was I believe a Corporal Bowman who just pulled
13 up, several officers on the scene. The defendant was
14 on the scene in the back of the parole car and it was
15 on the side of the road.

16 Q Okay. Did Mr. Glover appear to be coherent or under
17 the influence of any drugs of alcohol?

18 A No.

19 Q Okay. Can you tell me about how long you spoke with
20 Mr. Glover?

21 A Very briefly. It was not even really -- I wouldn't
22 consider it a conversation.

23 Q How long had he been detained when you made contact
24 with him?

25 A I'm in the sure.

1 Q Can you tell us the content of your conversation with
2 him?

3 A I essentially introduced myself, explained to him who I
4 was and Mr. Glover basically refused to cooperate with
5 me at all.

6 Q Did you mirandize him?

7 A Yes, I did.

8 Q At what point?

9 A When I first got on the scene, opened the door. I had
10 already asked one of the officers there if he'd been
11 mirandized already. They said yes but I proceeded to
12 mirandize him again while he was in the back of the
13 parole car.

14 Q Okay. Can you tell us exactly what you asked him and
15 exactly what his response was?

16 A After I introduced myself I explained to him what was
17 going on, explained to him that, you know, he was on
18 video at this location. He essentially didn't get a
19 response at first and then he essentially say told
20 me --

21 Excuse my language, Your Honor, he told me to go
22 fuck myself.

23 Q Okay. Did he make any statements implicating himself?

24 A No.

25 Q Were his statements to you all voluntary?

1 A Yes.

2 Q Was he under any duress in anyway?

3 A No.

4 Q Did law enforcement take, did law enforcement, do
5 everything they could to make him comfortable at the
6 time?

7 A Yes. They even at some point offered him water and let
8 him get air from outside the parole car.

9 Q Did he make any other statements to you?

10 A No.

11 Q Where did y'all -- what did y'all do after you left the
12 side of the road scene, where did y'all go next?

13 A I left. He was still being detained at that point
14 after I spoke to him, he didn't give me any further
15 information. I left and went and reviewed the video
16 myself to confirm that the person on video was the
17 defendant that they had in custody and at the point
18 that I viewed it and determined that he was the same
19 person I went back or called back to the scene and told
20 him to go ahead and place him under arrest and to bring
21 him up to police headquarters.

22 Q Did you make contact with him again at headquarters?

23 A Yes, I did.

24 Q Did he make any statements to you at that time?

25 A He stayed uncooperative.

1 MS. ALL: Court's indulgence.

2 BY MS. ALL:

3 Q Thank you, Investigator Williams, will you please
4 answer any questions defense counsel has for you.

5 CROSS-EXAMINATION

6 MR. COOPER: May it please the court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. COOPER: Thank you.

9 BY MR. COOPER:

10 Q Hi, good afternoon, Investigator.

11 A Hello.

12 Q You testified a moment ago to Ms. All that you, you,
13 arrived on the scene at 8:15 a.m?

14 A Approximately I was on my way to work. I normally
15 report to duty at 8:30 and I was going in route to work
16 when my sergeant called me.

17 Q All right. So, so, your testimony is that you first
18 encounter with Mr. Glover was sometime between 8:15 and
19 8:30, is that right?

20 A Approximately, generally, yes. All I remember was that
21 I was in route to work. I reported at 8:30 and I was
22 called. That's kind of on my way to work. So, I went
23 ahead and stopped by there. I believe I may have
24 stopped by the south region first, I can't recall.

25 Q All right. Well, you're, you're, positive that your

1 first encounter with Mr. Glover was that morning,
2 right?

3 A For -- yes.

4 Q Okay. It wasn't later in the afternoon?

5 A No.

6 Q All right. Did you reflect that in the investigative
7 report at all?

8 A I didn't complete an investigative report. The actual
9 case was completed when I arrived on scene. There was
10 nothing else to do but to do the warrants.

11 Q Okay. The case was completed. Well, you -- his
12 miranda was completed right when you arrived according
13 to the information you had, right?

14 A Yes.

15 Q And you testified that he, you know, as soon as you
16 encountered him he was not cooperative with you, right?

17 A Yes.

18 Q That's what you said, okay. So, he was no cooperative
19 during your attempts at miranda, right?

20 A I don't understand what uncooperative means when
21 stating something to him -- I don't understand your
22 question.

23 Q Okay. I'm just -- you used the word uncooperative in
24 your direct testimony.

25 A Okay.

1 Q So, I'm just kind of -- I'm trying to figure out what
2 you meant by that I guess because your testimony was he
3 was not cooperative with me when I encountered him, is
4 that a fair statement?

5 A Yes, sir.

6 Q Okay. So, I'm just asking you that, that, includes
7 your attempt to mirandize him, right?

8 A What I mean by that was, you know, when you're speaking
9 to someone they turn away and act like they don't want
10 to hear what you've got to say, that's, that's, what I
11 meant by uncooperative.

12 Q Sure. That would be a fair, that would be a fair,
13 reputation of uncooperative. That's what I was just
14 getting at.

15 A Okay. But he did hear what I said if that's your
16 question.

17 Q All right. So but you -- so you know that he heard
18 what you said but you would also characterize his
19 actions as being uncooperative and turning away from
20 you?

21 A Yes, sir.

22 Q Okay. And you weren't there for any previous attempts
23 to mirandize him, right?

24 A No, sir.

25 Q All right. And once again, you, you, know you were

1 there at 8:15 but you don't have that reflected in the
2 report, is that right?

3 A No, sir. I don't know I was there at 8:15. I'm giving
4 an approximate timeline.

5 Q Fair enough.

6 A And the only way I get that time frame is because again
7 I was on my way to work.

8 Q All right. But that's not in any of the reports you've
9 prepared for this case, right?

10 A No, sir.

11 Q Okay.

12 MR. COOPER: Beg the Court's indulgence, Your
13 Honor. Your Honor, that's all the questions I have for him.
14 I don't know if there's any redirect but I have a motion
15 about it.

16 THE COURT: All right. Thank you.
17 Redirect, solicitor.

18 MS. GARFIELD: Just a moment, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. ALL:

21 Q Investigator Williams, in terms of any other statements
22 he made to you, did he make any other threats about
23 doing anything in the patrol car or any other
24 statements at the scene?

25 A Not to me. He did to the officers that had him

1 detained.

2 Q Did you hear him?

3 A No.

4 Q Okay.

5 MS. ALL: No further questions.

6 THE COURT: All right. Thank you.

7 Recross?

8 MR. COOPER: No, Your Honor. I just of have a
9 motion if you'd like to hear.

10 THE COURT: All right. Thank you. Thank you
11 Detective Williams. You may step down.

12 Solicitor, do you have any other witnesses or
13 evidence to present in this matter?

14 MS. ALL: I don't.

15 THE COURT: Do you have any witnesses?

16 MR. COOPER: I do not, Your Honor. No, sir.

17 THE COURT: All right. I'll be glad to hear from
18 you, solicitor.

19 MS. ALL: Thank you, Your Honor. We just move
20 that the statement made was voluntarily. It wasn't a
21 confession in nature but he was mirandize prior to it was on
22 the scene. There were several officers present which is
23 consistent with Investigator Williams testimony that the
24 statement would be admissible.

25 MR. COOPER: May I respond, Your Honor?

1 THE COURT: Yes, sir.

2 MR. COOPER: Thank you, judge. My response is
3 that they, they, have not met their burden to show the
4 statement was voluntarily. Number one, I very clearly
5 questioned Investigator Williams about Mr. Tyris Glover's
6 behavior when he first encountered him. Investigator
7 Williams was very clear in his testimony to Your Honor that
8 he was not cooperative, in fact, his own characterization of
9 Mr. Glover's behavior was turning away and not listening and
10 that's what I thought was really important.

11 I think that too -- for someone to be aware of his
12 rights under our law and for his statement to be voluntarily
13 he's got to be listening, paying attention when the officer
14 mirandizes him and if he's not then the officer takes that
15 as a refusal or he attempts again to do so.

16 Now, Mr. Williams said then told me I know he
17 heard what I said but, in fact, the bulk of his testimony
18 completely contradicts that. His own characterizations of
19 Mr. Glover's behavior would indicate Mr. Glover did not
20 understand what he was saying, wasn't listening and wasn't
21 cooperating. So, I don't think that the evidence that
22 they've produced would indicate that he was properly advised
23 of his Miranda Rights and, you know, any statements that
24 he's made therefore can be, can be, found to be voluntarily
25 on his part and I would respectfully move for you to exclude

1 these statements based on that, Your Honor.

2 THE COURT: All right. Anything in response,
3 solicitor?

4 MS. ALL: Your Honor, only that the defendant's
5 lack of cooperation is not implicative of a lack of
6 response. He did respond with his body language. His body
7 language was refusing to cooperate was in response to
8 Investigator Williams questions and his statement used
9 proper pronouns telling him to go expletive himself was in
10 response to Investigator Williams questions toward him.

11 THE COURT: I'm trying to, I'm trying to,
12 determine how it's probative on the issue of whether or not
13 Mr. Glover committed burglary. It wasn't a confession. I
14 thought a Jackson versus Denno went to voluntariness of a
15 confession. I think they used statement and confession
16 somewhat interchangeable in the law but I don't know the
17 implication if any wasn't flushed out as to what it means
18 when an individual is uncooperative. If that implies — his
19 right to remain silent he certainly didn't remain silent but
20 his statement wasn't a confession.

21 What, what, does this go to if any issue proves
22 that he did or did not commit the burglary?

23 MS. ALL: Your Honor, the motion was made as a
24 safeguard of Mr. Glover's rights in prior trials in Richland
25 County we've ended up having to do a Jackson V. Denno for

1 just generally all statements made to law enforcement. So,
2 it was just a safety precaution but from the state's
3 prospective it does go toward his intent, his state of mind
4 at the time. He was consistently uncooperative with police
5 and, in fact, quite a nascence to them and rude.

6 THE COURT: Being uncooperative is not a
7 statement.

8 MR. COOPER: Yes, Your Honor, if I --

9 THE COURT: You can, you can, the defense lawyers
10 asked the reserve of that all the time, was he cooperative?

11 MR. COOPER: Yes, sir.

12 THE COURT: Yeah, he was cooperative. Well, he
13 should be, the SWAT team had him surrounded. I mean, you
14 know, that happens all the time. Was he uncooperative?
15 Yes. That's, that's, not a statement. You know, the
16 officer -- I think the officer can testify I mirandized him.
17 He turned his head, he looked the other way but -- let me
18 look, let me look, up a case. I can't think of the name of
19 it right off. I can tell you where it happened. I'll look
20 it up. You're not going to -- that won't be your first
21 witness will it?

22 MS. ALL: No, Your Honor.

23 THE COURT: All right.

24 MS. ALL: And again it was simply precautionary
25 just in case it was construed as a, no, I didn't do it in

1 anyway.

2 THE COURT: All right. Let me look up a case.
3 I'll take it under advisement. Don't use it in your opening
4 statement either way.

5 All right. Other motions, solicitor?

6 MS. ALL: No, Your Honor.

7 THE COURT: All right. You have motions,
8 Mr. Macnealy?

9 MR. MACNEALY: I do, Your Honor.

10 THE COURT: All right.

11 MR. MACNEALY: First off again, I just want to put
12 on the record and I submitted the copies to you, Your Honor,
13 and to the state in regards to our multiple request for the
14 -- and Officer White records but still have yet to turn over
15 not making any particular motion on that, just want to put
16 that on the record.

17 THE COURT: All right.

18 MR. MACNEALY: In terms of the first motion, Your
19 Honor, we should -- the state, Your Honor, should have a
20 motion's list it's going to be -- not going to go quite in
21 line with that, Your Honor. But, in fact, the first motion
22 I'm going to have is not listed on here but it's just a
23 request to -- it appears to be multiple officers the state
24 intends to call and we just got this -- the list right now.
25 Our first motion, Your Honor, is to request that the --

1 during the trial, of course the trial, the officers involved
2 not to investigators present but the officers be
3 sequestered.

4 THE COURT: Have they, have they, given written
5 statements, accident reports anything of that nature?

6 MS. ALL: No, Your Honor.

7 MR. MACNEALY: Yeah.

8 MS. ALL: We have no objection to them being
9 sequestered.

10 THE COURT: All right. And, of course, your chief
11 investigating officer may remain and any evidence custodians
12 if there are any.

13 MR. MACNEALY: Your Honor, I guess my request just
14 needs some clarification for all of their witnesses be
15 sequestered except for the investigator, the lead
16 investigator.

17 THE COURT: The victim or the owner of the
18 property has a --

19 MR. MACNEALY: Right.

20 THE COURT: Constitutional right to remain.

21 MR. MACNEALY: That's correct.

22 THE COURT: I believe. What other witnesses are
23 there?

24 MS. ALL: Just other officers that were on the
25 scene.

1 THE COURT: Ma'am?

2 MS. ALL: And the clerk support.

3 THE COURT: Who's the other one, solicitor?

4 MS. ALL: We have two clerks of court, Mr. Truitt

5 and then Ms. Gleen from the Orangeburg County Clerk of

6 Court's Office them and just the officers that were also on

7 the scene.

8 THE COURT: All right.

9 MR. MACNEALY: That's fine, Your Honor.

10 THE COURT: You don't, you don't, the clerk is

11 probably not going to be here anyway.

12 MR. MACNEALY: Right, that's fine.

13 THE COURT: You don't have any objection to them

14 remaining?

15 MR. MACNEALY: I do not.

16 THE COURT: All right.

17 MR. MACNEALY: Your Honor, the next motion is just

18 the to renew the Rule Five and Brady material, if there's

19 anything that the state hasn't turned over to the defense we

20 would request that at this time, particular it's come to our

21 attention there may be possibly a video from when my client

22 was stopped at the side of the road. My understanding is

23 that the blue lights were activated and most city cars at

24 this point are equip with video are activated -- the video

25 is activated upon turning on the blue lights. There isn't

1 any video to that fact. We have not received that and
2 wanted to put that on the record.

3 THE COURT: All right.

4 MR. MACNEALY: At this item.

5 THE COURT: Solicitor.

6 MS. ALL: The state does not have said evidence
7 and it is not in existence.

8 MR. MACNEALY: Okay.

9 THE COURT: You've complied with Rule Five and
10 Brady?

11 MS. ALL: We most certainly at every step of the
12 way and then we also scheduled a discovery meeting for
13 Monday the 23 and have a meeting -- I personally had a with
14 Mr. Macnealy and Mr. Cooper and went through everything and
15 then they have the opportunity to come up and view the
16 evidence.

17 THE COURT: Okay.

18 MS. ALL: We also made, I'm sorry.

19 THE COURT: No, go right ahead, solicitor, I
20 didn't mean to interrupt you.

21 MS. ALL: We also -- it came to my attention on
22 the first day that this was called for trial which would be
23 April 9th was the day that the state had notices for trial.
24 Mr. Macnealy brought it to the state's attention that the
25 video did not work on his computer and that he needed to be

1 able to view it so the state brought Mr. Glover over from
2 the jail everyday so that defense counsel could view it with
3 their client at their convince, used my office so that they
4 could have the opportunity to view it.

5 THE COURT: All right. Thank you. Thank you,
6 solicitor.

7 All right. Mr. Macnealy.

8 MR. MACNEALY: Thank you, Your Honor. The next
9 motion is just Riddle Motion I actually provided a copy of
10 the case law on Riddle, Your Honor. This is for any
11 additional or different statements that any of the witnesses
12 that the state intends to call that materiel would be turned
13 over to us a well. I have -- not aware if there is a -- if
14 the state, the solicitors, are aware of any additional
15 material to that effect we're requesting that at this time.

16 THE COURT: All right, solicitor.

17 MS. ALL: Regrettable, Your Honor, we don't have
18 that case law but we don't have any changes in any
19 statements.

20 THE COURT: All right. Thank you. Any others,
21 any others?

22 MR. COOPER: Yes, sir.

23 THE COURT: Yes, sir, Mr. Cooper.

24 MR. COOPER: Yes, sir. In reference to motions
25 number three, five and six I think I can sort of consolidate

1 those into one.

2 MS. GARFIELD: Can we have a copy of those
3 motions?

4 MR. MACNEALY: Yes, you have those --

5 MS. GARFIELD: Oh that --

6 MR. MACNEALY: Yeah, everything's together
7 including the case law.

8 THE COURT: Three, five, and six?

9 MR. COOPER: Yes, sir.

10 THE COURT: All right.

11 MR. COOPER: But the main point of these motions
12 is to address the manner in which the state will prove the
13 existence of the two prior burglar convictions.

14 First of all, the -- you know, the defense we're
15 aware that they have to prove the existence of those
16 convictions to prove the -- an element of the offense.
17 That's, that's, established law in South Carolina. But what
18 I will propose is to avoid the jury misconstruing that
19 evidence is would otherwise would be impermissible character
20 evidence. What I would propose and what the defense would
21 say is that we would stipulate to them presenting evidence
22 of the convictions in front of the jury which they're
23 required to do without going through the calling the
24 witnesses and going through a whole parade of witnesses to
25 do so because our concern is that while we realize that's a

1 requirement they got to fulfill it could be -- it goes on to
2 testimony it could be, you know, impermissibly construed by
3 the jury as character evidence when all they're required to
4 do is establish the existence of the condition. I would --
5 so I'd request that, that, they stipulate to the existence
6 of two prior burglaries and that the and, of course, we'd
7 agree with that.

8 The second prong of my concern about that is that
9 they're, only -- they only need to prove the existence of
10 two prior burglaries. I'm aware they might have more. I
11 think that certainly the introduction of any more burglaries
12 then the two they're required to produce would be
13 impermissible character evidence. The only thing it could
14 possibly be would be served as character evidence against
15 Mr. Glover. So, I ask the court to limit them to only the
16 introduction of two prior convictions and I do, that, you
17 know, there is an opinion about State V. James --

18 THE COURT: I'm looking at it.

19 MR. COOPER: Which I think would back me up on
20 that contention.

21 THE COURT: All right.

22 MR. COOPER: So, and also I realize we've already
23 addressed this a little bit, Your Honor. But the rest of
24 the motion was considering the proper third but I think
25 we've come to an agreement on that that we agree that

1 those -- elements. But those are -- would be my two
2 requests regarding the introductions for the prior
3 convictions for the purpose of previous burglary second
4 violent.

5 THE COURT: All right. They can bring in two
6 prior convictions.

7 Solicitor, did you want to stipulate to that or
8 you going to bring it in later?

9 MS. GARFIELD: Just, just, a second, Judge.
10 Judge, we agree that you can only introduce two while
11 Mr. Glover may have more convictions unless obviously he
12 takes the stand and that's a different issue. We don't have
13 a problem stipulation I just wish this could have been
14 brought up beforehand because we've got someone on the road
15 from Orangeburg right now.

16 THE COURT: You don't have a problem?

17 MS. GARFIELD: We have a clerk on the road coming
18 from Orangeburg right now. Oh, she actually just got here
19 so.

20 THE COURT: You're not stipulating to those two?
21 You're putting up witnesses?

22 MS. GARFIELD: We plan to put up Mr. Truitt for a
23 burglary conviction and Ms. Gleen for a burglary conviction.

24 THE COURT: Ms. Gleen.

25 MS. GARFIELD: Yes, sir.

1 THE COURT: Is this Ms. Gleen?

2 MS. GARFIELD: Yes, yes.

3 THE COURT: Okay. All right. I think that's the
4 law.

5 MR. COOPER: I -- just to clarify, I thought, if I
6 misheard, they agreed to stipulate, is that correct.

7 I thought that's what you said.

8 MS. GARFIELD: I said I would have agreed if I had
9 known beforehand but now that I have Ms. Gleen all the way
10 here.

11 MR. COOPER: Oh, so you're not agreeing to
12 stipulate. Okay, I just thought -- I didn't know what --
13 sorry.

14 THE COURT: All right. Any other motions,
15 Mr. Cooper or Mr. Macnealy?

16 MR. MACNEALY: Yes, Your Honor. We have several
17 left at least three motions dealing with suppression, Your
18 Honor. And I don't know what photographs the state intends
19 to introduce. I've seen all of the photographs but there
20 are several photographs that the state intends to use that I
21 would like a ruling on. I'm requesting that they be
22 suppressed particularly photographs involving my client
23 after he's been detained. The photographs and I don't have
24 them in front of me.

25 MS. GARFIELD: They haven't been marked yet.

1 And, Judge, all of those photographs were provided
2 to defense counsel.

3 MR. MACNEALY: And I do not know if they intend to
4 introduce any of the photographs involving my client after
5 he was detained, Your Honor, but those in particular I'm
6 making a request to suppress based on they are not probative
7 at all to the state's case. In my opinion, Your Honor, the
8 photographs are prejudicial to my client. I will be glad to
9 show you exactly what I'm talking about and I think you will
10 agree with me, Your Honor.

11 Your Honor, I'm going to hand up the particular --
12 and any of them that I might have missed the brief scan
13 involving my client.

14 Your Honor, most of the photographs are just
15 pictures of Sharky's, pictures of evidence but these in
16 particular, Your Honor, I -- Your Honor, we would like just
17 to have a clear record, if we can have them marking of those
18 photographs if it's possible to do that.

19 Your Honor, those photographs in my opinion they
20 show my client, you know, physical visibly upset. His hands
21 were behind his back probably, you know, with either cuffs
22 on or tied, tied, on his wrist. There's nothing about those
23 photographs that are probative of what the state is tries to
24 prove. It purely goes to making my client look, look, bad,
25 you know. It's -- he's in a difficult situation. He's

1 visibly sweating does not -- he's very uncomfortable it very
2 evident in those photographs and I would request, Your
3 Honor, that those photographs be suppressed.

4 THE COURT: All right.

5 MS. GARFIELD: And, Your Honor, she's got the
6 photographs. I was intended to at least submit one
7 photograph. This defendant was detained shortly after the
8 burglary. There's a video of him in Sharky's. He's wearing
9 the same clothing. He's wearing the same hat. It's highly
10 probative for our case.

11 THE COURT: All right. How many were marked?

12 MS. GARFIELD: I haven't -- I've put stickers on
13 them but I haven't marked any of them yet.

14 MR. MACNEALY: Five.

15 THE COURT: And of those five have you looked at
16 those five, solicitor, and you just going to offer one of
17 those five?

18 MS. GARFIELD: Yes, sir.

19 THE COURT: Is that what you're telling me?

20 MS. GARFIELD: Yes, sir.

21 MR. MACNEALY: Your Honor, and just to that -- the
22 evidence is my client's clothes, okay. They're also having
23 the officer testimony to what he was wearing when he was
24 detained. They're going to get that testimony in. It's
25 just the -- that picture -- those set of pictures I think

1 are highly prejudicial, Your Honor.

2 THE COURT: Well, if, if, this is a motion in
3 limine.

4 MR. COOPER: Right.

5 THE COURT: Testimony of evidence that is via of
6 the burglary, and shows an individual in this certain type
7 of dress and at sometime thereafter the defendant's arrested
8 and the items of clothing he has on is the same or similar
9 to those I think it would be admissible. I think it would
10 go to the weight and not the admissibility. Quite frankly
11 he didn't look particularly upset to me in one of them he
12 looked like he was smiling. Now, that could have been that
13 he was not smiling it could have been more bearing his teeth
14 than smiling. So, it can be interpreted different ways by
15 different people. But I think the testimony going -- like
16 that it's relevant under 401 and I would not exclude it
17 under 403.

18 And that's understanding, solicitor, you're going
19 to withdraw four of those five?

20 MS. GARFIELD: Yes, sir. Yes, sir.

21 THE COURT: Is that correct.

22 MS. GARFIELD: Yes, sir.

23 THE COURT: So, only one of those five you would
24 be offering and that's, of course, if the proper foundation
25 is laid.

1 MS. GARFIELD: Absolutely, Judge.

2 THE COURT: And I think it's different also in my
3 ruling you can say you put an officer up and say, all right,
4 what is this item? Say, well, that the T-shirt he was
5 wearing, that's the hat he was wearing, that the blue jeans
6 he was wearing. That doesn't give you the same prospective
7 as seeing an individual in photographs with those clothes
8 on. So, I think it has some -- it has probative value and
9 it survives a 403 with the understanding the solicitor is
10 just going to offer one, if you would show which one you
11 intend to offer to, to, Mr. Macnealy and Mr. Cooper.

12 All right. Any other motions?

13 MR. MACNEALY: Yes, Your Honor. Next is the a
14 motion regarding my client's bag, Your Honor. We had a
15 chance to go through that bag a couple days ago and in my
16 opinion there's nothing in the bag we didn't pre search that
17 bag. Your Honor, there is an adult magazine in there.
18 Nothing in that bag itself or about the bag that's going to
19 be testified to. I believe there's even a picture of the
20 bag but have that go back to the jury room, Your Honor, in
21 a, you know, an adult magazine in there, Your Honor, I
22 request that that not be admitted into evidence.

23 THE COURT: All right, solicitor.

24 MS. GARFIELD: I guess I ask for clarification of
25 the motion. Are you asking for the bag and everything in it

1 to be suppressed?

2 MR. MACNEALY: Well, I guess that goes to -- I
3 don't know if the state was planning on cleaning out the
4 bag, Your Honor, but there's is an adult magazine and other
5 things that I'm not sure what is in there because it's so
6 cluttered with things and it might be prejudicial to my
7 client. If it's just the bag itself and empty of its
8 contents then I'm fine with that, Your Honor.

9 MS. GARFIELD: Judge, the reason it's probative is
10 it is alleged that the defendant took packages of cigarettes
11 from the bar and the same brand type cigarettes are found in
12 the bag. I don't have a problem introducing an empty bag
13 and the cigarettes and keeping all the other contents out.

14 MR. MACNEALY: Yeah.

15 THE COURT: All right.

16 MR. MACNEALY: I think the cigarettes are already
17 separated, Your Honor, so we're fine with that.

18 THE COURT: All right. So, the bag and the
19 cigarettes are coming in.

20 MR. MACNEALY: Well, the cigarettes is my next
21 motion, Your Honor.

22 THE COURT: So the bag is coming in right now
23 empty, correct?

24 MR. MACNEALY: That's correct, yeah.

25 THE COURT: Is your position, all right. Now,

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 bonds 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 access 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 plain view
22 doctrine mere reasonable suspicion 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 seems 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 your 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 many 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 If you would have the jury step back to the jury room
2 momentarily please, I apologize.

3 (The jury retires from the
4 courtroom at 12:08.)

5 THE COURT: Sheriff, would accommodate Mr. Glover?

6 MR. COOPER: Thanks for doing that, Your Honor.

7 THE COURT: You're welcome.

8 (Pause)

9 MR. COOPER: Your Honor, he's returned and there's
10 one thing I did think of.

11 THE COURT: Yes, sir.

12 MR. COOPER: Can I get him -- when the jury panel
13 was in here I noticed that they left the shackles on and I
14 don't think you -- I don't think the jury has seen it at
15 all, but I just thought that if you'd allow it we can take
16 them off just to avoid any chance that they do. I mean,
17 he's had his feet up there and I think it's been fine but I
18 don't think he's going to or a flight risk or anything. So,
19 if you're willing to allow them to take the shackles off
20 trial when the jury is in here it might be easier just to
21 make sure they don't see it.

22 THE COURT: I'll talk to security over the break.

23 MR. COOPER: Yes, sir.

24 THE COURT: Is he all right now? I'm going to
25 release the jury for lunch.

1 MR. COOPER: Yes, sir.

2 THE COURT: Is that all right now?

3 MR. COOPER: Yes, sir.

4 THE COURT: Okay. All right.

5 (The jury returned to the

6 courtroom at 1:08.)

7 BAILIFF: Jury's present, Your Honor.

8 THE COURT: All right. Thank you. Thank you very
9 much. Welcome back, ladies and gentlemen of the jury panel.

10 I apologize for holding you captive for so long. It's very
11 difficult to estimate the time that these pretrial matters
12 will take and it took me a little longer than I anticipated
13 I had hoped we would be further down the road at this time;
14 however, this is where we've at, if I'd realize that I would
15 have just released you from an extended lunch period but
16 that's Monday morning quarter backing. At this time I am
17 going to release you for your luncheon recess. I will
18 remind you during this recess you're not to discuss this
19 case with others including your fellow juror lunch mates,
20 family and friends or anyone else. Do not read, watch or
21 listen to any news reports about the case should there be
22 any, do not use your computer cellular phone or any other
23 electronic device or communication capabilities or any other
24 method to obtain or disclose information about the case when
25 you're not in court. Information which is prohibited is the

1 following but it's not limited to the following, information
2 about the party or witness and attorney or court officer,
3 news accounts of the case, information collected through
4 juror research on any topic raised by the testimony or
5 offered by any witness or information collected through
6 juror research that you think might helpful in deciding he
7 case. Decided the case based on the evidence and the
8 testimony of the witnesses testifying from this witness
9 stand before you under oath and any exhibits or other items
10 offered into evidence and the law as I tell you the law is.

11 Remember keep an open mind. Do not begin your
12 deliberations until I instruct you to do so. I would ask
13 you to please be back promptly at 2:30 in your jury room, if
14 you please be back promptly at 2:30. Thank you very much.
15 You're now excused for your luncheon recess. You may go
16 with your bailiffs.

17 (The jury retires from the
18 courtroom at 1:12.)

19 THE COURT: All right. Court will be in recess
20 until 2:30.

21 MR. MACNEALY: Thank you, Your Honor.

22 MR. COOPER: Thank you, judge.

23 (Whereupon, a luncheon recess
24 was held.)

25 THE COURT: All right. Mr. Cooper, I had

1 discussed with security the issue with the leg braces on
2 Mr. Glover, I'm going to allow them the remain.

3 MR. COOPER: Yes, sir.

4 THE COURT: I do not think they can be seen by the
5 jury panel. Should he decide to take the witness stand what
6 I'll do is make sure that the jury is out of the room when
7 they come back in the room he will already be seated --
8 sitting.

9 MR. COOPER: Yes, sir.

10 THE COURT: All right. Anything from the state
11 before we bring in our jury, solicitor?

12 MS. GARFIELD: No, sir. Just housekeeping
13 matters, before our second witness we just need a minute to
14 get our screen setup.

15 THE COURT: All right. Anything further, Mr.
16 Macnealy, Mr. Cooper?

17 MR. MACNEALY: No, sir.

18 MR. COOPER: No, Your Honor. Thank you.

19 THE COURT: All right. Thank you. Thank you very
20 much.

21 Solicitor, on the hearing that we had that's in
22 terms of the Jackson v. Denno hearing, if the statement that
23 the state is attempting to elicit from the detective is that
24 the defendant said words to the effect to go F yourself. I
25 do not believe that is a confession. The fact that he

1 refused to cooperate I do not think necessarily have a
2 probative negative inference with the jury.

3 The case I looked at I couldn't quite remember was
4 State versus Reid, R-E-I D which was a Richland County case
5 where Reid was wanted by West Columbia officers got involved
6 in a high speed case on I-20 and then exiting I-20 at Alpine
7 Road at 119 miles an hour struck another vehicle and killed
8 the passenger. And the state was allowed to bring out that
9 he was advised of his miranda rights and I think you can do
10 that. Then the only thing that he said was what am I being
11 charged with and further that he never asked about the
12 condition of the passenger and that kind of brings in the
13 remorse and I realize you're not trying to get to the issue
14 of remorse but the fact in your case in chief that this
15 defendant (indicating) stated to an officer to go F yourself
16 I don't think it's probative on the fact as if he did or did
17 not commit the burglary.

18 Now, I'm not disallowing that based on miranda
19 violation or voluntariness violation any violation by the
20 officer involved or the officer that testified just at this
21 point I don't think, I didn't think, it's probative.

22 All right. Bring us our jury please.

23 (The jury returned to the
24 courtroom at 2:41.)

25 BAILIFF: Jury's present.

1 THE COURT: Thank you.

2 Ms. Clerk, would you swear our jury please?

3 THE CLERK: All right.

4 Ladies and gentleman, would you please stand and
5 raise your right hand to be sworn.

6 Jury was duly sworn.

7 THE CLERK: Thank you.

8 THE COURT: Is there any member of the jury panel
9 unable to take the oath, if so please stand.

10 (There was no response.)

11 Ladies and gentleman of the jury, the case we're
12 about to start is The State versus Tyris B. Glover. What I
13 now say is intended to serve as an introduction of the trial
14 of the case. These remarks are not an instruction on the
15 law. I would instruct you on the law that applies to this
16 case at the time end of the trial before you retire to
17 consider your verdict. This is merely an explanation of the
18 procedure that we will follow so that you may make -- better
19 understand what may be happening.

20 The defendant is charged by indictments filed with
21 this court with the crimes of burglary in the second degree
22 and larceny. The elements of which will be explained to you
23 later. These indictments, ladies and gentlemen, as I stated
24 previously are the charge by which the cases are brought
25 into court and they are not in any since evidence of any of

1 the allegations they contain.

2 The defendant has pled not guilty to these
3 indictments. The state therefore has the burden of proving
4 each element of the indictments beyond a reasonable doubt
5 and it will be your duty, ladies and gentlemen, to decide
6 whether the state has met that burden.

7 Your purpose as jurors is to find and determine
8 the facts. You are the sole judge of the facts, if at any
9 time I make any comment regarding the facts you must
10 disregard it. You are to determine the facts from the
11 testimony you hear and the other evidence introduced in
12 court. It is up to you to determine the inferences which
13 you feel may properly be drawn from the evidence.

14 It's especially important that you perform your
15 duty of determining the facts diligently and conscientiously
16 because originally there's no way to correct an erroneous
17 determination of the facts by a jury. On the other hand
18 with equal emphasis the same law that makes you the judges
19 of the facts makes me the judge of the law. The law is
20 given by the court is the only law you may consider. You
21 must accept and follow it even though you may disagree with
22 it. I cannot tell you what the facts are and you cannot
23 disagree with me about what the law is or should be. Your
24 job is to take the law as I give it to you and apply it to
25 the facts as you find them from the testimony of the

1 witnesses and any other evidence that is introduced, after
2 doing that, you will render your verdicts, true and just
3 verdicts, under the solemn oath that you have just taken as
4 jurors.

5 Until I advise you to begin your deliberations you
6 must not discuss this case with anyone including your fellow
7 jurors, family, friends or anyone else.

8 During the trial, do not read, listen to or watch
9 any news reports about the case should there be any. This
10 includes anything that may be in the news paper, on the
11 internet, radio or television. You must not consider
12 anything you may have read or heard about the case outside
13 the courtroom where before or during the trial. It is
14 important that you keep an open mind and not decide any
15 issue in the case until all of the evidence has been
16 presented, the parties have presented their closing
17 arguments to you and I have instructed you on the law in
18 this case and then advised you to begin your deliberations
19 with your fellow jurors in your jury room.

20 It is your solemn responsibility to determine the
21 guilt or innocence of the defendant and your verdict must be
22 based solely on the evidence as it is presented to you in
23 this trial and on the law as I instruct you during and at
24 the close of the trial.

25 Now, in just a moment, the solicitor will make

1 what is called an opening statement in which the solicitor
2 will explain to you the issues in the case or at least what
3 solicitor thinks the issues are in the case.

4 Mr. Macnealy or Mr. Cooper one of the attorneys
5 for Mr. Glover may also make an opening statement although
6 they are not required to do so. A criminal defendant in
7 South Carolina is presumed to be innocent regardless of the
8 seriousness of the charges. They are not required to prove
9 themselves innocent. The state has the burden of proving
10 its case beyond a reasonable doubt.

11 Now, ladies and gentlemen, what the attorneys tell
12 you during their opening statements or during their closing
13 arguments is not evidence in the case. It is only their
14 contention as to what the issues are. Further, their
15 questions are not evidence. The responses of the witness is
16 the evidence. The witnesses are placed under oath to tell
17 the truth. They're responses are the evidence. The
18 questions, the framework by which the testimony is elicited
19 from the witnesses. The evidence in this case will be
20 presented by -- to you in that manner.

21 From time-to-time during the trial you may hear one
22 of the lawyers say something like, Your Honor, I believe we
23 have a question of law or a matter of law to discuss with
24 you or, Your Honor, may we approach the bench? Sometime I
25 myself might find it necessary to excuse you from the

1 courtroom for a short while so the attorneys and I can
2 discuss the matter -- a matter of law. The reason for this
3 is because you are the judges of the facts in this case and
4 sometimes when I am discussing the matters of law with the
5 attorneys it may be necessary for me to make some comment as
6 to the facts in connection with ruling whether or not a
7 particular law applies. I am not suppose to tell you what I
8 think the facts are; therefore, I will excuse you from the
9 courtroom while those discussions take place so that in no
10 way will you be influenced by anything I might say or do in
11 connection with the facts.

12 In determining what the true facts are and in
13 using your good judgment and common sense you must decide
14 whether or not the testimony of the witnesses is believable.
15 It will be my responsibility to rule as a matter of law as
16 to whether certain testimony is admissible at all or not, in
17 other words, whether you are -- you hear it or not but once
18 the testimony is admitted, whether or not you believe it is
19 solely for you to decide.

20 In deciding whether to believe a witness you have
21 the right to consider the interest of any witness, the bias
22 of any witness, the prejudice of any witness, the
23 opportunity for the witness to have seen the matters and
24 things about which the witness may testify and the demeanor
25 or the behavior, the way the witness acts on the witness

1 stand. You have a right to consider anything that is in the
2 record that will help you evaluate the testimony of the
3 witnesses. That means it will be your duty to pay close
4 attention to the witnesses, to observe them, to listens to
5 the witnesses, to play close attention to the attorneys and
6 to the court. Don't let your thoughts wonder but give
7 strict attention to the testimony in this case, so that at
8 the end of all the testimony, the closing arguments by the
9 attorneys and the instruction on the law by the court, you
10 will then be in a position to determine what the true facts
11 are and to apply the law to those facts and thus render a
12 true and just verdict.

13 Just a couple of administrate issues, ladies and
14 gentlemen, what I'm really in charge of is taking breaks.

15 (Laughter.)

16 Ultimately and I have simple rule whenever I want
17 to take a break we take a break. No one is going to object.
18 Well, this isn't some type of judicial marathon but anytime
19 you set out here too long and you need a break please raise
20 your hand. Y'all will take y'all's break. We'll take our
21 break.

22 Also there may be I don't know what may be
23 introduced into evidence diagraphs, photographs, exhibits I
24 have no idea. Many times they may be handed to the jury
25 while you're here in your -- in the courtroom in your jury

1 box and passed among the members of the jury out here. If I
2 allow it into evidence you will also have item with you in
3 your jury room at the time of your deliberations. Look at
4 it all you wish to look at it while you're out here in the
5 courtroom keeping in mind that's not the only nor the lost
6 opportunity you will have to, to, view those items.

7 I generally work, ladies and gentlemen, for your
8 planning purposes till about 6:30 at night, generally the
9 hours I work and I usually start about nine in the morning.
10 I try to work from what they call can-to-can when I can see
11 to when I can't see. So, for your planning purposes if
12 anyone has childcare issues or other commitments at certain
13 times at a break just write out a note, knock on the door,
14 let the bailiff know so I will be able to respond
15 appropriately to that.

16 All right. Any objection of anything I told the
17 jury, solicitor?

18 MS. ALL: No, Your Honor.

19 THE COURT: Mr. Macnealy?

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

21 THE COURT: All right. We'll now begin the trial.
22 Solicitor, you may address the jury.

23 MS. GARFIELD: Thank you, Your Honor. May it
24 please the court.

25 You cannot take things that do not belong to you.

1 That was the subject of conversation at my dinner table last
2 night with my four year old. She was very upset because she
3 took her new Cinderella doll to school and put it in her
4 cubby and a classmate took it without her knowing it and
5 wrote on it in magic marker. You cannot take things that do
6 not belong to you. That is what this trial is about. This
7 trial is about this jury sending a message to the defendant
8 (indicating) Tyris Glover that you cannot take things that
9 are not yours.

10 This crime occurred in the Five Points area of our
11 county, Downtown Columbia, specifically the Restaurant Bar
12 called Sharky's. It's located on Harden Street and on
13 June 28th of last year in the early morning hours the
14 cleanup crew arrived around seven a.m. and found that the
15 establishment had been broken into. Several cigarette packs
16 had been taken and several items such as liquor bottles had
17 been moved about the business. Cleaning crew contacted the
18 manger who then contacted the police.

19 When the police arrived they found that there was
20 a video conducting surveillance of the establishment and
21 that officer viewed the video. And there was a black male
22 in the video dressed in jeans a white shirt and a New York
23 Yankees hat.

24 He then began to patrol the streets of our city
25 looking for this particular person. He was also seen with a

1 bicycle. Sometime later he found a black male with blue
2 jeans, a white shirt, a Yankees cap on a bicycle. When he
3 approached the male he asked him -- he had a book bag with
4 him and he asked him if he could look in the book bag and he
5 allowed him to do so. During the course of looking in the
6 book bag the officer found three packs of cigarettes --
7 three or four packs of cigarettes matching the same packages
8 that had been taken from Sharky's Bar.

9 Ladies and gentlemen of the jury, Tyris Glover is
10 charged with burglary in the second degree and petty
11 larceny.

12 Ladies and gentleman, my name is Dolly Justice
13 Garfiled and seated at the table with me is my cocounsel Ms.
14 Britton All. We are solicitors here in Richland County and
15 that's another word for prosecutor, district attorney. In
16 South Carolina that's what we refer to our job. And a lot
17 of people will ask me, oh, so you do like you see on Law In
18 Order and things like that and I usually explain to them
19 it's a lot like that as for as issues. We face the same
20 issues that you do on Law In Order except in my word I have
21 real cases with real witnesses. I don't have people that
22 are paid to be actors.

23 And, ladies and gentlemen, I will first say this
24 is not CSI. There's all kinds of crazy stuff they show on
25 CSI that just simply doesn't exist. Not ever case has DNA

1 evidence. Not every case has microscopic evidence that they
2 can enhance right there on the scene and get a thumbprint
3 that match somebody, it's just all kind of craziness. Here
4 in our state we have real witnesses, real law enforcement
5 who take the stand and tell you what they did during the
6 investigation of the case. It is our job to prove that to
7 you beyond a reasonable doubt and that is a burden that we
8 welcome in this courtroom in this case.

9 Right now Tyris Glover is presumed innocent and I
10 would like to think of that as if he has a cloak wrapped
11 around him. A cloak of innocence wrapped around his body
12 and as each witness takes the stand and as each piece of
13 evidence is introduced into evidence after piece of that
14 cloak is torn eventually revealing the guilty man that he
15 is.

16 Now, how will we approve this case? You're going
17 to hear from the manager of Sharky's and you're going to
18 hear from several law enforcement officers, law enforcement
19 officers who saw the video, and law enforcement officers who
20 went and did crime scene analysis and were able to obtain a
21 fingerprint that matched Tyris Glover from inside Sharky's
22 Bar. You're also going to be allowed to see the video that
23 was taken from the bar as well as photographs of the
24 defendant when he was arrested and the clothing he was
25 wearing.

1 Ladies and gentlemen, Five Points is a thieving
2 part and unique part of our city. It has wonderful dining
3 experiences for many people. It has wonderful memories and,
4 maybe, not so good memories for many of our college students
5 but for Tyris Glover he treated it as a place to commit
6 crime. Commit crime in our community. So, ladies and
7 gentlemen, I know that you are going to take this job
8 seriously because this is something that happened in your
9 community. And after you review all of the evidence, I
10 submit, that you will not hesitate in finding a guilty
11 verdict. You will not hesitate in sending that message to
12 Tyris Glover that you don't take things that don't belong to
13 you.

14 THE COURT: Thank you. Thank you very much,
15 Solicitor.

16 Mr. Cooper.

17 MR. COOPER: Yes, sir. Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. COOPER: Please the court.

20 Good afternoon, ladies and gentlemen. I
21 absolutely agree with Ms. Garfield's comments that this case
22 is about sending a message and I just don't think I have the
23 same message that she has. I think as you listen to the
24 evidence most of which will come in the form of testimony
25 from the witness stand (indicating) and a large part of

1 which will be given to you by law enforcement officers. You
2 will realize that this case is about sending a message to
3 law enforcement itself in our community and to the other
4 members of our community. The reason I say this is, let's
5 us think now about the scenario you just heard outlined by
6 Ms. Garfield. What she told you was you're going to hear
7 about law enforcement about seeing a black male on a video
8 inside a bar and then later that day seeing a black male
9 walking down the street minding his own business with a bag
10 who matches a description. What we have to decide, what you
11 all have to decide, after considering the evidence you hear
12 in this case is what do we accept as being enough in our
13 community? And the decision that you all make will be the
14 message that is send to law enforcement, to the rest of our
15 community and communities every where else in the United
16 States. The question is, what do we accept as enough for
17 condemning someone of a criminal act? And what they're
18 going to ask you to do is take the image a black man on the
19 video as perceived by police officers and the same
20 perception of police officers hey there's a guy, a black
21 guy, that -- with a cap and T-shirt I think he kind of looks
22 like the guy on the video. That's our guy. Is that enough
23 for our community? Is that enough to condemn somebody?
24 These are the questions you're going to have to ask yourself
25 during this trial. And my position is and our defense

1 position will be that that evidence that you hear from the
2 witness stand what's offered for you today is not enough to
3 condemn Tyris Glover. Tyris Glover should not be condemned
4 for being a black man, walking down the street who matches
5 the description. And what I and Mr. Macnealy are going to
6 do is ask you to send the Columbia Police Department and the
7 rest of your community a message that no matter what happens
8 elsewhere in this country here in Richland County seeing
9 someone you think matches a description that's not enough
10 for us, not here. That's not what we do. And this is
11 position that you're in today. This is why you had to get
12 somebody else to pick up your kids think morning. This is
13 why you had to tell your boss I've got jury duty. This is
14 why you had to give up, maybe, part of your vacation or
15 something that you enjoy doing and I know that was annoying
16 at the time that you had to do that but you have to
17 understand how important this is. This is why our society
18 we don't give law enforcement the ability to just pronounce
19 someone guilty at the scene because we know it's important
20 enough to put it to y'all, other members of the community to
21 decide and send a message what you want your community to be
22 like and what you want the standards to be like in your
23 community as a member of it.

24 Now, you heard Ms. Garfield say, well, this is not
25 CSI. Well, it's not the television program certainly not.

1 We all know that. But Ms. Garfield will say, well, it's not
2 CSI they do all kind of crazy stuff on the show, okay. But
3 at the same time they're going to ask you to rely on some
4 forensic evidence and I don't think they've going to call
5 that crazy stuff. I think what that means is, don't except
6 too much from us, if you except the amount of evidence they
7 have on the T.V. show we don't have it but that's okay. But
8 what we do have, well that's not crazy. That's firm, maybe,
9 you should believe that. I don't think they can have it
10 both ways. I think as you examine the evidence you will
11 realize that when you examine the testimony when you look at
12 what they actually place into evidence it is for you to
13 decide what is enough, what is crazy and what's not crazy.
14 Not them. You're the finder of fact in this case. You're
15 the ones that say is this enough to condemn a man as guilty?
16 Is this enough in our community to say this person is
17 guilty? Is this the message that we want to send our law
18 enforcement officers and the rest of our citizens that this
19 is okay, that this is enough. And, ladies and gentlemen,
20 you're going to find out that it's not enough. It's not.
21 And you're the final, you're the final, barrier. You are
22 the people that tell them this is not okay and this is not
23 enough. And I hope that when you reach that decision and
24 when you realize that you will return the just verdict of
25 not guilty for Mr. Tyris Glover. Thank you.

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 634 Harden Street.

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 wraps 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. Macnealy 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 (Whereupon, a bench conference
2 was held off the record, in
3 the -- presence of the jury, but
4 out of the hearing of the jury.)

5 THE COURT: All right. Ladies and gentlemen, step
6 momentarily to your jury room. Do not discuss the case
7 during this brief recess.

8 (The jury retires from the
9 courtroom at 3:42 p.m.)

10 All right. Sheriff, will you accommodate
11 Mr. Glover please?

12 And, solicitor, I understand you're next witness
13 will be our clerk from Orangeburg?

14 MS. GARFIELD: Yes, sir.

15 THE COURT: All right. Just let me know as soon
16 as the defendant is back in the court room I will be ready
17 to come right back out.

18 (Whereupon, a short recess was
19 held.)

20 All right. Anything, Mr. Macnealy, before we
21 bring the jury in?

22 MR. MACNEALY: No, Your Honor.

23 MS. GARFIELD: Not from us.

24 THE COURT: Juror number, juror number, 210,
25 number 210, Mr. Bailiff?

1 BAILIFF: Yes, sir.

2 THE COURT: Juror number 210 I'm appointing her
3 foreperson.

4 BAILIFF: All right.

5 THE COURT: If you'd bring our jury please.

6 BAILIFF: All right.

7 (The jury returned to the
8 courtroom at 4:03 p.m.)

9 BAILIFF: The jury's present, Your Honor.

10 THE COURT: Thank you, Mr. Bailiff.

11 All right. We'll continue on with the trial of
12 the case with the presentation and testimony by the state.

13 Juror number 210, thank you. Thank you very much
14 for agreeing to serve as our foreperson.

15 Solicitor, you may call you night witness.

16 MS. GARFIELD: Thank you, Your Honor. States
17 calls Bernetha Gleen.

18 THE COURT: All right. It you will come around
19 and be sworn.

20 Raise your right hand.

21 THEREUPON,

22 BERNETHA GLEEN,

23 after having been duly sworn, testified as follows:

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

1 THE WITNESS: Bernetha Gleen.

2 DIRECT EXAMINATION

3 BY MS. GARFIELD:

4 Q Ms. Gleen, where are you employed?

5 A Orangeburg County Clerk of Courts Office.

6 Q And what are your duties with Clerk of Courts Office in
7 Orangeburg County?

8 A I am the general sessions criminal court clerk and one
9 of the records custodians.

10 Q And how long have you been in that capacity?

11 A For two years.

12 Q And what are your duties?

13 A Basically we are -- we keep the records for all of our
14 cases that come through our courts.

15 Q What type of -- criminal records?

16 A Criminal records, I'm sorry.

17 Q Did you bring with you today what's been marked as
18 State's Exhibit Number 32?

19 A Yes, I did.

20 Q And can you identify that exhibit for the jury?

21 A This exhibit is a copy of a conviction for the
22 defendant from our, from out, courts.

23 Q And particularly what defendant was charged on that
24 document?

25 A Mr. Tyris Glover.

1 Q And do you know what charge?

2 A Burglary.

3 Q And that was in Orangeburg County?

4 A Yes, it was.

5 Q In what year?

6 A I don't have my glasses.

7 Q Oh.

8 A Looks like 1988, 89.

9 MS. GARFIELD: Your Honor, at this time I'd like
10 to move this exhibit into evidence.

11 THE COURT: May I see it please?

12 MS. GARFIELD: Yes, sir.

13 THE COURT: Thank you, solicitor.

14 All right, Mr --

15 MR. COOPER: May I see it, Your Honor?

16 THE COURT: Yes, certainly.

17 MR. COOPER: All right.

18 MS. GARFIELD: Thank you. Admitted, Your Honor.

19 MR. COOPER: No objection.

20 THE COURT: All right. State's 32 is in evidence
21 without objection.

22 (State's Exhibit 32 admitted
23 into evidence.)

24 BY MS. GARFIELD:

25 Q Thank you. No further questions at this time.

1 THE COURT: Thank you.

2 Mr. Cooper.

3 MR. COOPER: I have no questions, Your Honor.

4 THE COURT: Thank you. Thank you, madam clerk,
5 for being with us today and being patient.

6 THE WITNESS: Thank you.

7 THE COURT: Appreciate it very much.

8 All right. You may call your next witness,
9 solicitor.

10 This witness may be excused? Any objection?

11 MR. MACNEALY: None, Your Honor.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you.

14 MS. GARFIELD: State calls Jim Truitt.

15 THE COURT: All right. Mr. Truitt.

16 THEREUPON,

17 JIM TRUITT,

18 after having been duly sworn, testified as follows:

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

21 THE WITNESS: James Truitt, T-R-U-I-T-T.

22 DIRECT EXAMINATION

23 BY MS. GARFIELD:

24 Q Mr. Truitt, where are you employed?

25 A Clerk of Court Richland County.

1 Q And are you a custodian of records for criminal records
2 in Richland County?

3 A Yes.

4 Q And specifically that includes general sessions
5 charges?

6 A Yes.

7 Q I'm going to hand you what's been marked as State's
8 Exhibit Number 33, can you identify this document?

9 A It's a copy of a sentence sheet here for Richland
10 County.

11 Q Is that a conviction for a criminal charge?

12 A Yes, it is.

13 Q And what type of conviction?

14 A Burglary third.

15 Q And who would the defendant be?

16 A It's Tyris Glover.

17 Q And what's his date of birth?

18 A [REDACTED].

19 Q And when was that conviction made in Richland County?

20 A 8/6/08.

21 MS. GARFIELD: Your Honor, at this time I would
22 like to introduce State's Exhibit Number 33 into evidence.

23 THE COURT: Did you show it to Mr. Cooper and I
24 would like to see it, solicitor.

25 MS. GARFIELD: Yes, sir.

1 MR. COOPER: Yes. Thank you, Judge. All right.

2 MS. GARFIELD: Thank you.

3 (State's Exhibit 33 admitted

4 into evidence.)

5 THE COURT: All right. And, solicitor, will you

6 just clarify burglary third as being third degree and not

7 third offense?

8 MS. GARFIELD: Yes.

9 THE COURT: Will you just clarify.

10 MS. GARFIELD: Absolutely.

11 THE COURT: Do you have any objection, Mr. Cooper?

12 MR. COOPER: I do not, Your Honor.

13 THE COURT: All right.

14 BY MS. GARFIELD:

15 Q Mr. Truitt, are you familiar with the different levels
16 of burglary?

17 A Yes.

18 Q And what conviction is reflected in that document?

19 A Burglary in the third degree.

20 Q And does third degree mean third offense?

21 A No.

22 Q Do you know what third degree means?

23 A It's a lesser offense if I'm correct.

24 Q Then a burglary first or second?

25 A Yes.

1 Q Thank you.

2 MS. GARFIELD: Do that suffice, Your Honor?

3 THE COURT: Yes, thank you.

4 MS. GARFIELD: Thank you.

5 THE COURT: Thank you, solicitor. Anything

6 questions, Mr. Cooper?

7 MR. COOPER: I have no questions, Your Honor.

8 THE COURT: You have Mr. Truitt under oath. You

9 do not have any questions?

10 (Laughter)

11 All right. Thank you very much, Mr. Truitt.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you.

15 THE COURT: All right. Solicitor, you may call

16 your next witness.

17 MS. ALL: Thank you, Your Honor. The state calls

18 Officer Kevin Schmidt.

19 THE COURT: And, ladies and gentleman, I have

20 ruled that the officers are sequestered. They are not in

21 the courtroom at this time. They are not being

22 disrespectful in any manner they are following the order of

23 the court.

24 All right. Officer, if you will come down and

25 join us please.

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

2 BY MS. GARFIELD:

3 Q Thank you.

4 A Yes, ma'am.

5 Q Please answer any questions the defense may have.

6 A I will.

7 THE COURT: Yes, Mr. Macnealy.

8 MR. MACNEALY: Yes, sir. Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MACNEALY:

11 Q Officer Scott, is that correct?

12 A Yes, sir.

13 Q You wrote up the incident report, correct?

14 A Yes, I did, sir.

15 Q Okay. And in that incident report you mention latent
16 print cards 2-1 and one point one, is that correct?

17 A Yes. Yes, sir.

18 Q Okay. Which card came back with a hit with Mr. Glover?
19 You said there was a hit?

20 A It was 2 -- I believe it was two dash one.

21 Q Two dash one?

22 A Yes, sir.

23 Q So, one dash one did not?

24 A No, sir, did not.

25 Q Was that hit based off of a certain point of a match?

1 A I'm sorry, sir.

2 Q The, the, hit my understanding was a 14 point hit, is
3 that correct?

4 A There's 14 characteristics identified on a latent print
5 itself and the latent print and the known print. Yes,
6 sir.

7 Q Would that be described with like a 14 point match?

8 A It's not a match, sir.

9 Q How would you describe it for the jury?

10 A It's just doing a comparison, doing a comparison, and
11 you identify what we call the characteristics within
12 the fingerprint itself.

13 Q Are those 14 characteristics, is that what they use to
14 identify another person?

15 A No. That's their identify -- the ridge detail, the
16 ridge detail, identification. So, inside of a print
17 itself and for the jury themselves you have the
18 different types of ridges. One being an ending ridge.
19 I would like to really show you how it goes rights. As
20 the ridge comes up and it stops and it's a longer ridge
21 this is called an ending ridge. If a ridge goes up and
22 it spits into two different directions, this is what we
23 call bifurcation, okay. We have what they call dots
24 which is just, just, like you would see a dot at a end
25 of a sentence you would have a short ridge, a short

1 ridge, would be no more than a ridge that start at one
2 point and automatically stop but the ridge can be only
3 so long.

4 You have what we call enclosures sometime the
5 ridges will go up to a point into a bifurcation coming
6 from two different directions and meet in the middle
7 which then is called an encolure or what we call an
8 hour.

9 Q So, is there --

10 A These are what we call characteristics.

11 Q Okay. Tell me -- are there standards in the US in
12 terms of fingerprinting as to how much hits there needs
13 to be to match up with another fingerprint?

14 A No. There's no such thing as a hit, sir. Right,
15 characteristics --

16 Q Characteristics.

17 A Is what we're looking for.

18 Q Characteristics.

19 A On a characteristic there is no set number that you
20 need.

21 Q Uh-huh.

22 A However, right, you have to have what we call under the
23 standards of HV one is there an analysis -- do an
24 analysis of the print, comparisons of the print and
25 then you must be able to evaluate that print. In doing

1 so, right, we must be able one tell that the print is
2 either a world, a loop or arch. We got to then be able
3 to have identify characteristics within that print as
4 we talked about earlier the enclosures, the dots they
5 are the bifurcations the ending ridge to be able to
6 identify that print.

7 Q Okay. So, there's no standards in the US in terms of
8 how much many characteristics are needed?

9 A No, sir.

10 Q Okay.

11 A But you, you, must have a pattern type, you must have
12 characteristics, right, and you must have a -- you must
13 be able to verify those things, right, before --

14 Q And for clarification that you confirmed earlier that
15 there were 14 distinct characteristics that came off of
16 this print?

17 A Yes, it was, sir.

18 Q Okay. And that number 14 doesn't mean anything in
19 terms of the US standards because there are no
20 standards, correct?

21 A There's no set number.

22 Q Set number.

23 A Right.

24 Q Okay.

25 A Set numbers.

- 1 Q Are those set numbers in another countries?
- 2 A Oh, yes, England.
- 3 Q What do they use?
- 4 A England must have a minimum of -- you got to have a
- 5 minimum of ten I believe they like ten -- they like to
- 6 have ten, right.
- 7 Q I think it's 16, is that right?
- 8 A Yes, sir. Ten. Ten or eleven actually.
- 9 Q I think --
- 10 A Ten or eleven.
- 11 Q So it's not 16?
- 12 A No, sir. They don't have to have 16.
- 13 Q Did it change within the past few months?
- 14 A If you, if you, bring that to me, right, I'll take
- 15 that, sir.
- 16 Q While I brought this up, are there other countries with
- 17 different standards?
- 18 A Those are the only countries right there that I really
- 19 worry about, sir, because those -- that is the country
- 20 right there we base our system on, up on.
- 21 Q What is France at?
- 22 A I do not know, sir.
- 23 Q Would 30 sound accurate?
- 24 A I don't know, sir.
- 25 Q What about Brazil?

- 1 A I do not, sir.
- 2 Q Argentina?
- 3 A I do not know, sir.
- 4 Q Does 30 sound accurate?
- 5 A As I said, sir, I do not know, sir.
- 6 Q You're an expert in this field, correct? You continue
7 to read up on your field by other experts?
- 8 A Yes, sir. Matter of fact, prior to, prior to, going
9 overseas, right, for the two year time period, right, I
10 just had finished one of the, the, continuing education
11 courses on it.
- 12 Q And they don't talk about any of this stuff about what
13 other counties set --
- 14 A Well, yes, sir.
- 15 Q Standards are?
- 16 A You talk about it, right, but, you know, your primary,
17 your primary, option is, right, is to ensure, right,
18 that you identify and do the proper analysis, right, to
19 identify the prints, right, that you have in front of
20 you.
- 21 Q I just bring it to your attention.
- 22 A Yes, sir.
- 23 Q And you see there's a footnote?
- 24 A Do you mind if I stand, sir?
- 25 Q Sure.

1 A Okay. 16, okay, sir, I'll take that.

2 Q Okay. But no standard in the US, right?

3 A No, sir.

4 MR. MACNEALY: Beg the court's indulgence.

5 BY MR. MACNEALY:

6 Q I'm just going to write this down. So England has 16
7 points. You're not sure what France has, correct?

8 A No, sir.

9 Q Okay. You're not sure what Brazil has, correct?

10 A No, sir. I do not know.

11 Q You're not sure what Argentina has?

12 A No, sir.

13 Q If I told you that France -- that Brazil and Argentina
14 have 30 and France has 24 would you disagree with me?

15 A If that's what you tell me, sir, right. I'll take what
16 you have, right, here today so I can read it myself.

17 Yes, sir.

18 Q But you understand --

19 A I'll take it, sir. Yes, sir.

20 Q US is one of the only countries that does not have a
21 standard, that correct?

22 A Basically, sir. Yes, sir.

23 Q But you're working off a 14 point standard, is that
24 correct?

25 A Yes, sir.

1 Q Okay. Well, it's not the standard you're working off

2 14 --

3 A On --

4 Q That's standard in the US?

5 A 14 characteristics, sir.

6 Q Right.

7 A Is what we're working off of.

8 Q Which wouldn't make it in the UK, would it?

9 A We're not in the UK. So, we're in the United States.

10 Q But would you describe the science -- what is described
11 as a science that's subjective in nature?

12 A I wouldn't say it's subjective, sir, right. We've
13 been, we've been, using fingerprints in the United
14 States, okay, before DNA. Before DNA, okay.
15 Fingerprints was the science being used. Even after
16 DNA. DNA, right, has also been used and fingerprints
17 have also been used to identify different individuals.
18 What is unique about the fingerprints, right, compared
19 to DNA is on DNAs, right, two twins same could have the
20 same DNA; however, right, on fingerprints, right, no
21 twins will have the same fingerprints.

22 Q Yea, you made that point earlier today according to you
23 there's never been a person with identify fingerprint,
24 is that what you said earlier, right?

25 A Yes, sir.

1 Q I'm not going to dispute that.

2 A Not born today. No, sir.

3 Q But that doesn't mean it matches from one to another
4 you still have to have certain standards would you
5 agree?

6 A Yes, sir.

7 Q Okay.

8 A And we have identified those standards today.

9 Q But the US does not have any standards in terms of
10 number of characteristics required, is that correct?

11 A There's no set number. No, sir.

12 Q But there are in other counties?

13 A That's other countries. Yes, sir.

14 Q And other countries realize that no two people have the
15 same fingerprints but yet they have standards, don't
16 they?

17 A Yes, sir.

18 Q Okay. I asked, I asked, you if this is a subjective
19 science and kind of evasive and I asked it again.
20 Would you describe this as a subjective -- when you're
21 analyzing are you using your subjective to analyze
22 that?

23 MR. MACNEALY: I'll rephrase that, Your Honor.

24 BY MR. MACNEALY:

25 A Thank you.

1 Q I'll rephrase that. Do you take exams to be qualified?

2 A Yes, sir. We do.

3 Q Okay. If every police officer that took that exam got
4 the same score --

5 A I don't know the answer to that, sir. Because when we
6 do the exam, right, your exam is for you to take your
7 exam and you're graded upon what you do, if do not make
8 -- if you identify or give what they call an erroneous
9 identification then you cannot pass that test.

10 Q Okay. So, you can fail the test?

11 A Yes, sir.

12 Q I think it's fair to say that we're talking about a
13 point scale 0 to 100 if that's how they score it and I
14 have no idea how they score it. You would know how
15 they score it?

16 A Uh-huh.

17 Q That -- if 100 officers took that exam all 100 are
18 not -- will not get the same answers correct, would you
19 agree with that at least?

20 A Well, first of all, sir, right, you're going to have to
21 have a, officers will have to be one, trained.

22 Q Sure.

23 A In fingerprints.

24 Q Sure.

25 A Okay. This is something that every officer on the

1 street cannot do.

2 Q Sure.

3 A Okay. Then two, the end result is, okay, is for that

4 officer, right, to identify the characteristics.

5 Q Uh-huh.

6 A The pattern types.

7 Q Sure.

8 A Okay. And be able to compare the latent to the known

9 print, okay. And if he identifies it, okay, then yes,

10 we're going to come up with the same answer, right. Is

11 that individual have these unique characteristics

12 within the fingerprint pattern to identify that person

13 based upon any other person right in that room or

14 within that state.

15 Q I guess I'm -- a lot right there, this is why I asked

16 this straight out, if 100 officers took the same test

17 this latent print test will they come off with the same

18 scores?

19 A Well, sir, I can't answer that question.

20 Q Okay.

21 A Because I'm not giving the exam.

22 Q But a 100 different eyes is looking at the same set of

23 prints, right?

24 A Yes, sir.

25 Q Okay. And it's possible that some set of eyes don't

1 come out to the same conclusion as the next officer
2 taking the test, would you agree?

3 A I differ with that, sir. If the print is there, the
4 characteristics were there --

5 Q Okay.

6 A And you --

7 Q So, let me just ask you --

8 A And you have two officers they will come up with the
9 same end finding which would be either it is an
10 individual or it's not the individual.

11 Q So 100 officers take the test they are coming back with
12 the same thing?

13 A The going to come to the finding. The finding is,
14 right, what they actually see right there. The
15 characteristics are there, the identification pattern
16 is there and then they all are going to come up with
17 the same finding.

18 Q That's pretty amazing. And just to -- for
19 clarification Tyris Glover, 14?

20 A Yes, sir.

21 Q Okay.

22 MR. MACNEALY: Thank you, Your Honor. No further
23 questions.

24 THE COURT: Thank you, thank you, Mr. Macnealy.
25 Redirect.

1 MS. GARFIELD: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. GARFIELD:

4 Q Investigator Scott, you have a trained eye for this
5 field, correct?

6 A Oh, I love it.

7 Q In fact, when you look at two fingerprints the ridges
8 just jump out at you?

9 A Yes, ma'am, they do.

10 Q Much more than someone like me who has no training?

11 A I love it. Yes, ma'am.

12 Q And in order for you to do this line of work you have
13 to pass the examination?

14 A Yes, ma'am, we do.

15 Q Which means every comparison had to have been correct?

16 A Yes, ma'am.

17 Q Or you wouldn't be able to certify to do such?

18 A Yes, ma'am.

19 Q And all the comparisons that you do are they subject to
20 peer review within the --

21 A Oh --

22 Q Your department?

23 A Yes, they are, ma'am.

24 Q And so someone else also agree with your opinion?

25 A Yes, ma'am, they do.

1 Q Is your expert opinion that those two fingerprints
2 matched?

3 A Without a doubt.

4 Q Thank you.

5 RECROSS-EXAMINATION

6 BY MR. MACNEALY:

7 Q You passed your exam, correct?

8 A Yes, sir.

9 Q Just not sure if other officers passed theirs?

10 A I have no idea about the other offices.

11 Q Thank you. No further questions.

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

14 THE WITNESS: All right. Thank you.

15 THE COURT: Solicitor, you may call your next
16 witness.

17 MS. GARFIELD: Thank you. Your Honor. State
18 calls Investigator Paul Nelson.

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

20 THE COURT: Currently, sure.

21 (Whereupon, a bench conference
22 was held off the record, in the
23 presence of the jury, but out of
24 the hearing of the jury.)

25 Just stand aside just a minute, officer. We'll be

1 right with you. All right. You can sit down. You can take
2 your seat please, Mr. Bailiff.

3 BAILIFF: All right.

4 THE COURT: Thank you. All right. Madam
5 Forelady, ladies and gentleman, it appears that now would be
6 the appropriate time for us to take our evening recess. I
7 would remind you during the recess you're not to discuss
8 this case with anyone that includes your fellow jurors,
9 family, friends or anyone else. If anyone tries to talk
10 with you about the case please let me know immediately. Do
11 not read, watch, listen to any news reports about the case.
12 Please remember my instructions to not use your computer
13 cellular phones or any other electronic devices,
14 communication or any other method to obtain or disclosed
15 information which is prohibited. Information which is
16 prohibited includes but is not limited to the following
17 information about a party, a witness, a court officer or an
18 attorney, news accounts of the case, information collected
19 through juror research on any topic raised or testimony
20 offered by any witness or information collected through your
21 research on any other topic you might think would be
22 helpful. In other words, do not do any investigation on the
23 internet or on your own. You can't go home tonight and try
24 to do a crash course in inventory of alcohol or
25 fingerprinting or anything of that nature. You have to

1 decide the case based on the evidence and testimony you hear
2 from the witnesses testifying under oath in the courtroom on
3 the law as I tell you what the law is.

4 Thank you. Thank you, very much for your patience
5 today and for the attention and the focus that you've shown
6 to all the parties throughout the trial of this case. With
7 that being said, you're now excused for the evening recess.
8 I would ask you to please be back promptly at 9:30 in the
9 morning. Please be back promptly at 9:30. Thank you.
10 Thank you very much.

11 (The jury retires from the
12 courtroom at 6:00 p.m.)

13 Anything from the state before we take our evening
14 recess?

15 MS. ALL: No, Your Honor. Thank you.

16 THE COURT: From the defense?

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

18 THE COURT: All right. As far as this case is
19 concerned it's in recess until 9:30. I have a attorney
20 general matter at 9 o'clock in the morning. All right.
21 thank you very much. I hope y'all have a pleasant evening.

22 Thank you very much.

23 (The following proceedings were
24 held on April 27, 2009.)

25 THE COURT: All right. Bring us our jury please.

1 (The jury returned to the
2 courtroom at 10:03 a.m.)

3 BAILIFF: Your Honor, the jury panel's present.

4 THE COURT: Thank you. Thank you very much,
5 Mr. Bailiff.

6 Good morning, ladies and gentlemen of the jury
7 panel, welcome back. I apologize for the delay this morning
8 it's not the fault of any of the parties and the attorneys
9 in this matter. They were not on time, they were early and
10 working very diligently. With that being said we've
11 continuing the trial of the case by the presentation of
12 evidence and testimony by the state and its case in chief.
13 I would ask you to please continue to please continue to
14 give the parties yours complete and undivided attention.

15 Solicitor, you may call your next witness.

16 MS. GARFIELD: Thank you, Your Honor. State calls
17 Investigator Paul Nelson.

18 THE COURT: All right. If you would come around
19 please and be sworn.

20 THE CLERK: Raise your right hand.

21 THEREUPON,

22 PAUL NELSON,
23 after having been duly sworn, testified as follows:

24 THE CLERK: Thank you. Have a seat in the witness
25 stand.

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 laten 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 laten 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 precent --

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 laten on finger
14 number four I was able to positivity 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 where 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 filed 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 Q And in this case did someone else look at these
2 matches?

3 A Yes.

4 Q And that would be Kermit Scott?

5 A Kermit Scott.

6 Q Thank you. Please answer any questions the defense
7 has.

8 THE COURT: Yes, thank you, solicitor.

9 Mr. Cooper.

10 MR. COOPER: Thank you, Your Honor. May it please
11 the court.

12 CROSS-EXAMINATION

13 BY MR. COOPER:

14 Q Morning, sir.

15 A Good morning.

16 Q You know that from your training and experience you
17 know that fingerprint analysis and compassions is not
18 an exact science, right?

19 A That's correct.

20 Q All right. And that's why you and Ms. Garfield talked
21 at length about standards specifically lack there of is
22 because there's no specific standards because it's not
23 an exact science, right?

24 A Correct.

25 Q And several times Ms. Garfield used the word

1 comfortable when talking about your analysis and that
2 what she meant was and correct me if I'm wrong that
3 based on this analysis you've made your conclusions
4 because you personally are comfortable with the
5 results, right?

6 A I am.

7 Q Right. And that's not based on any specific standard
8 it's just based on your comfort level of your analysis,
9 right?

10 A And my training.

11 Q And your training?

12 A (The witness nodded head.)

13 Q And so when Ms. Garfield talked about peer review the
14 person who reviewed your work was also I suppose
15 comfortable with it that was Mr. Kermit Scott, right?

16 A That's correct.

17 Q Okay. And who's also testified in the case, right?

18 A Yes, he has.

19 Q All right. Just one last thing. I'm sure the jury can
20 see this from looking at it, but and I know they heard
21 Mr. Scott testify yesterday that the points he
22 hesitated to use the words points I think he wanted or
23 referred to characteristics that you all matched up
24 with ended up being 14, right?

25 A Correct.

1 Q Okay. So, you agree this number (indicating) 14,
2 right?

3 A Correct.

4 Q Okay.

5 MR. COOPER: I don't have anything further for
6 him, Your Honor.

7 THE COURT: Thank you, Mr. Cooper.
8 Solicitor?

9 MS. GARFIELD: Nothing further may this witness be
10 excused?

11 THE COURT: Yes, thank you. Thank you very much
12 to being with us.

13 THE WITNESS: Thank you.

14 THE COURT: You may step down.

15 Any objections to this officer being excused?

16 MR. COOPER: I have none, Your Honor.

17 THE COURT: Thank you. You may be excused.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Solicitor, you may call
20 your next witness.

21 MS. ALL: Thank you. State calls Sergeant J.P.
22 Williams.

23 THE COURT: All right, Sergeant, come around and
24 be sworn.

25 THE CLERK: Raise your right hand.

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 cheek
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 though 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 A Yes, sir, for the third time.
- 2 Q Okay. And for a second you just got a promotion,
3 right?
- 4 A Yes, sir.
- 5 Q And you're now a supervisor, right?
- 6 A That's correct.
- 7 Q Okay. That means that you're in charge of other
8 people, right?
- 9 A Other investigators, yes, sir.
- 10 Q That means that you monitor how other investigators how
11 they conduct their investigations, right?
- 12 A That's part of my duties. Yes, sir.
- 13 Q Okay. So, if you in your role as a supervisor now, if
14 you think that something hasn't been diligently enough
15 examined, if you think that steps have not been taken
16 that should have been taken it's your responsibility to
17 call them out on that, right?
- 18 A Yes, sir.
- 19 Q Because you know all the steps that need to be taken in
20 a competent investigation, right?
- 21 A I would say yes.
- 22 Q Right. And, and, that's because you try very hard to
23 take all of those steps in every investigation that you
24 do, right?
- 25 A Yes, sir, if --

1 Q You wouldn't ask your investigators that you're now
2 supervising you would never ask them to do something in
3 an investigation that you wouldn't do yourself, right?

4 A There -- different investigators have different
5 approaches to investigating cases.

6 Q All right.

7 A I don't necessarily have to impose my way of
8 investigating on another investigator for them to get
9 the job done correctly.

10 Q Your way of investigating so another investigator might
11 actually take notes that might be his way of
12 investigating, right?

13 A Sure.

14 Q Okay. Let's talk about role of an investigator in
15 general. Now, you discussed this with Ms. All at
16 length a minute ago and I just want to clear some stuff
17 up. It seems to me that the role of an investigator in
18 this case as you described it to the jury is you took
19 everything that officers below you had gathered, you
20 examined that, is that right?

21 A Yes. In a sense. First off, officers aren't below me.
22 We're all equal. I have a specialty that the officers
23 didn't obtain and therefore I was called to the scene
24 to the burglary because I have specialties in
25 burglaries. But yes, the -- and in this specific case

1 which is kind of rare to have that over abundance of
2 evidence given to you when you arrive on the scene.
3 That is kind of rare this was a specific case in the
4 aspect.

5 Q Okay. Well, Investigator Williams, when I, when I, say
6 below you I'm certainly not trying to insult anybody
7 but, I mean, it's just a fact that police department
8 operates on rank.

9 A Yes, sir.

10 Q I mean, you got your promotion because you've been
11 there a while, you had experience and so it's as a
12 matter of rank you're above people. That's what I
13 mean. That's true, right?

14 A Yes, sir.

15 Q All right. And, I mean, that's not a small point
16 because in a police department during investigation
17 it's important to have a chain of command, right?

18 A Yes, sir.

19 Q It's important to have people who may know more and may
20 be more experienced to instruct those with different
21 skills and less experience, right?

22 A Yes, sir.

23 Q All right. So, it's fair to say that on this
24 investigation in this case you were the lead
25 investigator, right?

- 1 A Yes, sir.
- 2 Q You were in charge of this investigation?
- 3 A Yes, sir.
- 4 Q So, if your supervisor examined this investigation, if
5 he wanted to talk to the person who was in charge who
6 the buck stopped with he would come to you, right?
- 7 A Yes, sir.
- 8 Q He'd talk to you about it?
- 9 A Uh-huh.
- 10 Q If he wanted to talk to you about why this arrest was
11 made, why certain things were done or why they weren't
12 done he'd come to you, right?
- 13 A Yes.
- 14 Q You are the boss of this investigation?
- 15 A I would be the lead investigator.
- 16 Q Right. So, in a way the things that are done or not
17 done in the investigation of this case you have
18 responsibility for those things?
- 19 A I have responsibility for them but not necessarily
20 control over.
- 21 Q All right. So, you don't, you don't, have control.
22 You don't have complete control over investigations is
23 what you're saying?
- 24 A No, sir. I'm saying I don't have control over what
25 people do before I arrive on the scene.

- 1 Q Right. You don't -- at the time scene, let's talk
2 about that. You don't have control over a scene, we
3 know that.
- 4 A Well, I have control over the scene. I don't have
5 control over what took place before I arrived.
- 6 Q You have control over a scene that you never visited?
- 7 A Once I get there. Yes, sir. My scene was at Shore and
8 Millwood where the defendant was at.
- 9 Q Your -- that was your scene?
- 10 A Yes, sir.
- 11 Q But the crime scene you never visited?
- 12 A No, sir.
- 13 Q And so we know you had no control over that, you didn't
14 even go there?
- 15 A Right, I was --
- 16 Q If you wanted more control over that you might have
17 driven the few minutes down Harden Street and actually
18 approached the alleged incident location, right?
- 19 A Repeat the question please.
- 20 Q No, you would do that?
- 21 A No, I said repeat the question please.
- 22 Q I'm sorry. If you wanted more control over the crime
23 scene the alleged crime that you were investigating you
24 might have jumped in your car and said I will ride down
25 to Harden Street and take a look at it, right, but you

1 didn't do that?

2 A I was familiar with the location there. To me it
3 served no purpose.

4 Q So, all right, let's go, you're familiar with the
5 location so as your role as a supervising investigator
6 as in this case, crime is alleged committed and your
7 method of investigation is to say, well, I've already
8 familiar we the location. I've been there before. I
9 know what it looks like I don't need to go, is that, is
10 that, a fair characterization of what you did this
11 time?

12 A Part of the totality of the circumstances that took
13 place that would be one specific thing but there's a
14 totality of circumstances as to why I didn't go to the
15 incident location.

16 Q Well, I mean, well, let's be clear for the jury now. I
17 want to clear this up. I know what totality of
18 circumstances mean. I think the jury probably does too
19 but my question is pretty direct, is that for purposes
20 of this investigation you told Ms. All that you did not
21 go because you were already familiar with Sharky's and
22 that you didn't need to go. That's basically what
23 happened, right?

24 A As one of many circumstances that I took into play
25 before I made that decision, yes, sir.

1 Q All right. But the fact that you felt that you already
2 had Sharky's down and you were familiar with it that's
3 a major reason you didn't go, right?

4 A That is again one of many circumstances that I
5 considered before I made that decision.

6 Q Well, you would agree with me that you testified with
7 Ms. All at length about your review of the video,
8 right?

9 A Yes, sir.

10 Q Okay. I mean, it got pretty detailed you were
11 testifying about the suspect's cheekbones, right?

12 A Yes, sir.

13 Q You were testifying about the different lighting
14 conditions in the, in the, bar, right?

15 A Yes, sir.

16 Q You testified about the different areas of the bar and
17 what existed in the bar, right?

18 A Yes, sir.

19 Q You testified about the different lighting conditions
20 that may have existed in the bar, right?

21 A Yes, sir.

22 Q So, I mean, that leads me to believe and you're
23 testifying correct me if I'm wrong that the condition
24 of the scene that you observed in the video was an
25 important part of this case, is that correct?

- 1 A Yes, sir, that's why --
- 2 Q All right.
- 3 A Kermit Scott identified all of those locations and took
4 pictures of them and that's the pictures we displayed
5 today.
- 6 Q Right. The condition of the scene that you actually
7 never took the time to visit, correct?
- 8 A It was completed and done before I had the opportunity
9 to which was another reason why I didn't go.
- 10 Q That you --
- 11 A One of --
- 12 Q That you never took the time to visit, right?
- 13 A That's correct. I never went to the scene, yes, sir.
- 14 Q Yes. All right. But we know from your testimony with
15 Ms. All that what's depictive on the video which is
16 what the only thing you reviewed -- well, I won't say
17 only thing but that was your review of the seen. The
18 conditions at that time in the bar were important to
19 the case, right?
- 20 A Yes, sir. That's why they were preserved.
- 21 Q Right. And let's, let's, cut back to how y'all's
22 investigation works. You testified to Ms. All that
23 there are different people with different roles in
24 every investigation, correct?
- 25 A That's correct.

1 Q All right. And you know from your, gosh, what was it?
2 Awe man, I think it's like 16 or 17 years of
3 experience, right?

4 A I've been at the police department for a little over 16
5 years.

6 Q Okay. And, you know, in those 16 years I bet that
7 you've had many occasions to fill out indents reports,
8 right?

9 A When I was in patrol. Yes, sir. I filed out incident
10 reports.

11 Q Well, and as part of your investigation you review
12 incident reports on a regular basis, right?

13 A Yes, sir.

14 Q Because like you told the jury earlier, I mean, if
15 you're not going actually going to go to the scene
16 yourself, if you're not going to go out there and look
17 at the crime scene you probably at last want to look at
18 a report the somebody who's there generated, right?

19 A The two things didn't necessarily go together but, yes,
20 sir I've looked at the report.

21 Q Okay. Well, let me put in a different way, if you
22 don't go a crime scene, if you don't bother to actually
23 go to a scene you're going to read the report from
24 someone who was there, right?

25 A I would go and speak to the crime scene tech which was

1 Kermit Scott who took pictures of everything as it was
2 before he removed it which is his job.

3 Q Okay. Well, I'm going to ask it one more time, if you
4 don't go to a crime scene, if you don't bother to drive
5 down to Harden Street you want to read the report and
6 talk to the person who generated the report who was
7 actually there, is that correct?

8 A I don't always talk to the reporting officer, no, sir.

9 Q All right. You're saying that in come investigations
10 that you not only do you not look at the scene but you
11 don't talk to the reporting officer?

12 A That correct.

13 Q And that's the kind of you kind of investigative
14 methods that you condone in these investigators that
15 you supervised?

16 A In this specific case the totality of everything that
17 took place the report is generated to document that
18 there was a burglary that happened. That's what the
19 report is for. That is simply -- in the police
20 department you get a case number. You work the case
21 out of your case number.

22 Essentially, the reporting officer is responsible
23 for going to the scene, documenting that a burglary
24 took place, documenting the items that were stolen and
25 then he have speciality people like Kermit Scott to

- 1 come in and take pictures of where everything was at.
2 To process the crime scene. I don't know how to do
3 that. He preserves all of the evidence. He preserves
4 through pictures and retrieves the evidence that needs
5 to be retrieves. So that is why I didn't need to speak
6 to the reporting officer because there was nothing in
7 the report I needed to clarify because I had spoken to
8 other officers on the scene. There was nothing else
9 that needed clarification for me at that time.
- 10 Q You are the investigator, right?
- 11 A I am the sergeant at this point.
- 12 Q Sergeant and an investigator, is that correct? Are you
13 still an investigator?
- 14 A No, that's two different ranks.
- 15 Q All right. Well, okay. You're still -- you still
16 investigate crimes, is that right?
- 17 A On occasions I could, yes.
- 18 Q At this time at the time of this incident you were an
19 investigator, is that right?
- 20 A Yes, sir, that's correct.
- 21 Q So, you've, you've, told the jury a lot about the jobs
22 of other people on an investigation and everything that
23 they document and everything that they do and you've
24 told the jury about reports that they generate but in
25 the end it is you who decided whether or not to make an

1 arrest, is that right?

2 A That's correct.

3 Q All right. And the person in this case who decided
4 whether or not to make an arrest was Tyris Glover that
5 being you never visited Sharky's, is this right?

6 A That is correct.

7 Q The person who decided to make an arrest of Mr. Tyris
8 Glover actually never generated his own report, is that
9 correct?

10 A You wouldn't generate a report.

11 Q Did you generate a report?

12 A No, sir. No, I did not.

13 Q Are you the person who decided whether or not to arrest
14 Tyris Glover?

15 A That is correct, I was that person.

16 Q And we've talked at length about -- or you have about
17 these other reports that other people generate, right?

18 A Yes.

19 Q All right. And the reason that they actually bother to
20 generate reports and memorialize things is so that if
21 they end up here in court they have something to refer
22 to and make sure they get the information correct, is
23 that right?

24 A That would be a -- yes, sir.

25 Q Uh-huh. And you don't have any of that that you've

- 1 prepared, right?
- 2 A No, sir.
- 3 Q All right. And those other people who actually
- 4 bothered to generate reports they're trained to do
- 5 it -- to get the best result possible in this case so
- 6 that they don't forget things and so that they
- 7 memorialize important pieces of evidence, isn't that a
- 8 key purpose of why they generate reports?
- 9 A When you have a purpose for generating reports, yes,
- 10 sir.
- 11 Q Uh-hum. And you didn't, you didn't, have that purpose
- 12 in this case, is that what you're saying?
- 13 A In this specific case, no, I did not.
- 14 Q You didn't have the purposes of memorializing things to
- 15 get them right later, did you?
- 16 A No, sir. All of that had been done before I arrived on
- 17 the scene.
- 18 Q You didn't need to do it?
- 19 A No, sir.
- 20 Q Well, you're the boss and so, everybody does their work
- 21 under you, right, for you in this case?
- 22 A In this case everybody had a responsibility to which
- 23 they did and they did correctly on it which lead --
- 24 Q Uh-huh.
- 25 A Lead me to not have to generate report.

1 Q Uh-huh. Well, let's talk about in any case, I think,
2 maybe, not every case in a lot of cases a timeframe a
3 timeline is important part of investigations is that
4 right?

5 A In some cases, yes, sir.

6 Q And you've been here the entire time as the lead
7 investigator. You've been here the entire time and you
8 have seen I suppose that that is a timeline, timeframe
9 that is relevant in this case, correct?

10 A Yes, sir.

11 Q Okay. And so, what you have been trained to do and I
12 don't know if I should but I suppose what you would
13 tell other investigators to do is to make sure that
14 you're familiar with that timeline and it's to the best
15 of your ability you get it right, isn't this right?

16 A Yes, sir.

17 Q Okay. And once again, in order to do that you need
18 to -- it's a good practice to memorialize at what times
19 certain events happened to the best of your ability,
20 isn't that right?

21 A Yes, sir, or direct others to.

22 Q Right. And so, so, if we take that to this case you
23 would agree that the best practice in the case would be
24 to memorialize times that's happened to the best of
25 your abilities and the other officers abilities, isn't

1 that correct?

2 A Yes, sir.

3 Q All right. Now, I know that you've told the jury that
4 you don't always find it necessary to review an
5 officer's report. But it is true that you've reviewed
6 many incidents reports in your time, right?

7 A Yes, sir.

8 Q Okay. You are familiar with the basic Columbia Police
9 Department incident report and who it's setup, right?

10 A Yes, sir.

11 Q You're familiar with the different blocks on the report
12 and what they mean, right?

13 A Yes, sir.

14 Q You're familiar with the different types of information
15 that might be on an incident report, right?

16 A Yes, sir.

17 Q Okay. And you know that in this case responding
18 officer prepared an incident report, right?

19 A Yes, sir.

20 Q All right. And you know that they indicated that they
21 actually arrived on the scene at Sharky's at 9:33 a.m,
22 right?

23 A I don't have the report in front of me, sir.

24 Q All right. Well, if I showed you the report would that
25 help you remember?

1 A Yes, sir.

2 Q Okay. I will do that. Here you are, sir. If you look
3 at that that will probably help you remember. Now, you
4 can testify that the report indicates that the time of
5 arrival was 9:33, isn't that correct?

6 A Yes, sir, 9:33.

7 BY MR. COOPER:

8 Q All right. Okay, excuse me. I'm going to grab another
9 copy so I can refer to mine.

10 MR. COOPER: Sorry, judge.

11 BY MR. COOPER:

12 Q Okay. And now that you have reviewed this you'll see
13 that the responding Officer White indicates that the
14 departure time is ten a.m, right?

15 A Yes, sir.

16 Q All right. Now, you testified that you knew about what
17 time you went out not the actual crime scene but
18 Millwood Avenue to be around 8:15 because that's when
19 you leaving on your way into work, right?

20 A If I remember correctly my testimony was I was unsure
21 of the time where I got the time frame from when you
22 wanted me to pin down a actual time was that I was on
23 my way to work. I normally arrive at work at 8:30 or
24 should be at work at 8:30 and it would have been at
25 some point between the time I left my house and the

1 time I arrived at work.

2 Q Well, see, this is why it's good to write that kind of
3 thing done, wouldn't you agree? And so that now we
4 wouldn't have to be so unsure but let's do our best,
5 you testified you told the jury that you normally leave
6 for work at around 8:15, is that right?

7 A I normally leave for work sometimes around eight, 8:30.

8 Q Okay. And that is how you came up with an estimate of
9 your arrival over at Millwood Avenue, right?

10 A Yes, sir.

11 Q Okay. And that would be between I guess 8:15 and 9:00,
12 right?

13 A Generally, yes, sir.

14 Q Okay. We don't have it written down but that's your
15 general estimation, correct?

16 A Not based upon the facts that are on -- written down on
17 the report, no, sir. That's why I told you I wasn't
18 sure at the time that I arrived.

19 Q Oh, oh. So, so were you --

20 A Timeframe --

21 Q So, are you saying --

22 A Can --

23 Q Now, wait a second --

24 THE COURT: I can't hear both of you.

25 MR. COOPER: I'm sorry, judge.

1 BY MR. COOPER:

2 A In my original testimony which the jury wasn't privy to
3 when I was asked what time I arrived on scene I was
4 asked -- explained to counsel I was unsure of the exact
5 time.

6 When I was asked to guesstimate the time it was
7 based upon the fact that I was in route to work. I
8 specifically remember my sergeant calling me in route
9 to work and being near the location. After reviewing
10 times and I didn't have the paperwork in front of me at
11 the time after reviewing the times of the incident and
12 the departure times and all of that information on this
13 report is apparent to me that if I did not go into work
14 at my normal time that day. That was a guess on my
15 part based upon the prompt from to counsel. I stated
16 to him under oath I was unsure of my time and it was
17 based upon the fact that I was in route to work and my
18 normal work time -- report time is 8:30 at that time.

19 Q Investigator Williams, you just used the words
20 guesstimation and guess about two or three times in
21 that answer, didn't you?

22 A Yes, sir, I did.

23 Q Okay.

24 A Uh-huh.

25 Q And I think what you were trying to explain to the jury

1 was why in earlier testimony you indicated a time
2 around 8:15, right, isn't that what you were trying to
3 explain to them?

4 A Yes, sir.

5 Q All right. And in trying to explain that to them using
6 the words guesstimation and guess because now it's
7 apparent that you could have been about an hour off at
8 least, right?

9 A Most defiantly, yes, sir.

10 Q Okay. Well, this goes back to our conversation about
11 the importance of timeframes in investigations the --
12 this guesstimation on your part you have corrected it
13 in front of the jury because of a memorialization that
14 an officer actually put in a report, isn't right?

15 A I --

16 Q You have, you have, now changed your testimony about
17 what time you arrived because of something that's
18 written in this report, right?

19 A Yes, sir. I didn't change my time. I guess you an
20 estimate based upon the facts that I remembered when I
21 testified earlier and I made that evidently clear when
22 I testified that I was unsure of the time and I based
23 it upon other facts.

24 Q Yes. And you told the jury a minute ago that you were
25 guessing because you didn't have this document in front

1 of you and you were basing what you said based on
2 counsel, I assume you meant me, right?

3 A Yes. You asked me a specific question and I asked
4 it --

5 Q I did. I did. And you told the jury that when you
6 talked to me before in per-trial hearing you were
7 guessing because you didn't have this (indicating) in
8 front of you, right?

9 A I was guessing because you asked me to, sir.

10 Q You -- but you didn't have this in front of you, right?

11 A No, sir, I did not.

12 Q You told the jury that one of the reasons that you
13 think that happened was because you didn't have this in
14 front of you, right?

15 A After the fact, yes, sir.

16 Q After the fact. Well, when you made the determination
17 to arrest Tyris Glover you didn't have any of your own
18 notes in front of you to refer to then, did you?

19 A No, sir.

20 Q Because they didn't exist?

21 A That's correct.

22 Q And when you reviewed the video and you saw these
23 cheekbones and lighting conditions you didn't have any
24 of our own notes in front of you then to refer to, did
25 you?

1 A No, sir, I had the video.

2 Q All right. And in any investigation I assume you want
3 to avoid what you have referred to as guesstimation,
4 isn't that correct?

5 A Yes, sir.

6 Q The best that you can, right?

7 A Yes, sir.

8 Q And I assume also that in any investigation where you
9 have to testify in a matter like this you want to avoid
10 guesstimation, correct?

11 A Sure.

12 Q All right. And again, one way to do that is to
13 memorialize details and times in writing so that
14 doesn't become necessary, correct?

15 A Yes, sir.

16 Q All right. Now, you told the jury a lot about your
17 observations on the video, correct?

18 A Yes, sir.

19 Q You spent time going over exhibits with Ms. All and you
20 took a lot of time explaining to the jury what you
21 believed the suspect was doing in the video, right?

22 A Yes, sir.

23 Q And you took a lot of time explaining what your
24 impression is of what he looked like, right?

25 A Yes, sir.

1 Q And I believe you testified that part of that was your
2 training and experience you've learned to recognize
3 different postures and physical characteristics, isn't
4 that right?

5 A Yes, sir. I -- when I'm looking specifically for them,
6 yes, sir.

7 Q Right. And let's talk about looking specifically for
8 them. The officers who viewed the video at Sharky's
9 who actually went down there. They had not yet
10 encountered -- that day they had not yet encountered
11 Mr. Tyris Glover, correct?

12 A At the point they reviewed the video?

13 Q Yes?

14 A One of the officers felt that from working in the
15 community he knew who --

16 Q Had had encountered him, sir, was my question.

17 A No, sir.

18 Q All right.

19 A Not on that day.

20 Q And when you -- viewed the video not at the crime
21 scene, not at the incident location when you finally
22 viewed the video it was after you had encountered
23 Mr. Glover, right?

24 A That's correct.

25 Q It is after you had seen him?

1 A Correct.

2 Q It's after -- not only had you seen him but you were
3 using all of your, you know, powers of observation to
4 really get a good look at him, right?

5 A Yes, sir.

6 Q So, all of these impressions that you have that you've
7 told the jury what you're impressions are in the video
8 all of those impressions were made after you saw
9 Mr. Glover (indicating)?

10 A That is correct.

11 Q Right. In this open and shut case, right?

12 A (There was no response.)

13 Q That's what you called it, right?

14 A Oh, yes, sir.

15 Q All right. And after you saw Mr. Glover you felt it
16 wasn't necessary to go to the crime scene you had
17 enough to go watch the video, right?

18 A Yes, sir.

19 Q Okay. So, you called the other officers who actually
20 had been to the scene. The other officers who actually
21 had viewed the video without encountering Mr. Glover,
22 you called them after your review of the video and said
23 okay go ahead and arrest him, isn't that right?

24 A That's correct.

25 Q Because to you they done everything important and at

1 that point it was opened and shut, right?

2 A They had had done everything that they needed to do in
3 my opinion they done it correctly.

4 Q Uh-huh.

5 A And there was to me overwhelming amount of evidence and
6 no doubt in my mind that's why I made that decision.

7 Q It was so good, it was so opened and shut, that you
8 didn't need to write anything down, right?

9 A My evidence was in video, in pictures, documented --

10 Q It was so good that you didn't need to write anything
11 down, right?

12 A That's correct I did not written anything down, sir.

13 Q Okay. You know what -- well, I know you don't have in
14 written down but I guess you'll have to guesstimate
15 again. Do you have a time can you at least guesstimate
16 a time when you think Tyris Glover was actually
17 arrested and transported to the jail?

18 A Again it would be based upon other facts that I need.

19 Q So, is that a no you can't guesstimate again?

20 A Obviously with it being known that it is me guessing
21 based upon the facts I can generate a time for you like
22 I did before if you'd like.

23 Q You can generate a time?

24 A Based upon the other facts I know, yes, sir.

25 Q I'm not sure generating a time would -- okay.

1 A If you're wanting a specific and direct answer, sir, I
2 cannot answer you. If you would like for me to guess
3 like you asked me to do before I will be glad to do so.

4 Q You know, I think there's been enough guessing in this
5 case. So I won't ask you to guess?

6 A Okay.

7 Q You're probably right that's probably not a good idea.

8 Would you disagree if I told you -- I'm sorry
9 what?

10 A I was clearing my throat, sir.

11 Q Oh, I'm sorry.

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

13 THE COURT: Yes, sir.

14 BY MR. COOPER:

15 Q I guess for your whatever time you can generate in your
16 mind that -- would you disagree if I told you he was
17 booked at 2:47 p.m. in the afternoon?

18 A If you're looking at the booking from Richland County
19 Detention Center and that's what you're reading I would
20 have to say that's correct, sir.

21 Q Well, it is. So, thank you for that answer. It's
22 better than a guess.

23 MR. COOPER: I beg the Court's indulgence, Your
24 Honor.

25 THE COURT: Yes, sir, certainly.

1 BY MR. COOPER:

2 Q All right. Sir, that's all I have at this time. Thank
3 you.

4 THE COURT: Thank you, Mr. Cooper.
5 Redirect.

6 MS. ALL: Yes, thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. ALL:

9 Q Sergeant Williams, why did you choose to view the video
10 at South Region instead at Sharky's?

11 A That's where a copy of the video was at.

12 Q And what were the officers and the defendant doing
13 while you viewed the video?

14 A The officers and the defendant were standing -- well,
15 the officers were standing by with the defendant with
16 the exception of the officer that had the video.

17 Q So, isn't it true that you were trying to minimum the
18 amount of time that everybody else had to wait?

19 A Yes, sir -- yes, ma'am, I'm sorry.

20 Q Did you see the incident report in front of you?

21 A Yes, ma'am.

22 Q Can you please take a look at those boxes that
23 Mr. Cooper referred to repeatedly as a departure time
24 and dispatch time and describe to the jury how type
25 times are entered into those boxes?

1 A There's four boxes on every incident report that is --
2 incident report faction is actually regulated by SLED.
3 There's various changes at -- each department have a
4 few little quirks that they change on the boxes but
5 they're generally the same because again it's regulated
6 by South Carolina Law Enforcement Division as a
7 incident report which they obtain statistics on and they
8 also obtain statistics federally. So, there's a lot of
9 guidelines and rules that is regulated how -- what has
10 to be on this report and how it's laid out. In this
11 specific report and in all reports there is a dispatch
12 date box, a dispatch time box, a time arrived box and a
13 departure time arrive box. Just through my knowledge
14 of having written these reports as also observing
15 different people being on scene and seeing what takes
16 place there was originally a SLED incident report
17 manual that regulated what went in each of these boxes
18 and those specific four boxes it basically left those
19 blank and upon interpretation based upon what you had
20 your dispatch time it just left it blank. Where in
21 other boxes it would say this is what you put in this
22 box. These were left blank that's self explanatory.
23 With that being said a dispatch time and it -- I'm
24 sorry, a dispatch date and dispatch time, a time
25 arrived and a time departed may be retrieved different

1 ways when officers write the report. Some officers
2 having a computer in their car and they can look at the
3 screen to see what their dispatch time is. Some
4 officers do not. Some officers may jot it down in a
5 book. Some when they arrive on scene not knowing there
6 are going to take it. Some do not. Some may call
7 dispatch and say what was my dispatch time? What was
8 my arrival time? What was my departure time? Dispatch
9 logging that done and when the parole officer arrives
10 on scene and says in their codes, a 1023, which I've
11 arrived on scene. They may say I'm clear, I'm code
12 five -- which means I've taken a report at the scene
13 and dispatch logs that in and can give that information
14 back out to them. But different officers use different
15 technics as there's no specific way an officer needs to
16 get those timeframes. The office may have only been
17 there ten minutes and say I arrived ten minutes ago.
18 An officer may call and get the exact time but there's
19 no specific way that we are told to get these times
20 when we write the report. So in this specific case I
21 can't tell you if these were the exact times because
22 they wrote them down when they said I'm arriving on
23 scene. I don't know if the departure time is when the
24 officer actual left the scene or, maybe, when he
25 finished the report. Again, there's no clarification

1 for that in the manual for your departure time. With
2 that being said officers also because of number of
3 calls that we get officers will clear a call on the
4 radio to show that they're cleared up on calls then
5 remain on the scene for a longer period of time. That
6 happens quite regularly. They may know the person or
7 know the victim or want to speak to the victim about
8 further about the crime but they want to remain clear
9 for other calls because it's just a proper thing to do
10 in case somebody needs a police officer they want to be
11 in the clear so they can always come back if they don't
12 have the information that they have need. Some
13 officers take down the basic information, go to the
14 district and in that case this district is from Five
15 Points all the way up Landmark Square near Veterans
16 Road to Garner Ferry –

17 THE COURT: Let me stop you a minute. Solicitor,
18 ask your next question please.

19 MS. ALL: Thank you, Your Honor.

20 BY MS. ALL:

21 Q Did you transport the defendant to the jail?

22 A No, I did not.

23 Q Did you have any control over when he was booked in?

24 A No.

25 Q Do you have anything knowledge at the time he was

1 booked in?

2 A No.

3 Q Does the exact time that you arrived on scene change
4 the evidence that you observed in anyway?

5 A No, it did not.

6 Q May you have gotten the time wrong?

7 A Yes.

8 Q Do you not remember the exact time?

9 A No, I do not.

10 Q Does that change what you reviewed?

11 A No, it does not.

12 Q With your ten years I think you said ten years
13 experience as an investigator, in this case did you
14 need to write investigative notes?

15 A In my opinion no, I did not.

16 Q Are investigators required to generate reports?

17 A No, we've not.

18 Q Was there anything for you to document?

19 A In my opinion there was nothing to be documented
20 because everything had already been documented.

21 Q And is every case different?

22 A Yes, it is.

23 Q Did the officers who saw the video before they
24 encountered the defendant believe it was the defendant
25 in the video?

1 A That is correct.

2 Q Did officers who encountered the defendant who worked
3 the Five Points area and encountered the defendant
4 before and then viewed the video believed that it was
5 the defendant in the video?

6 A Yes, they did.

7 Q Did the officers who encountered the defendant and then
8 viewed the video believed that it was the defendant in
9 the video?

10 A Yes.

11 Q How many burglaries have you investigated in your
12 career?

13 A I couldn't begin to count.

14 Q And how many of them were resolved before you arrived
15 on scene?

16 A Maybe, a hand full. Maybe, five, six, maybe, I guess;
17 a very small number. It doesn't happen all the time.

18 Q Did the fact that you did not generate notes in this
19 the case mean that you are a bad investigator?

20 A No.

21 Q Does it mean that the evidence is changed in anyway?

22 A No.

23 Q Thank you, Sergeant Williams.

24 THE COURT: Recross, Mr. Cooper?

25 MR. COOPER: Yes, sir. Thank you.

1 BY MR. COOPER:

2 Q Well, investigator, you told Ms. All a second ago that
3 whether or not you were right about the times in this
4 case it doesn't change the case for you, is that right?

5 A No, sir. All the facts of the case have been taken
6 care of before I arrived.

7 Q The facts. Well, at what time something happened or
8 didn't happen that would be a fact in the case, right?

9 A Yes, sir. It was relevant so I took the case, yes,
10 sir.

11 Q All right. But you don't know, you don't know whether
12 you are right or wrong about the times that you told
13 the jury, do you, not for sure?

14 A The time that I arrived on scene?

15 Q Well, I don't want to get back into anymore of your
16 guessing but what I'm trying to get at is you don't
17 know -- Ms. All told you a minute ago that in the
18 incident report those times that were put down there
19 you explained to the jury why they could be off, didn't
20 you?

21 A Yes, sir.

22 Q But the fact is, those are times that we have written
23 down in the incident report, right?

24 A That's correct.

25 Q And you don't have any time written down that you did

1 anything, do you?

2 A No, sir, I don't.

3 Q Okay. And a opened and shut case, right?

4 A (There was no response.)

5 Q That's what you said, that's what you told the jury

6 opened and shut.

7 A Yes, sir, I did.

8 Q Okay.

9 MR. COOPER: That's all I have, Your Honor.

10 THE COURT: Thank you very much.

11 Thank you, Investigator Williams, you may step

12 down.

13 All right. Ladies and gentlemen of the jury

14 panel, I believe we will take this morning recess. I will

15 remain you during this recess you are not to discuss this

16 case with anyone that includes your fellow jurors or anyone

17 else. Remember to keep an opened mind not to begin your

18 deliberations until I instruct you to do so. We'll take

19 about 15 minutes. With that being said you may now go with

20 your bailiff. Thank you very much.

21 (The jury retires from the

22 courtroom at 11:35 a.m.)

23 How many, how many, more witnesses you have,

24 solicitor?

25 MS. GARFIELD: Judge, we'll rest.

1 THE COURT: All right.

2 MS. GARFIELD: I think I'm done. When --

3 THE COURT: Take a break, do you have any
4 objections prior to bringing the jury back out if I take
5 motions up at that time?

6 MR. MACNEALY: Yeah, I need a break too, Your
7 Honor.

8 THE COURT: I'm going to take a break before I
9 hear them but do you have any objections if we hear those
10 motions before I bring the jury back out?

11 MR. MACNEALY: Oh, no, sir.

12 THE COURT: All right. We'll take about a 15
13 minute recess.

14 (Whereupon, a short recess was
15 held.)

16 THE COURT: All right anything from the state?

17 MS. GARFIELD: Judge, we'll rest when the jury
18 comes back. I don't know if you wanted to go ahead and do
19 directed verdict motions.

20 THE COURT: All right. You have any objection to
21 me hearing the motions now, Mr. Cooper, Mr. Macnealy?

22 MR. COOPER: No, Your Honor, we don't.

23 THE COURT: All right. Do you have any motions?

24 MR. MACNEALY: Yes, Your Honor. We have a motion
25 for direct verdict if I may. First, Your Honor, I guess

1 I'll address the petty larceny charge. My argument for why
2 I believe a directed verdict is warranted on the petty
3 larceny, Your Honor, is based off the testimony of all the
4 state's witnesses. When we have the general manager himself
5 when I asked him on cross about the six bottles of liquor —
6 because the incident report indicates that they were stolen.
7 So, that was the case when I was crossing him became evident
8 from his testimony that six bottles of liquor had not been
9 moved from the premises at all. That's still seems to be
10 unclear to the officers involved; however, for whatever
11 reason I do not know why, perhaps, because certain people do
12 not take notes. However, the general manager's own
13 testimony says that six bottles were not missing.

14 In regards to the 45 packs of cigarettes same
15 basis, Your Honor, the general manager's testimony there's
16 been no documentation provided to the state, law enforcement
17 turned over to the defense where you would have in the
18 normal course of business inventory sheets, accounts
19 receivable, accounts payable, tracking what comes in, what
20 goes out, what's missing. We have an allegation that 45
21 packs of cigarettes that are missing. We have officers'
22 testimony again the times are all mixed up but the officers'
23 testimony seems to suggest that a short time after the
24 alleged incident they stop Mr. Glover on the side of the
25 road. And we had this, you know, legal argument earlier

1 whether it was consent and we still argue that it wasn't
2 consent; nonetheless, they check his bag and there's four
3 packs of cigarettes. Now, we examined those packs of
4 cigarettes, Your Honor. There's two packs and not a unique
5 brand, I mean, you're talking about name brand a Newport and
6 a Campbell that are unopened. One is used up completely and
7 the other is particularly used. There been no serial number
8 shown the juror -- to jurors, none to us that links those
9 four packs to Sharky's. There's been no evidence that 45
10 packs missing from any kind of inventory documentation. The
11 court -- Your Honor, indicates that before you can charge
12 somebody -- convict somebody of a crime the state has to
13 prove that petty larceny for example that something was
14 actually missing and I didn't hear that in the testimony
15 other than this, you know, the general manager said, you
16 know, the way they lineup these, you know, there and I don't
17 buy cigarettes I don't even know what you call it, the
18 dispenser the way they line that up now, of course, he's the
19 general manager. There's no telling whether or not people
20 who worked there might have smoked an extra pack, didn't
21 account for it. We have no idea, Your Honor, because
22 there's been no documentation to that effect. I argue that
23 in terms of the petty larceny charge the state has provided
24 at most merely a suspicion that those items are missing and
25 linking it -- and how you link it to Tyris Glover I'm not

1 sure but just that those items are missing period.

2 THE COURT: All right.

3 MR. MACNEALY: And I guess we'll take that up
4 before the burglary.

5 THE COURT: And the burglary?

6 MR. MACNEALY: And the burglary, I'll go ahead
7 with that, Your Honor. In terms of the burg charge prior
8 to -- basically my argument, Your Honor, is identity.

9 Now, the store owner -- I'm sorry the general
10 manager again. I don't picking with the guy because he was
11 a nice guy but I asked him are you certain. I asked him
12 three different times. Are you certain you can identify
13 Mr. Glover from the video? Yes, I'm certain. So, we went
14 through this whole thing for about an hour watching the
15 video and, Your Honor, took the opportunity to watch it
16 yourself. I'm 100 percent confident that nobody can
17 identify Tyris Glover from his face and I asked the general
18 manager specifically could you identify Tyris Glover's face
19 from the video? Yes, I could. Your Honor, that is just
20 simply is impossible.

21 Now, we have 14 point fingerprint evidence in my
22 mind, Your Honor, it's unfortunate the US does not have
23 standards in this regard we will someday. My research
24 suggest that 14 points simply would not cut it in most
25 courts. Now, again, this is United States. We have a 14

1 point hit on one card and no hit on another card and that is
2 the basis of the burglary is a 14 point hit on one card and
3 no hit on the other card. And the basis, Your Honor, that I
4 believe that there's still only merely a suspicion I would
5 argue the directed verdict is warranted based on for both
6 the burg as well as petty larceny. Thank you, Your Honor.

7 THE COURT: Thank you. I would respectfully deny
8 those motions. And as to the petty larceny just because
9 they would have presented more evidence the inventories,
10 documentation doesn't mean they're suppose to.

11 If you look at I believe it's State's Exhibit 30.
12 I can't quite recall but in the video you see an individual
13 letter identified by opinion testimony of various officers
14 identified as Mr. Glover drive up on a or ride up on a
15 bicycle. Then go out of view on a sidewalk. Then you see
16 the internal cameras. This individual within Sharky's
17 during the hour in which it's was closed moving about the
18 business, moving items within the business and when he
19 leaves he's carrying a bucket and the bucket appears to be
20 full of vessels. And those vessels appear to be vessels
21 that would commonly hold liquors.

22 The officer — the manager's testimony is that
23 there was 45 packs of cigarettes in the cigarette machine
24 and that they were missing upon his return on the morning of
25 the 28th of June I believe it was is the same on the

1 burglary second identification is an opinion that a lay
2 witness has the right to give under certain circumstances in
3 court and those arguments really go to the credibility or
4 the believability of whether it's a lay witness or an
5 officer witness or what have you. So, I think there's more
6 than mere suspicion both as to the larceny and as to the
7 burglary second. I think there's direct evidence and
8 substantial circumstantial evidence on both the burglary
9 second degree and the larceny charge. I would deny the
10 motions for directed verdict.

11 MR. MACNEALY: Thank you, Your Honor.

12 THE COURT: Any other motions before I bring --

13 MR. MACNEALY: Yes, Your Honor.

14 THE COURT: Before I bring the jury in?

15 MR. MACNEALY: Yes. Just to renew all prior
16 objections at this time, Your Honor.

17 THE COURT: Is Mr -- are you intending to present
18 any evidence or testimony?

19 MR. MACNEALY: No. The defense would rest. We're
20 just going to present closing, Your Honor.

21 THE COURT: All right. Now, Mr -- have Mr. Glover
22 come around to the.

23 MR. MACNEALY: Yeah, sure.

24 THE CLERK: Raise your right hand, sir.

25 THEREUPON,

1 TYRIS GLOVER,

2 after having been duly sworn, testified as follows:

3 THE CLERK: Thank you.

4 BY THE COURT:

5 Q All right. Speak up for me so I can hear you and if
6 you don't understand my questions, Mr. Glover, please
7 let me know. I need to go over some things with you.
8 I do this with everyone that's on trial and I need your
9 responses to be under oath that's why I had the clerk
10 place you under oath.

11 Do you understand?

12 A Yes, sir.

13 Q Tell me your full name?

14 A Tyris Bernard glover.

15 Q And how old are you, Mr. Glover?

16 A 45.

17 Q Say it again?

18 A 45.

19 Q All right. And how much education do you have?

20 A I graduate from high school.

21 Q We've reached the stage of trial where the state has
22 rested and your side of the defense now has the
23 opportunity to present evidence for the jury to
24 consider. Do you understand where we're at in this
25 trial?

1 A Yes, sir.

2 Q In that regard, Mr. Glover, you may call witnesses to
3 testify on your behalf and if you choose to testify
4 yourself you may do so, you do you understand?

5 A Yes, sir.

6 Q No one can force you to testify, you have the absolute
7 right to remain silent and if you choose not to testify
8 I will tell this jury that they cannot hold your
9 silence against you in anyway. I will tell them that
10 they are not to even discuss that issue in the jury
11 room, do you understand?

12 A Yes, sir.

13 THE COURT: If your side offers no evidence at
14 all, in other words, if either you nor anyone on your behalf
15 testifies or offers any exhibits then your attorney either
16 Mr. Macnealy or Mr. Collins, excuse me, either Mr. Macnealy
17 or Mr. Collins (sic) will then get to make the last argument
18 to the jury; otherwise, the prosecutor gets to make the last
19 argument, you do understand?

20 A Yes, sir.

21 Q Does the defendant have a prior criminal record that
22 would subject him to impeachment under Rule 609?

23 MR. MACNEALY: Yes, Your Honor.

24 MS. GARFIELD: Yes.

25 MR. COOPER: Yes.

1 THE COURT: And what is that record?

2 MS. GARFIELD: Judge, we believe the convictions
3 that we would be able to use in the last ten years would be
4 auto breaking, receiving stolen goods, another auto
5 breaking, a property third the -- another auto breaking,
6 another property third and obviously the burglaries have
7 already been submitted.

8 BY THE COURT:

9 Q All right. So, you have two prior burglaries, two auto
10 breaking, two receiving stolen goods and two property
11 third offenses?

12 A Yes, sir.

13 Q For which there are convictions?

14 A Yes, sir.

15 Q These are within the last ten years?

16 A Yes, sir.

17 THE COURT: All right. Do you agree with that
18 record, Mr. Macnealy?

19 MR. MACNEALY: Yes, that sounds accurate, Your
20 Honor.

21 BY THE COURT:

22 Q All right. And what that means is if you were to
23 testify the prosecutor could ask you whether or not you
24 had been convicted of those offenses. They can't ask
25 you about the facts of the prior offenses but they can

1 ask you if you've been convicted of those offenses. If
2 that happens I would then tell the jury that they
3 cannot consider that evidence against you, if they
4 consider it against you at all they can only consider
5 only on the issue of whether your testimony is
6 believable or not and for no other purpose, you
7 understand?

8 A Yes, sir.

9 Q The decision about whether you testify or not is your
10 decision to make and yours alone. I except that you
11 may have conferred with your attorneys in the past on
12 this very important decision but that decision about
13 whether you testify or not is your call to make your
14 decision to make, Mr. Glover, do you understand?

15 A Yes, sir.

16 Q Has anyone used any undo influence over you to get you
17 to choose to testify or not testify?

18 A No, sir.

19 Q Today you under the influence of my medication, drugs
20 or alcohol or anything that negatively effects your
21 thinking ability?

22 A No, sir.

23 Q Do you have any physical or mental problems that effect
24 your thinking ability today?

25 A No, sir.

1 Q Do you have any questions that you would like to ask me
2 about your right to testify or not to testify?

3 A No, sir.

4 Q Whatever decision you have made about whether to
5 testify or not to testify is it your decision? You
6 made of your own free will and accord?

7 A Yes, sir.

8 Q And what is that decision?

9 A Choose not to testify.

10 Q All right. And do you have any questions that you'd
11 like to ask you about that decision?

12 A No, sir.

13 THE COURT: All right. I find that he has had an
14 opportunity to talk with his defense attorneys and I make a
15 finding that his decision to not testify is his own decision
16 mad freely and voluntary.

17 Thank you, Mr. Glover. You many retake your seat.

18 All right. So, when the jury comes out if you
19 will formerly, solicitor.

20 And I'll direct my attention to the defense. They
21 can renew, renew, your motions on the record I will --

22 MR. MACNEALY: Thank you.

23 THE COURT: Renew my rulings on the record.

24 Thereafter, I usually tell the jury at that point that
25 they've heard all of the evidence, all the testimony that

1 they're going to hear form the trial of the case and the
2 state in its case in chief that a defendant now has the
3 right to present evidence and testimony; however, they're
4 not required to. The defendant is presumed to be innocent.
5 The state has the burden of proofing this case beyond a
6 reasonable doubt.

7 I will now turn out attention to the defense and
8 ask the defense to call your first witness you can then
9 formally rest. I'll then tell the jury that basically where
10 we've at and what procedure we will then follow.

11 All right. You request a charge, from the State?

12 MS. GARFIELD: Just your traditional.

13 THE COURT: All right. From the defense,

14 Mr. Macnealy?

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

16 THE COURT: Sure.

17 MR. MACNEALY: None, Your Honor, thank you.

18 THE COURT: All right. Thank you very much. How
19 long y'all need to argue about 15 minutes, 20 minutes each,
20 solicitor?

21 MS. ALL: If that, Your Honor.

22 THE COURT: And when I say each, I mean, each side
23 not each lawyer.

24 (Laughter.)

25 How about, how about, the defense?

1 MR. MACNEALY: But might be a little more than
2 that, Your Honor, but I'm not -- I try not to be too long
3 winded.

4 THE COURT: Well, I, don't, I don't, you know
5 Judge Baggett he also starts (indicating).

6 (Laughter.)

7 It just gets louder and louder and louder
8 (indicating) you hear it in your head. You stick your
9 fingers in your ear you can still hear it. Whatever time
10 you need, Mr. Macnealy.

11 MR. MACNEALY: Thank, Your Honor.

12 THE COURT: That's fine I you just wanted to get
13 an idea. I always tell the jury lawyers assure me they are
14 going to be about ten minutes. No, I don't tell them that,
15 Mr. Macnealy.

16 All right. Anything further?

17 MR. MACNEALY: No, Your Honor.

18 THE COURT: Is our clerk in here?

19 Bring us our jury then.

20 (The jury returned to the
21 courtroom at 12:25 p.m)

22 BAILIFF: Your Honor, the jury's present.

23 THE COURT: Thank you. Thank you, Mr. Bailiff.

24 Welcome back, ladies and gentlemen of the jury
25 panel, we're continuing the trial of the case by the

1 presentation of evidence and testimony from the state and
2 its case in chief.

3 Solicitor, you may call your next witness.

4 MS. GARFIELD: Your Honor, at this time the State
5 of South Carolina rest its case against Tyris Glover.

6 THE COURT: Thank you. Thank you very much,
7 solicitor.

8 Mr. Macnealy.

9 MR. MACNEALY: Your Honor, the defense rest.

10 THE COURT: All right. Defense renew his motions?

11 THE DEFENDANT: We renew all previous motions and
12 objections, Your Honor.

13 THE COURT: All right. And I would renew my
14 previous rulings and the defense rest.

15 Thank you. Thank you very much. Madam Forelady,
16 ladies and gentleman of the jury, as you heard the state has
17 rested. The defense has also rested. So, you've heard all
18 of the evidence, all of the testimony that you will hear
19 from the parties in the trial of this case.

20 As you recalled and I've instructed you throughout
21 the pretrial -- trial of the case that the State of South
22 Carolina has the burden of proving each and every element of
23 the two offenses charged burglary and larceny proof beyond a
24 reasonable doubt. A defendant in South Carolina no matter
25 the seriousness of the charge that may be brought against

1 him or her is never required to prove him -- himself or
2 herself innocent. He is presumed to be innocent and the
3 burden always rest on the State of South Carolina.

4 The procedure we follow now in a case like this
5 we're at the point of the closing arguments by closing
6 arguments by the attorneys. What will happen is one -- one
7 of the assistant solicitors will present the closing
8 arguments on behalf of the state; thereafter, followed by
9 one of the attorneys for Mr. Glover.

10 As you recall me telling you previous what the
11 attorneys tell you is not evidence but the closing arguments
12 are different from opening statements they are true
13 arguments. They my comment on the facts, the inferences to
14 be drawn from the facts and the law and how the law would
15 apply to those facts and inferences. The ultimate
16 determiner of the facts is you the jury. So, I would ask
17 you to please give the parties your complete and undivided
18 attention during these closing statements.

19 Is the back door locked, sheriff?

20 I don't allow any moving about the courtroom while
21 the attorney is addressing the jury, if anyone wants to
22 leave between the arguments, in other words, after the
23 solicitor and before Mr. Macnealy or Mr. Collins (sic)
24 you're welcome too do so, if you can get out that locked
25 door.

1 (Laughter.)

2 And if after the closing by the defense attorney
3 if you want to leave prior to my instruction to the jury
4 you're welcome to do so. But I don't allow movement about
5 while the closing arguments are going on or our my charge to
6 the jury.

7 All right. With that being said, if you'd please
8 again give the attorneys your complete and undivided
9 attention.

10 Solicitor, you may approach the jury.

11 MS. ALL: Thank you, Your Honor.

12 Ladies and gentlemen, Assistant Dolly Garfield
13 summed up this case for you in her opening with one
14 sentence, you can't take things that don't belong to you. A
15 concept that's so important that she spent an entire dinner
16 teaching it to her four year old child. Preschoolers know
17 you can't take other people's Cinderella Dolls. It's what
18 make our economy go around. That there's earners that go to
19 work that earn a paycheck to earn money to by the things
20 that they want.

21 Tyris Glover (indicating) is a taker. He takes
22 what he wants. He walks into a business where everybody
23 else pays money for those items and he takes his sweet time
24 picking out exactly what he wants to enjoy that day, loading
25 it up into his vessel of choice and walking out of the

1 restaurant with it.

2 The economy is undermined by people like this.

3 Everybody else pays more because people like Tyris Glover

4 steal. It doesn't matter if it's one pack of cigarettes, 45

5 packs of cigarettes, 20 bottles of liquor. You heard

6 Mr. Hubbard talk about the very calculated system they use

7 to make the pours. You heard him testify that they make

8 sure to equip that box full with 45 packs of cigarettes.

9 And the next day there weren't cigarettes in the box, liquor
10 was missing and he watched a video and saw one person come

11 inside and take it. Items were stolen and it doesn't matter

12 how many there were. It doesn't matter if he wasn't caught

13 with them he put them somewhere else. The bottom line is he

14 went into a business while it was closed within their

15 permission and he took what he wanted and he stole it. He's

16 been charged with burglary second and larceny.

17 Burglary second is when somebody enters a building

18 without consent, with the intent to commit a criminal inside

19 having two or more prior burglaries. That's why we put the

20 clerk's of court on the stand. That was evidence, it's part

21 of our burden to prove to you that he's got prior

22 convictions. It's an element of the offense.

23 Larceny is stealing. Taking stuff that belongs to

24 somebody else without their permission.

25 The defendant is on video entering Sharky's while

1 it's closed. Now, let me be clear about the definition of
2 burglary. It doesn't mean that you karate kicked the door
3 opened. It doesn't mean that you jimmy the lock. It's as
4 soon as you cross that threshold without that person's
5 permission. It doesn't matter that the door was unlocked.
6 It doesn't matter that the bartender the night before forgot
7 to put the board down. What matters that the business was
8 closed and Tyris Glover did not have permission to be
9 inside. You see him on video entering the building. I
10 showed y'all a lot of video where he's just lolly gagging
11 inside. And he knows he's not suppose to be in there
12 because y'all could see he knows he's not suppose to be in
13 there. He's right there on Harden Street and he sees
14 somebody walks back he snatches his hat off and he's hiding
15 and looking and you see him bolt across to the back. If he
16 thought it was okay to be in there why was he docking and
17 bobbing and weaving? He knew he wasn't suppose to be inside
18 so when he thought the people saw him -- people who knew he
19 wasn't suppose to be inside also popped the door opened with
20 there baby stroller and their dog and looked inside to see.
21 And he's hiding behind the board somewhere because he took
22 too long picking out exactly what he wanted.

23 He selected several vessels to carry these items
24 in. I think y'all can see that he had some trouble deciding
25 which one he was going to take. The a box, a bucket, a

1 towel, know of which mind you were his. He didn't come in
2 with the appropriate shopping bag. He used their stuff to
3 load up their inventory to walk out with it. He stole
4 liquor. He stole cigarettes.

5 Mr. Cooper asked you during opening that this is
6 about y'all deciding what isn't enough to condemn a poor
7 black man walking down the street with a bicycle, just some
8 innocent bystander. I don't know, let's take a look at it.
9 Is it enough that he's on video? Is it enough that we've
10 got over an hour's worth of footage watching him inside?
11 Runs out of stuff to steal, stands in the middle
12 (indicating) looking around like this. What else can I get?
13 Is it enough that he's caught less than a mile away a few
14 hours later in the same clothes? I understand the argument
15 during opening about it's a black man in a white T-shirt and
16 jeans. But that's not the state's case. They stopped a
17 black man because it was a black man in the video. They
18 stopped a black man wearing a white T-shirt and jeans
19 because that's what he's wearing in the video. And how many
20 people are there walking around with New York Yankees hats
21 in Columbia, South Carolina? It's not like it's a Game Cock
22 hat or God forbid a Clemson Tiger's hat. It's a New York
23 Yankees ball cap pushing a blue bicycle with packs of
24 cigarettes that he can't explain. Is it enough that we're
25 on Millwood Avenue a few hours after this happened and we

1 see him? It is enough in case there was any doubt that his
2 fingerprint is on a bottle that he move in the video. Y'all
3 watched him pick it up, read the label, check the caloric
4 count, how much sodium it has in it and put it down on a
5 wall and then Officer Scott dusted it for prints and found
6 his fingerprint on the bottle.

7 The state has the burden to prove it beyond a
8 reasonable doubt. We welcome that burden. It's Mr.
9 Glover's right. But we have proven this case be beyond all
10 doubt.

11 Mr. Glover is ether guilty or he's the unluckiest
12 man in Five Points. The victim of a string of uncanny
13 coincidences who just so happens to be equip with exactly
14 the same gear that some Sharky's bandaid was also wearing.
15 That's not the case. He's not unlucky. He's guilty. It's
16 him in the video. It's his fingerprint on the bottle.
17 There's no conspiracy here. There's no shoddy police work.
18 it's not discrimination. The case is that good. He's that
19 guilty.

20 Investigator Williams, Sergeant Williams didn't
21 have to write notes because it was solved. The cops aren't
22 the bad guys here.

23 My mentor taught me that not all heros wear capes
24 and masks. Some of them wear guns and badges. The
25 defendant is the bad guy. The cops did their job.

1 Assistant Garfield asked y'all to envision the
2 defendant cloaked in a cloak of innocence and with every bit
3 of evidence that we present to strip away a piece of that
4 cloth. Tyris Glover left that cloak on the sticky black and
5 white checked floor of Sharky's and he's sitting in front of
6 you today exposed and guilty.

7 Y'all took an oath to render a verdict and apply
8 the law to the facts. Come back with a verdict that is just
9 and true. The truth is that Tyris Glover is guilty.

10 THE COURT: Thank you. Thank you very much,
11 solicitor.

12 Mr. Macnealy.

13 MR. MACNEALY: Thank you, Your Honor.

14 Thank you all for your patience. It's been a long
15 couple of days. I'm sure a long week and you guys have been
16 very, very, patient. I'm going to back up -- and don't want
17 to be looming.

18 We kind of structured how we were going to do the
19 cross-examinations give you break from me because I can --
20 work with a lot of passion, pretty passionate as you saw.
21 And I thought you -- see a different approach with my
22 cocounsel, Mr. Cooper. Both of us have been working at the
23 public defender's office here in this county.

24 I hope that my passion and vigor was not too
25 intimidated. I have a great deal of respect for the law

1 enforcement community. My long time friend 17 years of
2 friendship is served undercover in Tampa Bay. We went to
3 college together, continue to be very, very, close friends.
4 To my cross-examination of these officers has nothing to do
5 with my respect for what the law enforcement community does.
6 They're necessary and they and an interval of our community.
7 If you want to call it legal combat the solicitors and the
8 public defenders have done in this courtroom I hope you know
9 that I have the upmost respect for the role of the
10 prosecutor. I've worked for the US Attorney's Office in the
11 Cooperate Securities Fraud Division on one of the largest
12 cooperate fraud cases by private cooperation in US history.
13 Prosecution plays an important role in our society.

14 We have an adversarial system and it's important
15 so that through, through, combat, if you want to call it the
16 truth may come out.

17 I worked for two federal judges and I have the
18 upmost respect for what this judge has done today and what
19 the role of judges are in our system (indicating). My vigor
20 and my passion has nothing to do at all with a lack of
21 respect for this -- the roles of everybody in this
22 courtroom. My passion has to do with justice and truth,
23 that's what it has to do with. It has something to do with
24 wanting better standards for our communities and not being
25 satisfied with the way things are. And I don't think you're

1 satisfied. I don't have to specify certain things. You
2 live your life. You're hard working people. You see what
3 goes down in society. You see what's happened in the last
4 12 years in this country.

5 Now, many of y'all if you're fortunate you haven't
6 had that much interaction with the legal community in out
7 society. I work in it all the time. When I'm working --
8 when I'm talking about passion in this context the one thing
9 that needs improvement, I'm going to bring it very local
10 now, and we make a discussion on a national level. I'm
11 going to bring it local. I'm going to bring it home, is
12 what's the standard that you want of your law enforcement
13 community? Law enforcement in this community? What's the
14 standard that you want for them? How do you want them to
15 conduct themselves in your neighborhood? If they pull over
16 one of your friends or one of your family members what kind
17 of conduct do you expect? What kind of conduct do you
18 expect should you be pulled over? That's why I'm passionate
19 about this subject and this case.

20 Open and shut. Open and shut; however, it's a
21 open and shut case. I don't even know why I'm here. I'm
22 not sure why Cooper's here (indicating) if that's the case a
23 law enforcement officer knows he's got his man. The
24 investigator didn't write down a darn note. Open and shut.
25 Is that the standard you want our officers to go by?

1 I'm going to go through some of the testimony
2 which I think you heard, just want to refresh your memory
3 from yesterday. But before I do that let he think about
4 three legal principles while I'm talking. You've heard
5 reference already the presumption of innocence. Until you
6 all are back in that room deliberating and come back with a
7 verdict either way Mr. Glover is presumed innocent. Now,
8 you wouldn't know that, perhaps, if you listened to the
9 solicitor make the comments during the video. You remember
10 what I'm talking about. You see Tyris Glover in there? You
11 see Tyris Glover in there? He stole your role in this
12 courtroom. That's your decision. The state had presumed
13 Mr. Glover guilty before you had a chance to even
14 deliberate.

15 The second legal principle to be thinking about is
16 the state's burden. Open and shut; was it? It's the
17 state's burden to prove to you all beyond a reasonable doubt
18 that's the third principle that Tyris Glover is guilty of
19 this crime.

20 And what does that mean proof beyond a reasonable
21 doubt? When the judge gives you instructions at the end
22 he's going to talk a little bit about that principle and
23 what he tells you is what y'all need to be taking back with
24 you back in that room, okay.

25 There's a circuit court judge here I like his

1 analogy so I'm going to use it. Let's borrow from him.
2 Courts have different standards of proof depending on the
3 type of subject matter, for instance, in a civil matter they
4 use the preponderance of evidence standard and this
5 particular judge when he says that he lifts his hands up and
6 a slight tilt one way or another (indicating) is all that's
7 needed for the preponderance of the evidence standard. He
8 said in other matters there's the clear and convincing
9 standard and he raises his hands up a little higher clear
10 and convincing (indicating). He then says in criminal
11 matters we have proof beyond a reasonable doubt, the highest
12 standard we have in our legal systems. Think about that.
13 It's the state's burden to prove beyond a reasonable doubt.
14 I think y'all saw some reasonable doubt. Let's go
15 through some of that. First, we had Ron Hubbard the general
16 manager at Sharky's. First there's Ron Hubbard.
17 Mr. Hubbard seemed like a likeable guy. Ron Hubbard is a
18 likeable guy. I'm not going to -- what I have to say is not
19 to pick on him in particular, if I ever have an opportunity
20 to drink at Sharky's I hope he won't turn me down to drink,
21 okay. Did you catch what officer -- what Mr. Hubbard said
22 about Officer White's incident report when I questioned him
23 about? He says, quote, inaccurate. He says there were not,
24 in fact, six bottles of liquor taken. According to him he
25 thought there were essentially moved. In regards to the 45

1 packs of cigarettes the state is arguing that was stolen.
2 Recall Mr. Hubbard's testimony when I asked him if he had
3 turned over any inventory documentation to the police that
4 would have been turned over to the prosecution and myself,
5 he said, no. Ask yourself why. Just curious. He could
6 have. He says he has a system in place. Surely, there
7 could have been a printout that would have showed what comes
8 into place and what goes out of the place and when things
9 are unaccounted for. You didn't see that and I didn't see
10 that.

11 If you recall Mr. Hubbard said and I asked him I
12 think about three times and I almost couldn't believe what I
13 was hearing, I asked him, are you sure you could see
14 Mr. Glover's face in that video? Yep, he's sure. Now you
15 all watched that video on the big blowup screen. I think
16 you know the answer to that. There's one other interesting
17 remark that he made, I almost didn't catch it, it was during
18 direct examination the prosecutor had asked him had you ever
19 seen Mr. Glover before? And almost went right by me. You
20 remember what his response was? Do you remember his
21 hesitation? Remember he hesitated at that point? Almost as
22 if he was about to say yeah but he didn't -- no, remember
23 that? You know what came to mind as soon as I saw that
24 remark? Professor -- West is famous for saying race still
25 matters. That's what came to mind, race still matters. You

1 saw a black man. If you spend any time in Five Points you
2 know the poverty around that area. I don't have to describe
3 it to you. There are poor black men that walk around,
4 riding bicycles if they have one. He was one of those black
5 men that's what came to mind from the comment. Race still
6 matters.

7 Let's turn to Officer Schmidt. Remember officer
8 Schmidt? Remember how he could recall everything in detail
9 that happened on June 28th? Which is why he didn't have to
10 refresh his memory beforehand. He didn't have to read the
11 incident report because he knew went down June 28th.
12 Remember that? Didn't have to read the incident report
13 drafted by Officer White. Yet as you saw he conventionally
14 forgot so many details, didn't he? Who drafted the incident
15 report?

16 I don't know.

17 You never read the incident report?

18 No.

19 Where is Officer White now?

20 I don't know.

21 Is Officer White still employed with the Columbia
22 PD?

23 No.

24 Why is Officer White not -- no longer with the
25 Columbia PD?

1 I don't know.

2 Let me stop there for a second. Now, do you
3 believe that him and his buddies at the Columbia Police
4 Department they're out having a barbecue and a beer, do you
5 believe they're not talking about they're not talking about
6 their college and why that person is no longer working the
7 force? I didn't believe that. I didn't believe that one
8 bit. I don't think you believe that. You know the work
9 place. You know the gossip.

10 Did you produce a video of your encounter with
11 Mr. Glover?

12 No.

13 Wasn't your car equip with video?

14 I don't know.

15 Did you activate you blue light so that would have
16 triggered the video?

17 I don't know. Do you believe that? Do you
18 believe he stopped a man, didn't activate his blue lights?
19 Is that reasonable? Does that make sense? No. How long
20 was he encountered with Mr. Glover?

21 I don't know. Okay, was it five minutes?

22 I don't know.

23 An hour?

24 I don't know.

25 Do you have any idea about how long the encounter

1 was with Mr. Glover?

2 No. Part of your role as jurors is the weight and
3 credibility of the witnesses on the stand. That's a large
4 part of it. Do, do, they sound creditable? He didn't come
5 off as creditable to me. It sounded evasive is what I would
6 describe that.

7 What time did you arrive at Sharky's?

8 Between eight and 8:30. I mind you the incident
9 report which he says he never read drafted by Officer White
10 they never called to testify says that this was actually
11 after 9:30 that Officer White first one on the scene shows
12 up at 9:30.

13 Let's turn to that stop with Mr. Glover. Office
14 Schmidt testified he pulled up his vehicle yet he can't
15 recall if he activated his blue lights. He couldn't even
16 recall if his car had a video system at the time.

17 Now, he says, what he saw was Mr. Glover walking
18 with a limp. Well, folks, we're talking about June 28th
19 Columbia summers here. The man has a bicycle. He's ridding
20 his bicycle. He's not pushing it. This is what I think
21 happened right there. I think he saw a guy that might be he
22 had a suspicion. He's ridding his bike. In fact, it --
23 what Schmidt says at this point. He gets out of his car.
24 About six feet away from Mr. Glover. He orders him to walk
25 toward him. Now, think about that context for just a

1 second. Think about the context. Race matters. Race still
2 matters. A white officer in the deep south tells a black
3 man, I order you to come towards me. I think if you're
4 having a free and voluntary consent in your own mind at that
5 time.

6 Then he says, this what gets me, he said he asked
7 for permission to see in his bag. That doesn't sound
8 credibility, does it? After ordering a man sure the lights
9 were activated. You order a man to work towards you. And
10 you're going to ask nicely. Sir, can I look in your bag?
11 That doesn't sound reasonable. I'm not buying that.

12 What's he see in that bag? He says he sees four
13 packs of cigarettes. Oh, and no receipt.

14 Now, I had Mr. Schmidt when he was on here I
15 showed him those cigarettes again and see if he and I agreed
16 with what those cigarettes looked like. He and I agreed two
17 of those packs were unused. He and I agreed that one was
18 partially used. And he and I agreed that the other one was
19 completely used. But it was four packs of cigarettes and no
20 receipt that was reported. That was open and shut. Does
21 that sound reasonable? No.

22 I asked him do you keep receipts from stuff you
23 buy?

24 No.

25 Officer when testifying on direct those four packs

1 matched that was stolen from Sharky's. So, when I asked him
2 on cross, do they match?

3 He said, oh, they'll the same brand.

4 The other part that we got from his testimony was
5 that video, do you remember that? He gave a by-play-play
6 commentary, you know, we just all sat there kept waiting,
7 kept waiting, for the awe ha moment. It's coming, edge of
8 my seat I was waiting and we're going to see Tyris Glover's
9 face. You were waiting for that because you heard you were
10 going to see something like that from one of the witnesses
11 that's what you're going to see. Throughout the whole
12 play-by-play commentary. Nope, all we saw was a black man
13 entered a bar. That's what you could see from the video.

14 Let's turn to Officer Kermit Scott. Officer Scott
15 admitted there was two fingerprint cards and he had
16 mentioned labs and one was one dash one and two dash one and
17 there was a potential match on one of those. Now, he and I
18 were going back and forth on the characteristics points,
19 points of characteristics, when the less -- it was a 14
20 point or characteristics that he's working with and how the
21 reason what he knows in his expert opinion there could be no
22 other than Tyris Glover.

23 He seems remarkably uninformed about where his
24 filed is progressing considering he's an expert worldwide.
25 It was ten point for the U.K. You sure?

1 Yeah, ten points.

2 Sure it's not, 16?

3 No. Ten points. Well, if you show me something
4 where it's ten points then I'll believe it.

5 France 24. 30 Brazil. 30 Argentina. 14 Tyris

6 Glover. Folks, this is an important point. This trial has
7 been about demanding more. Demanding higher standards of
8 law enforcement of the state. It's your tax dollars. You
9 have family that could be potentially facing criminal
10 prosecution. Do you want the state to rely on 14 points?
11 Which is not even a standard. They don't have one. One of
12 the few countries that still does not a standard. Fourteen
13 points wouldn't even cross the prosecutor's desk
14 (indicating).

15 You remember that analogy I was trying to talk
16 about a little bit about examinations they have to take.
17 Here's a point of that, there are examination that they have
18 to take and I can assure you and common sense would suggest
19 it, if you have 100 police officers taking that test 100
20 aren't getting the same score on that thing. A large part
21 of it if you want to call it a science we'll call it a
22 science but it's subjective, folks. That's the reason why
23 there's certain high standards around the world because
24 you're trying to gain as much as possible that subjectivity.

25 Let's talk about the other witness you saw in

1 here, Officer White, oop, you didn't see him; did you?
2 Didn't see Officer White, first officer on the scene, drafts
3 the incident report. Where is Officer White? It's not like
4 he's disappeared, not like the state doesn't know where he
5 is. They could have called him as a witness. They didn't.
6 Why? You can ask that, why? Curious? It's curious that
7 the state would attempt to put up a case and wouldn't call
8 the first officer that arrived on the scene and who's only
9 incident, incident, report of the entire incident that day
10 on the 28th of any patrol officer, that's all we have that
11 one incident report from that the patrol officer. They
12 didn't call him. They didn't call him -- think about this
13 because they didn't want me the cross examine him. That's
14 why they didn't call him. They didn't want me to cross
15 examine him. Think about that.

16 We have Investigator Williams. I want to speak
17 about a little bit since you already heard him this morning.
18 One quote -- a couple of quotes that stood out from him or
19 really stood out to me is the overwhelming amount of
20 evidence, over abundance of evidence. Open and shut. You
21 saw the cross. Is that the standard that you want of your
22 law enforcement, open and shut? Don't have to take a note?
23 Open and shut, don't have to write a report? Open and shut,
24 it's very clear on video it was Mr. Glover. It's not as we
25 saw it. It's not clear. Open and shut, no. It's just not

1 credibility. It's not believable folks.

2 When y'all are deliberating back there I want you
3 to think long and hard about what you saw, what you didn't
4 see and ask the question -- ask if that's good enough for
5 you. Is it good enough that Officer Schmidt sees a black
6 man whether or not he on his bike or not to stop and orders
7 him to walk towards him? Is that good enough? Race still
8 matters. Is it good enough you did not see any sheets from
9 a business? Solicitor All, economy is undermine. Well, you
10 know, when you run a business documentation helps. Is it
11 good enough, 14 points from the experts saying it's good
12 enough for him, comfortable. Comfortable?

13 Comfortable. That's not -- demand more. Demand
14 more. There's the reason why there are standards.

15 I'm not sure how many police cars were on scene
16 during this entire incident. I figure at a minimum, at a
17 minimum, three. You didn't see a single video from any of
18 those cars from that stop. Folks, I've seen a ton of video
19 from traffic stops. You didn't see any. Ask yourself why?

20 Two prior burgs. Mr. Tyris Glover -- I'm going to
21 show you his picture. I'm going to show you this picture
22 because it makes me angry. I want you to look at this
23 picture and pass it around.

24 (Pause)

25 Folks, race still matters. Have a man

1 embarrassed, head down, sweating in that summer heat,
2 surrounded by mostly white officer and you know this is
3 true. I'm speaking the truth. All they have at this point,
4 all they have, the fingerprint report wasn't drafted until
5 the next day. They have a man with some cigarettes and no
6 receipts because he could not possibly ID his face on that
7 video.

8 Folks, Mr. Glover two prior burgs the state has
9 mentioned, you know what, that man (indicating) has paid his
10 debit to society for that I can assure you. Don't convict a
11 man based on the debit he's already paid. Look at the
12 evidence that's been submitted to you. Demand higher
13 standards. Demand more from the law enforcement community
14 in this state. And I ask you if you weigh the evidence come
15 back with a verdict of not guilty. Thank you.

16 THE COURT: Thank you. Thank you very much,
17 Mr. Macnealy.

18 Sheriff, if anyone wants to leave at this time
19 prior to my instruction to the jury they may do so.

20 Would you take this down for me, please
21 (indicating)? Thank you.

22 Ladies and gentlemen of the jury panel, if you
23 please give me your complete and undivided attention. I'm
24 going to charge or instruct you on the law that applies in
25 this case. I will tell you first the procedure that I use.

1 I charge the general law that applies to all criminal cases
2 tried in South Carolina. I then charge the particular
3 indictments in the offenses in the particular indictments
4 which is burglary second and larceny and finally I would
5 charge a form of verdict. When I charge the general law and
6 I would normally give you a caption of the session and
7 subject matter I'm fixing to cover. When I change form one
8 subject matter to another I will give you that caption. If
9 you please continue to give me your complete and undivided
10 attention.

11 The indictments charge the defendant with burglary
12 second degree and larceny. I remind you the fact that the
13 defendant was arrested, charged and indicted in this case is
14 not evidence and cannot be considered by you as evidence of
15 guilt nor does it create anything presumption or inference
16 of guilt. These documents, these indictments are again
17 simply the formal written instruments which contain the
18 charges made against the defendant. They are the formal
19 documents that bring the case into court.

20 Presumption of innocence, the defendant has pled
21 not guilty to these indictments, that plea puts the burden
22 on the state to prove the defendant guilty. The person
23 charge with committing a criminal offense in South Carolina
24 is never required to prove himself innocent. I charge you
25 that it is an important rule of the law that the defendant

1 in a criminal trial no matter what the seriousness of the
2 charge may be will always be presumed to be innocent of the
3 crime for which the indictment was issued unless guilt has
4 been proven by evidence satisfying you of that guilt beyond
5 a reasonable doubt. The presumption of innocence does not
6 end when you begin your deliberation but it accompanies the
7 defendant throughout the trial until you reach a verdict of
8 guilt based on evidence satisfying you of that guilt beyond
9 a reasonable doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the defendant
12 which remains with the defendant until it has been stripped
13 from the defendant by evidence satisfying you of the
14 defendant's guilt beyond a reasonable doubt. The
15 presumption of innocence is not a mere legal theory. It is
16 not just a legal phrase. It is a substantial right to which
17 every defendant is entitled unless you the jury are
18 satisfied from the evidence of the defendant's guilt beyond
19 a reasonable doubt.

20 What is a reasonable doubt in the law? A
21 reasonable doubt is the kind of doubt that would cause a
22 reasonable person to hesitate to act. The state has the
23 burden of proving the defendant guilty beyond a reasonable
24 doubt. Some of you may have served as jurors in the past in
25 civil cases where you were told that it is only necessary to

1 prove that a fact is more likely true than not true such as
2 by the greater weight or the preponderance of the evidence.
3 The state's proof must be more powerful than that. It must
4 be beyond a reasonable doubt. Proof beyond a reasonable
5 doubt is proof that leaves you firmly convinced of the
6 defendant's guilt.

7 Now, there are very few things in this world that
8 we know with absolute certainty and in criminal cases the
9 law does not require proof that overcomes every possible
10 doubt. If based on your consideration of the evidence you
11 are firmly convinced that the defendant is guilty of the
12 crimes charged you must find the defendant guilty, if on the
13 hand you think there is a real possibility that the
14 defendant is not guilty you must give the defendant the
15 benefit of the doubt and find him not guilty.

16 Duties of the trial jury and trial judge, I remind
17 you that during this trial you and I have certain duties to
18 perform. As the trial judge it is my responsibility to
19 preside over the trial of this case. I also have the duty
20 to rule on the admissibility of the evidence offered during
21 the trial. You are to consider only the competent evidence
22 before you, if there is any testimony ordered stricken from
23 the record during the trial you must disregard that
24 testimony. You are to consider only the testimony which has
25 been presented from this witness stand and any exhibits

1 which have been made a part of the record in this case.

2 I have the additional duty to charge or instruct
3 you the law that applies to this case. As the presiding
4 judge I am the sole judge of the law of this case. And it
5 is your duty as jurors to accept and apply the law as I now
6 state it to you. If you already have any idea as to what
7 the law is or what the law ought to be and it does not agree
8 with what I now tell you the law is you must abandon your
9 idea because you are sworn. You have taken an oath to
10 accept the law and apply the law exactly as I state it to
11 you. And every case tried in this court before a trial jury
12 the jury becomes the sole and exclusive judge of the facts
13 in a case. A trial judge cannot intimate, state comment on
14 or makes any statement to a trial jury about the facts in
15 the case. Since you the jury are the sole judge of the
16 facts you are not to infer from what I have said during the
17 progress of this trial in ruling on the admissibility of
18 evidence or otherwise or anything that I say now during the
19 course of this instruction to you that I have any opinion
20 about the facts in this case. The law does not allow me to
21 have an opinion about the facts in a case that is a matter
22 solely for you, the jury, to determine. As jurors it is
23 your duty to determine the effect, the value the weight and
24 the truth of the evidence that has been presented during
25 this trial.

1 Direct and circumstantial evidence, there are two
2 types of evidence which are generally presented during a
3 trial direct evidence and circumstantial evidence. Direct
4 evidence is the testimony of a person who claims to have
5 actual knowledge of the facts, such as, an eyewitness or an
6 earwitness. It is evidence which immediately establishes
7 the main fact to be proved.

8 Circumstantial evidence is the proof of the chain
9 of facts in the circumstances which immediately establishes
10 a collateral fact from which the main fact may be inferred.
11 Circumstantial evidence is based on inference and not on
12 personal knowledge or observation. The law, our law, makes
13 absolutely no distinction between the weight or the value to
14 be given to either direct or circumstantial evidence nor is
15 there a greater degree of certainty required of
16 circumstantial evidence than of direct evidence.

17 You should weigh all of the evidence in the case.
18 After weighting all of the evidence if you are not convinced
19 of the guilt of the defendant beyond a reasonable doubt you
20 must find the defendant not guilty, if after weighing all of
21 the evidence you are convinced of the guilt of the defendant
22 beyond a reasonable doubt you must find the defendant
23 guilty.

24 Credibility of witnesses. Necessarily you the
25 jury must determine the credibility of the witnesses who

1 have testified in this case. Credibility simply means as
2 you all know believability. It becomes your duty as juror
3 to analyze and to evaluate the evidence and to determine
4 which evidence convinces you of its truth. In determining
5 the believability of the witnesses who have testified in
6 this case you may believe one over several or several over
7 one. You may believe the part of the testimony of a witness
8 and reject the remaining part of the testimony of that same
9 witness. You may believe the testimony of a witness in its
10 entirety or reject the testimony of a witness in its
11 entirety. You must consider whether any witness has
12 exhibited to you any interest, bias or prejudice or other
13 motive in this case you may also consider the demeanor or
14 the appearance, the manner of the witness while on the
15 witness stand. You have but one function and one duty and
16 that is to seek the truth regardless, regardless, from where
17 that truth comes.

18 Expert witnesses. Again you've heard me say the
19 rules of evidence ordinarily do not permit witnesses to
20 testify to opinions or conclusions. An exception to this
21 rule exist for those witnesses that we call expert
22 witnesses. A witness who by education or experience has
23 become an expert in some art or science or profession or
24 calling may state an opinion as to relevant and material
25 matter in which the witness claims to be an expert and may

1 also state the reasons for that opinion. You should
2 consider any expert opinion received in evidence in this
3 case and like any other evidence you give it the weight that
4 you think it deserves, if you decide that the opinion of an
5 expert is not based on sufficient education or experience or
6 if you conclude that the reason given in supported of the
7 opinion is not sound or that the opinion is out weighted by
8 other evidence you may disregard the opinion entirely. An
9 expert witness's testimony is to be given no greater weight
10 than that of any other witnesses simply because the witness
11 is an expert. Further, you are not required to accept a
12 expert's opinion even though it is uncontradicted.

13 Ladies and gentlemen, I instruct you an emphasize
14 that the fact that the defendant did not testify is not a
15 factor to be considered by you in any manner in your
16 deliberation and in your consideration of the question of
17 guilt or innocence of the defendant. It must not be
18 considered by you in any manner whatsoever. A defendant has
19 the constitutional right to remain silent and the assertion
20 of that right must not be considered by you in your
21 deliberations. I repeat, under your oath, you are to draw
22 no conclusions whatsoever from the fact that the defendant
23 in this case did not testify. The fact that this defendant
24 did not testify should not even be discussed in the jury
25 room. The burden of proof as I have stated to you is on the

1 state. The defendant is not required to prove his
2 innocence. The burden of proof remains on the state to
3 prove guilt beyond a reasonable doubt.

4 Identification. An issue in this case is the
5 identification of the defendant as the person who committed
6 the crimes charged. The state has the burden of proving
7 identification beyond a reasonable doubt. You must be
8 satisfied beyond a reasonable doubt of the accuracy of the
9 identification of the defendant before you may convict the
10 defendant.

11 Identification testimony is an expression of
12 belief or an impression by a witness. You must determine
13 the accuracy of the identification of the defendant. You
14 must consider the believability of each identification
15 witness in the same way as any other witness. Again, I
16 instruct you the burden of proof is on the state extends to
17 every element of the crime charged and this specifically
18 includes the burden of proving beyond a reasonable doubt the
19 identity of the defendant as the person who committed the
20 crime. Ladies and gentlemen, that is the general law that
21 applies to all criminal cases in South Carolina.

22 I'm now going to charge the offenses of burglary
23 second and larceny. I would ask you to please continue to
24 give me your complete and undivided attention. Although you
25 can't see the number of pages I still have in front of me I

1 assure you the end is in sight.

2 (Laughter.)

3 And as I say, if you will continue to give me your
4 complete and undivided attention.

5 Second degree burglary is a statue in South
6 Carolina under our code of laws under 16-11-312. To prove
7 second degree burglary the state must prove beyond a
8 reasonable doubt that the defendant entered a building
9 without consent and with the intent to commit a crime in the
10 building.

11 The term building is also described in our
12 statute, a building is any structure where people assemble
13 for the purpose of business, government, education,
14 religion, entertainment, public transportation or public use
15 or where goods are stored. So, you have the state having to
16 prove beyond a reasonable doubt that the defendant entered a
17 building without consent with the intent to commit a crime
18 in the building.

19 Finally, the state must prove beyond a reasonable
20 doubt that the defendant has a prior record of two or more
21 convictions for burglary and or housebreaking. And let's
22 talk about that for just a moment. Evidence of prior
23 offenses committed by the defendant was not offered to prove
24 the defendant has a bad character or to prove that the
25 defendant committed the burglary on this occasion.

1 The prior convictions may be considered by you
2 only for the purpose of determining whether or not it
3 satisfies the element of the offense which makes it second
4 degree burglary. If you enter a building without consent to
5 commit a crime therein and you have two prior convictions
6 for burglary and or housebreaking.

7 Before you can even consider the evidence of the
8 defendant's prior burglary and or housebreaking convictions
9 you must first find that the state has proved beyond a
10 reasonable doubt that the burglary was committed by the
11 defendant. If you find beyond a reasonable doubt that the
12 burglary was committed then you may consider the evidence of
13 the prior convictions as evidences of a circumstance which
14 would make the burglary second degree burglary. If you do
15 not find beyond a reasonable doubt that the defendant
16 committed these alleged prior offenses then you cannot
17 return a verdict of second degree burglary. So, it's
18 entering a building without consent with intent to commit a
19 crime therein and the defendant had a prior record of two or
20 more convictions for burglary and or housebreaking at the
21 time of the burglary in this case. That is the charge of
22 burglary in the second degree.

23 Larceny. We know what larceny is, stealing. The
24 defendant is charged with larceny. The state must prove
25 beyond a reasonable doubt that the defendant took and

1 carried away the property of another against the will or
2 without the consent of the other person. The slightest
3 removal of the property or the complete possession of the
4 property even for an instance by the defendant is enough to
5 show a taking and carrying away of the property.

6 The state must also prove beyond a reasonable
7 doubt that the defendant intended to permanently deprave the
8 owner of the property. That is the charge of burglary
9 second degree and larceny.

10 And finally, ladies and gentlemen, the form of the
11 verdict. There are two possible verdicts you may find in
12 this case as to each indictment; guilty or not guilty.
13 There's absolutely no suffigance whatsoever in the order in
14 which I stated those possible verdicts. It's simply that
15 one must be stated fist. Ladies and gentlemen, your
16 verdicts musts be unanimous verdicts. All 12 of you must
17 agree. Your verdict must not be based on passion,
18 prejudice, or bias or any other emotion not in evidence in
19 this case.

20 Madame Forelady, you will have in the jury room
21 along with all of the exhibits that were introduced a
22 document entitled a verdict from. It's -- be very simple
23 for you or any member of the jury to follow. I direct this
24 to you as the foreperson of our jury. It states please mark
25 the appropriate verdict below and follow the accompanied

1 instructions, on indictment and it's got the number as to
2 larceny. We the jury unanimously find the defendant and
3 you've got two choices; guilty or not guilty. Whatever your
4 verdict may be if it's guilty that's solely by way of
5 example I would ask you to check to the left of guilty and
6 circle both your check mark and the word guilty, if your
7 verdict is not guilty I would ask you to check to the left
8 of the words not guilty, circle both your check mark and
9 those two words. Under that number two indictment for
10 burglary second degree also guilty or not guilty whatever it
11 may be check the appropriate line to the left, circle the
12 appropriate word or words then it's a place to sign as the
13 presiding juror and to date it.

14 Once you have reached those unanimous verdicts and
15 you have properly filled out the from, Madame Forelady, and
16 signed your name if you will knock on the jury room door and
17 inform the bailiff that you have reached your verdict at
18 that time we will receive you back into the occur room.

19 Momentarily I'm going to ask you to step to the
20 courtroom with your bailiff. What may happen I have to
21 confer with the attorneys one final time before the case can
22 be submitted to you for you to begin your deliberations, if
23 I forgotten something if I have to bring you back out for
24 any further charges. Do not begin your deliberations until
25 you are directed to do so either by the clerk or the bailiff

1 at that time the items of evidence with be presented in the
2 jury room along with the verdict form.

3 And everybody looks great by the way. So our
4 alternate would come out. You can then begin your
5 deliberations. All right. Thank you very much. You may
6 now go with your bailiff.

7 (The jury retires from the
8 courtroom at 1:41 p.m.)

9 Any exceptions or additions, solicitor?

10 MS. GARFIELD: No, sir.

11 THE COURT: Mr. Macnealy?

12 MR. COOPER: None from the defense, Your Honor.

13 THE COURT: All right. Have y'all check the
14 exhibits, check the verdict form. I will send, I will send
15 in, send in the indictments.

16 (Whereupon, a short recess was
17 held.)

18 (The jury returned to the
19 courtroom at 2:25 p.m.)

20 THE CLERK: Jury's all present, Your Honor.

21 THE COURT: Thank you. Thank you very much.
22 Madame Clerk.

23 THE CLERK: Madame Forelady, has the jury reached
24 a verdict?

25 MADAME FORELADY: We have.

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 you two questions. I need you to answer both questions.

2 Number 210, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE WITNESS: Yes.

6 THE CLERK: Number 121 was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Number 299, was this your verdict?

11 JUROR: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes, ma'am.

14 THE CLERK: Number 131, was this your verdict?

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE COURT: Number 242, was this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Number 24, was this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it sill your verdict?

25 JUROR: Yes.

1 THE COURT: Number 23, was this your verdict?

2 JUROR: Yes.

3 THE CLERK: It sill your verdict?

4 JUROR: Yes.

5 THE CLERK: Number 83 is this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Number 149, was this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict.

12 JUROR: Yes.

13 THE CLERK: Number 37, was this your verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Number 269, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: Number 41, was this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Jury's polled, Your Honor.

1 THE COURT: Anything further from the jury?

2 MR. MACNEALY: No, Your Honor.

3 THE COURT: All right. Thank you.

4 Madame Forelady, ladies and gentlemen of the jury.

5 Thank you. Thank you very much for your service this week.

6 I never criticize nor commend a jury for itself verdict.

7 However, I will say, if you ever find yourself a part of the

8 system in the future and I hope you do not but if you ever

9 do by way of a party or witness or otherwise I hope the jury

10 that is selected for the trial of this -- that case is as

11 focused and attentive and patient as y'all have been

12 throughout the trial of this case. We could not be about

13 the very important business of administering your civil and

14 criminal justice system without your input and input of

15 citizens such as yourself week-to-week. It has been by

16 pleasure and privileges to be with you this week in Richland

17 County. I'm now going to excuse you for your jury service.

18 That's correct, isn't it, Mr. Clerk? Any other

19 jurors to be selected?

20 MR. TRUITT: No, sir. That's it, Your Honor.

21 THE COURT: I'm mean, you got six more hours of

22 daylight this week, you know. That's it?

23 MR. TRUITT: I could call but, no.

24 (Jury panel erupted saying, Oh,

25 no.)

1 (Laughter.)

2 MR. TRUITT: No, sir.

3 THE COURT: All right. Well, call another judge
4 too.

5 (Laughter.)

6 All right. With that being said I'm going to
7 release you from your jury service for the reminder of the
8 day and reminder of the week.

9 Madame Clerk, what do they need to do if they need
10 work excuses?

11 THE CLERK: If they would just step back in the
12 jury room, Your Honor. I can give them their checks and
13 their work excuses.

14 THE COURT: Y'all have checks?

15 THE CLERK: I do.

16 THE COURT: All right. Can they cash them before
17 the weekend?

18 THE CLERK: You can cash them as quick as you can,
19 I guess.

20 (Laughter.)

21 THE COURT: All right. If you now go with your
22 bailiff to your jury room. Thank you. Thank you very much.

23 (The jury retires from the
24 courtroom at 2:30 p.m.)

25 All right. Mr. Macnealy, Mr. Cooper, do you have

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 whit 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 seizes 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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1. COUNTY OF RICHLAND)

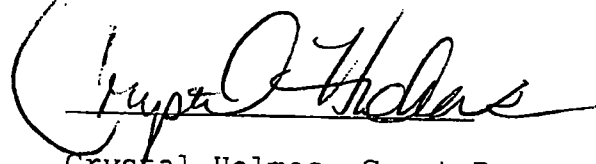
2. CERTIFICATE OF REPORTER

3. I, Crystal Holmes, hereby certify that I reported
4. the preceding case entitled State of SC V. Tyris Glover Case
5. No. 2012-GS-40-00854 AND 2012-GS-40-0857, at the Richland
6. County Courthouse, April 26 and 27 of 2012.

7. I FURTHER CERTIFY that the foregoing pages 1
8. through 346 constitute a true, accurate and full transcript
9. of said hearing.

10. I FURTHER CERTIFY that I am not employed by any of
11. the parties hereto and I have no financial interest in the
12. outcome of said case.

13. IN WITNESS WHEREOF, I have heretofore set my hand
14. and seal at Richland County on this 16th day of August,
15. 2012.

16. 

17. Crystal Holmes, Court Reporter
18. and Notary Public for the
19. State of South Carolina my
20. Commission Expires:
21. April 21 2014
22.
23.
24.
25.

FORM 5

2014 CP400 1523

STATE OF SOUTH CAROLINA

COUNTY OF RichlandTyris Bernard Glover 157418
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORR INST - 430 OAKLAND RD. PELZER S.C. 29669
2. Name and location of Court which imposed sentence General Session Court Columbia, S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012 GS-4000-854
 - (b) 2012 GS-4000-857
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 27, 2012 Property offense (10 yrs)
 - (b) April 27, 2012 Burglary and violent (12 yrs) "Concurrent"

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made: 5
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 2-5-2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Miranda v. Arizona
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance Counseling
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Poor Judgement
- (b) Fail to Investigate my case Prior to trial
- (c) Fail to Object to Commentator on Certain Issues

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____ *N/A*
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____ *N/A*
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____ *N/A*
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____ *N/A*
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____ *N/A*
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Jeremy MacNealy Esq. & James Cooper Esq. Public Defender
 - ii. David Alexander-Appellant Defender
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial & Sentencing
 - ii. Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of All Conviction Sentence & Release from Unlawfully Imprisonment

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tyris Glover

SWORN to and subscribed before me this 3rd
day of March, 2014.

Danaye Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2027

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]

Applicant

SWORN or affirmed to and subscribed before me this

3rd day of March, 2014.

[Signature]
Notary Public

My Commission Expires: 1-23-2027

2014 MAR 10 AM 10:09
C.C.P. 8.6.8.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyris B. Glover, #157418,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2014-CP-40-01525

RETURN

Respondent, making its Return to the Application for post-conviction relief filed March 10, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during February 2012 term of the Richland County Grand Jury for Burglary – 2nd Degree (Violent) (2012-GS-40-00854) and Property Crime – 3rd or Subsequent Offense (2012-GS-40-00857). He was represented by Jeremy J. MacNealy, Esquire and James D. Cooper, III, Esquire. On April 26-27, 2012, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon, where he was convicted as indicted. Judge McMahon sentenced Applicant to twelve years for Burglary – 2nd Degree (Violent) and ten years for Enhancement/Property Offense – 3rd or Subsequent Offense.

Applicant filed a notice of appeal and was represented by Appellate Defender David Alexander. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence by unpublished opinion. State v. Tyris Bernard Glover, 2014-UP-043 (Ct. App. filed February 5, 2014). The Remittitur was sent on February 24, 2014.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and Applicant's trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody for the following allegations of ineffective assistance of counsel:

1. "Poor Judgement [sic];"
2. "Fail to investigate my case prior to trial;" and
3. "Fail to object to commentator on certain issues."

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625; citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests a hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, Respondent requests that a hearing be held.

Signature block to follow.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: *Megan E. Harrigan*
ATTORNEYS FOR RESPONDENT
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Post Office Box 11549
Columbia, SC 29211

June 30, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYRIS B. GLOVER, #157418

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-40-01525

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan Waller , Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street, Suite 104
Columbia, South Carolina 29201

DATED this 30th day of June, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2014-CP-40-1525 ,
	)	
	)	
	)	
Tyris Bernard Glover	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
<u>DEFENDANT</u>	)	July 15, 2015
		Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

JONATTHAN D. WALLER, ESQ.
Attorney for the Applicant

J. CLAYTON MITCHELL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Tyris Glover				
4	Mr. Waller	4		21	
5	Mr. Mitchell		17		
6					
7	Jeremy MacNealy				
8	Mr. Waller	22		43	
9	Mr. Mitchell		35		
10					
11	Certificate of Reporter	45			
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1 THE COURT: Let's proceed, I make good notes.

2 MR. MITCHELL: Your Honor, may it please the
3 Court. This is Tyris Glover vs. State of South Carolina
4 case number 2014-CP-40-1525. Mr. Glover was indicted on
5 February of 2002 -- 2012 excuse me for a burg second and a
6 third or subsequent property crime. He was represented by
7 Jay Cooper and Mr. Jeremy MacNealy, trial proceeded
8 April 26 to April 27 of 2012 before Judge McMahan. He was
9 convicted as indicted, sentenced to 12 years on burg
10 second and ten years on the property crime.

11 THE COURT: Consecutive?

12 MR. MITCHELL: Concurrent, Your Honor. The
13 appeal was taken. Court of Appeals affirmed his
14 conviction in an unpublished opinion. Your Honor, if you
15 recall this case was called Monday of this week and Mr.
16 Glover had filed a motion for discovery of a dash cam
17 video tape and a video of incident scene to see if there
18 were any possible -- there's existence of video tape from
19 the incident scene surveillance video. We're before you
20 here today and ready to go. I note for the record Mr.
21 Glover is here and represented by Mr. Jonathan Waller and
22 I turn to him at this time.

23 THE COURT: Mr. Waller.

24 MR. WALLER: Thank you, Your Honor. At this
25 time I call Tyris Glover.

1 THE COURT: Come around, Mr. Glover. You
2 solemnly swear the testimony you're about to give in this
3 case will be the truth, the whole truth and nothing but
4 the truth so help you God?

5 MR. GLOVER: I do.

6 THE COURT: Have a seat in the witness box.

7 WHEREUPON,

8 Tyris Bernard Glover,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WALLER:

12 Q Good morning, Mr. Glover. How are you today?

13 A Good.

14 Q Mr. Glover, how old are you?

15 A Forty-eight.

16 Q Where you from?

17 A Orangeburg County.

18 THE COURT: You got to speak up a little bit, so
19 I can hear you, okay.

20 BY MR. WALLER:

21 Q Mr. Glover, how long have you lived in Columbia,
22 South Carolina?

23 A Since 2003.

24 Q Okay. I want to take you back if I can June 28th of
25 2011. Do you recall that day?

1 A Yes, sir.

2 Q Okay. Did you get arrested that day?

3 A Yes, sir.

4 Q Okay. When you initially got arrested, what happened
5 immediately after that?

6 A (Inaudible.)

7 Q What were you charged with?

8 A Burglary, Burglary second.

9 Q Can you speak up just a little bit, so I can hear you
10 and Ms. Reed can hear you.

11 A Burglary second and petty larceny.

12 Q Okay. Did you have a bond hearing?

13 A Yes, sir.

14 Q Okay. Were you able to make bond?

15 A No, sir.

16 Q Okay. So you were locked up?

17 A Yes, sir.

18 Q About how long were you locked up before you went to
19 trial on this charge?

20 A From the time -- June to April.

21 Q Now, you actually had two charges; is that right?

22 A Yes, sir.

23 Q You had a burglary and you talked about you had a
24 larceny?

25 A Yes, sir.

1 Q And the State charged you under the property crime
2 enhancement for the larceny?

3 A Yes, sir.

4 Q Did you have a lawyer for your bond hearing?

5 A Yes, sir.

6 Q Do you recall who that was?

7 A I can't remember his name. He was -- I can't
8 remember the guy's name, but he didn't represent me. They
9 put somebody else on me to represent me at my preliminary
10 hearing.

11 Q It wasn't the lawyers that represented you at your
12 trial?

13 A No, sir.

14 Q Okay. When did Mr. Cooper and Mr. MacNealy first
15 become your lawyers?

16 A Trial date -- I got him, Mr. MacNealy, on December
17 2011. I hadn't seen me Mr. Cooper until April until my
18 trial date came up.

19 Q Okay. So Mr. MacNealy was assign to you before
20 Mr. Cooper?

21 A Yes, sir.

22 Q Okay. Was Mr. MacNealy the first lawyer who you
23 discussed this case with?

24 A No, sir.

25 Q How many lawyers did you have prior to Mr. MacNealy?

1 A I had one lawyer, female lawyer Ms. Renee Lipson.

2 THE COURT: Who?

3 MR. GLOVER: Renee Lipson.

4 THE COURT: Gibson?

5 MR. GLOVER: Lipson.

6 THE COURT: Lipson?

7 MR. GLOVER: Yes, sir.

8 BY MR. WALLER:

9 Q In the preparation of your case for trial, who did
10 you deal with more Mr. MacNealy or Mr. Cooper?

11 A I deal with none of them actually.

12 Q Who did you talk to more throughout the entire
13 process of your case?

14 A Really talk to nobody really.

15 Q Okay. Did you and your lawyers particularly
16 Mr. MacNealy discuss the evidence the State intended to
17 show you against you?

18 A Yes, sir.

19 Q Okay. Did you and your lawyers discuss the alleged
20 incident and events that took place after that?

21 A Yes, sir.

22 Q What did you tell them about the incident?

23 A I don't get what you asking me.

24 Q Okay. What did you tell them? What was your
25 sequence of the events that day?

1 A What happened that day?

2 Q Yes.

3 A I was telling him that very first thing I spoke to
4 him about was about the video from that stop on Millwood
5 Avenue, that's the very first thing I told him about. I
6 told him that I was walking down the sidewalk, they stop
7 me. When they stop me, one officer ask me where I was
8 coming from. Like he said, you look like someone fit the
9 description of something happen early this morning.
10 During the time he was talking to me, he ask me what I had
11 in my bag. I had a book bag on my back. And he tell me
12 place it on the front of the hood. He ask me to search my
13 bag and I give him consent to search my bag. But during
14 the time -- before he about to search my bag, two other
15 officers pull up with the lights on, siren on whatnot.
16 And one of the officers got out the car and said, well,
17 tell him to walk down the sidewalk and turn. So that's
18 what I did. I demonstrate a walk and I came back to the
19 car. The guy was on the phone. I remember his name
20 Jackson. He was talking to somebody on the phone and he
21 was like that's not the guy. The guy in the video was
22 cripple. So he -- give Officer Schmit permission to go
23 ahead and search my bag. Once he open my bag, he seen
24 three packs of cigarettes. He like where you get these
25 cigarettes from. I say they mine. He said do you have a

1 receipt. I say who keep receipt for cigarettes, that's
2 when he place me under arrest.

3 Q Okay. So who was the first if you recall, who's the
4 first officer that approached you?

5 A Schmit.

6 Q Okay. Did he approach you in a vehicle or on foot?

7 A In a vehicle.

8 Q Okay. Did you tell your lawyer that?

9 A Yes, I did.

10 Q Okay. And you believe -- I believe you testified
11 that two other vehicles pulled up?

12 A Yeah, Jackson and Officer White.

13 Q Okay. Did you discuss with your lawyers what you
14 just told the Court that you were asked to walk down the
15 street and back?

16 A Yes.

17 Q You discussed that with your lawyers?

18 A Yes, I did.

19 Q Did you discuss with your lawyers that you give the
20 officer consent to search your bag?

21 A Well, actually he never even ask me. He never ask me
22 did I give an officer consent to search the bag. He never
23 ask me that. He argued that in my pretrial. He never ask
24 me personally did I ask him to search the bag.

25 Q That Mr. MacNealy?

1 A MacNealy he never ask me.

2 Q Did you provide your lawyers particularly Mr.
3 MacNealy with any potential witnesses on your behalf?

4 A No, sir.

5 Q Okay. Did y'all discuss any potential defenses that
6 you might have?

7 A No, sir.

8 Q Okay. Other than what you just testified to, did you
9 provide Mr. MacNealy any other information that might help
10 him prepare to defend you on these charges?

11 A I requested for Officer White to be at my trial and
12 Officer Jackson to be there. Well, his word was like
13 State won't let us subpoena Officer White. We subpoena
14 his internal affair record. They wouldn't let him --
15 allow them to subpoena him. I had want him at my trial
16 also.

17 Q Okay. Had Officer White left the police department?

18 A Yes, sir.

19 Q Okay. But other than the issue with the officer
20 asking you to walk down the street and one of those two
21 officers to testify, did you discuss anything else that
22 you thought would be helpful in your defense in this
23 trial?

24 A No, sir. No, sir.

25 Q Did you ever have opportunity to view the

1 surveillance video from the bar?

2 A Yes, sir.

3 Q Okay. Let me back up one second. Were you arrested
4 at where the incident took place?

5 A No, sir.

6 Q Okay. About how far, if you know, were you arrested?

7 A I estimate say about five, six blocks over.

8 Q Okay. You testified that you did have an opportunity
9 to view the surveillance video; is that right?

10 A Yes, sir.

11 Q Okay. When you watched it, how many different camera
12 angles did you see when you watched the video?

13 A I say four.

14 Q Okay. Did you and Mr. MacNealy discuss that there
15 may have been more cameras than just the ones that you're
16 provided?

17 A No, sir.

18 Q Did you ask him about that?

19 A No, sir.

20 Q Okay. At some point you made the decision that y'all
21 were going to go to trial; is that right?

22 A Yes, sir.

23 Q Okay. What did you and your attorneys discuss to
24 help you make that decision?

25 A It really wasn't nothing to discuss. All he kept

1 telling me was there's no negotiation or recommendation on
2 the charges. I didn't have a choice but to go take a
3 trial. I didn't want to go on an open plea.

4 Q Okay. When you and your attorney started preparing
5 for trial, what did y'all talk about as far as how trial
6 would go?

7 A Never talked about that. Talked about anything what
8 my trial was.

9 Q What did they tell you?

10 A He was like, oh, Mr. Glover, you know if you found
11 guilty, you get 25 years, that's what you're facing. So
12 that's the only thing really warned me about if I be found
13 guilty.

14 Q Okay. Did you ask him any questions about what they
15 were going to do?

16 A I asked him plenty of questions.

17 Q What was the answer?

18 A I can't recall, I can't.

19 Q Okay. Did you -- never mind I'll move on. Did you
20 think that your lawyers were prepared to go to trial?

21 A No, sir, no.

22 Q Okay. What do you think that they weren't prepared
23 on?

24 A Really actually they wasn't prepared because the fact
25 of how -- it's just like I had Renee Lipson so long. Then

1 like time when December -- once I seen MacNealy when he
2 came to the county and talk to me say I be your -- I'll be
3 representing you on these charges because no longer --
4 Renee Lipson no longer work for you -- work for the public
5 defender's office. He say anything you like me to do for
6 me. I say, yes, sir, put me in for a bond reduction and a
7 speedy trial. So we done that, we went up like January.
8 It's like the end of December. I went up January. We
9 still haven't talked anything about my case. So all the
10 way up until January, February, March, April, that's when
11 I came to court and they did a Schmerber motion on me. We
12 never -- we really didn't talk about anything actually.

13 Q Okay. You mention a Schmerber motion, did you and
14 your lawyers talk about why you were coming to court that
15 day?

16 A Yeah, she told me it was a Schmerber motion for
17 fingerprints.

18 Q Okay. Had y'all discussed that before you got here?

19 A No, sir.

20 Q Did you know you were coming to court until they woke
21 you up?

22 A No, sir.

23 Q Okay. You mentioned that you did not think your
24 lawyers were prepared. Is there anything else that you
25 felt specifically they weren't prepared for?

1 A No, sir.

2 Q You mentioned earlier that you were asked to walk
3 down and back on the street and that you mentioned that to
4 Mr. MacNealy?

5 A Yes, sir.

6 Q Did he raise that at trial?

7 A No, sir.

8 Q Did he raise ---

9 A He -- yeah, I can say he did. Did say something
10 about walk the line, that Officer Day asked me to walk the
11 line.

12 Q Okay. Did he raise anything else with the -- your
13 encounter with Officer Schmit?

14 A No.

15 Q Did he bring up consent to search?

16 A Yes, sir.

17 Q Okay. Did you have any issues with consent to
18 search?

19 A I had issues with it because the fact he argued that
20 in my case in pretrial about consent to search and that
21 was like -- really I did gave them permission to search my
22 bag.

23 Q You didn't have any issue with giving ---

24 A No, I didn't have no issue.

25 Q And you told Mr. MacNealy that?

1 A No, I didn't tell him. He never ask me that. This
2 been argue. I never know this would be brought up during
3 pretrial. He brought that up in pretrial. He never even
4 even ask me did you give them permission to search the
5 bag. He never ask me that. This something he argue on
6 his own.

7 Q Okay. Did y'all discuss in preparation for trial
8 whether or not you had given ---

9 A No, sir.

10 Q Did he ever ask any questions about it?

11 A No, sir.

12 Q Okay. Did you get an explanation from Mr. MacNealy
13 on why he chose consent to search and -- not you having to
14 walk down the street and back?

15 A Say that again.

16 Q Did you ever get an explanation on why he chose to
17 argue -- he didn't give consent to search versus why you
18 were forced to walk down the street and back in front of
19 the officers?

20 A No, sir.

21 Q Okay. During the trial, were you able to communicate
22 with your lawyers?

23 A Not really.

24 Q Okay. Did you during breaks and stuff could you talk
25 to him?

1 A No, sir.

2 Q Did you have a pen and pad to write down ---

3 A Yeah, I had a pen and a pad.

4 Q Okay. Were you able to take notes?

5 A Weren't no notes to take.

6 Q Okay. Did you ever attempt to tell him anything
7 about how the trial was going?

8 A No, they never tell me anything.

9 Q Okay. Did you take any issue with the way the trial
10 went in itself that you tried to bring to their attention?

11 A No, sir.

12 Q Okay. Mr. Glover, I've asked you all the questions
13 that I have for you. Is there anything that you think I
14 have left out or that you think the Court needs to be
15 aware of as far as your representation by Mr. MacNealy?

16 A Yeah, I was talking about the day I been stopped like
17 the cameras wise. I feel like that was real vital to my
18 case because I feel like the lights were on, the camera
19 was on. And it would have showed me the walk down the
20 street. It show demonstrated of a walk. If they would
21 have the video, that would have been a different outcome
22 for my case.

23 Q So you think that the three police cars that showed
24 up when you were arrested, you think there was a video?

25 A I know there was video.

1 Q And did you and your lawyers ever talk about trying
2 to get the video?

3 A No, sir.

4 Q Okay. Did you ever ask them to get the video?

5 A No, sir.

6 Q Okay. Did they ever mention video to you at all?

7 A No, sir, not from an officer, no, sir.

8 MR. WALLER: No further questions. Please
9 answer any questions Mr. Mitchell has.

10 CROSS-EXAMINATION

11 BY MR. MITCHELL:

12 Q Good morning, Mr. Glover.

13 A Good morning.

14 Q You testified that you didn't discuss this case that
15 much with your lawyers; is that right?

16 A Not at all.

17 Q You did go over some of the evidence though, right?

18 A Yes, sir.

19 Q So you went ---

20 A I only went over evidence when they brought me to
21 the courtroom let me see up in the Solicitor's office,
22 that's the only evidence I seen.

23 Q So they never discussed this beforehand?

24 A No, sir.

25 Q Before trial anything like that?

1 A No, sir, that's when I came up here for the Schmerber
2 motion. That's when they had -- I guess --

3 Q That's when they took your fingerprints?

4 A Yes, sir.

5 Q Those fingerprints ended matching a bottle in the
6 incident location?

7 A I don't know about a match. I know it's a
8 fingerprint. I don't know about a match.

9 Q That's what the State argued, right?

10 A Okay.

11 Q In that search, that was your issue on direct appeal,
12 wasn't it?

13 A Yes, sir. That was they issue, that wasn't my issue
14 now. I didn't --

15 Q That was the issue your appellate lawyer raised?

16 A Yeah. That shouldn't have been brought up actually.

17 Q That was just on what you consented or not to the
18 search?

19 A But I did consent.

20 Q Okay. And when they consented, they found cigarettes
21 in your backpack?

22 A Three packs.

23 Q The State said those were the same brand the ones
24 that were stolen from the incident location, right?

25 A Yeah, no documentations.

1 Q Now, the videos we talked about a bit, how about
2 surveillance video in Sharpy's, there's four angles on
3 that?

4 A Yes, sir.

5 Q So you could see the assailant who they said -- who
6 they claim was you walking around in there?

7 A Not clearly you couldn't.

8 Q But it was the same clothing that you were wearing
9 when you were arrested not long after that, correct?

10 A Well, I won't say not long after that because they
11 testified -- the officer testified that he stopped me
12 within 15 minutes after this crime happened. It was like
13 five hours. He stop me like 12:30 in the afternoon when
14 he stop me. So he made it look like he just actually stop
15 me as soon as the crime happen.

16 Q It was -- he stopped you ---

17 A 12:30. I know what time it was.

18 Q You were wearing the same clothes of whoever was in
19 ---

20 A White T-shirt, blue jeans, baseball cap, common
21 clothes.

22 Q And that was brought out at trial, wasn't it?

23 A Yes, sir.

24 Q Okay. You brought up that Officer White -- you
25 brought up that Officer White issued -- you wanted to have

1 him there at trial; is that right?

2 A Yes, sir.

3 Q He was not made available to come testify; is that
4 right?

5 A Correct.

6 Q That's part of what your lawyers argued, wasn't it,
7 kind of like where's Officer White why isn't he here?

8 A Yeah.

9 Q He's the first guy on scene, right?

10 A Writing the incident report also.

11 Q Where's his report, right?

12 A Yeah.

13 Q That's part of what went into the strategy defending
14 the case; correct?

15 A Yes, sir.

16 Q Now, they also challenged your statement at the
17 beginning of the trial pretrial, right?

18 A Yes.

19 Q One sentence?

20 A The reason why -- I'm just using like they say they
21 didn't want Officer White there. They were trying to use
22 somebody in the place of Officer White like Officer
23 Jackson. They use him like he say, well, he can -- he a
24 witness to whatever -- whatever he say will be a
25 duplicate, but Officer Jackson wasn't at my trial also.

1 MR. MITCHELL: No further questions. Thank you,
2 Mr. Glover.

3 THE COURT: Redirect.

4 MR. WALLER: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WALLER:

7 Q Mr. Glover, you mention that you -- you don't feel
8 that you were identified on that video; is that right?

9 A Yes, sir.

10 Q Have you ever been in that bar?

11 A No, sir.

12 Q Okay. Have you ever met the gentleman who testified
13 who was the bar manager?

14 A No, sir.

15 MR. WALLER: No further questions.

16 THE COURT: All right, sir. You may come down.
17 Thank you very much.

18 (WHEREUPON, the witness leaves the witness
19 stand.)

20 THE COURT: Anything further I'm sorry?

21 MR. WALLER: Yes, sir, Your Honor. Applicant
22 calls Jeremy MacNealy.

23 THE COURT: Come around, Mr. MacNealy. You
24 solemnly swear or affirm the testimony you about to give
25 in this hearing to be the truth, the whole truth and

1 nothing but the truth so help you God?

2 MR. MACNEALY: I do, Judge.

3 THE COURT: Have a seat in the witness box and
4 state your full name for the record.

5 MR. MACNEALY: Jeremy MacNealy.

6 WHEREUPON,

7 Jeremy MacNealy,
8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WALLER:

11 Q Good morning, Mr. MacNealy.

12 A Good morning.

13 Q When did you first get appointed to represent, Mr.
14 Glover?

15 A It was in December of 2011.

16 Q Okay. Now, were you the only lawyer on the case?

17 A No, Renee Lipson was I think the original attorney
18 and Mr. Glover may not be aware of this, but I think he
19 actually had a great cause for a short period because I
20 inherited all my cases from Gregg in December. I don't
21 know if Gregg and Mr. Glover ever met, but I think Gregg
22 got Renee's cases and I got Gregg's.

23 Q Okay. While you were appointed to represent Mr.
24 Glover while you were representing Mr. Glover, was anybody
25 else assign to assist you?

1 A At a later point, I brought in Jay Cooper when I knew
2 it was going to be a trial.

3 Q Okay. But it was still your case?

4 A That's correct.

5 Q Did you file a Rule 5 or Brady motion in this case or
6 had someone from your office filed that?

7 A It had been previously filed.

8 Q Okay. And did you get a response?

9 A Yeah, we received discovery.

10 Q Okay. Did you discuss with Mr. Glover the charges he
11 was facing?

12 A We did.

13 Q Did you discuss the elements of those charges or what
14 the State would have to prove against them?

15 A We did.

16 Q Okay. Did you believe he understood those?

17 A I do.

18 Q Okay. Did you discuss with Mr. Grover the potential
19 penalties that each of these charges carry?

20 A We did.

21 Q Do you think he understood those?

22 A I do.

23 Q Did you go over the discovery that you received with
24 Mr. Glover?

25 A We did.

1 Q Okay. Do you recall when you went over that
2 discovery?

3 A With that, multiple times. It probably would have
4 been early January 2012 met at least half a dozen times
5 from January until April, seven times.

6 Q Okay. Did Mr. Glover provide you with any
7 information regarding the alleged events or those that
8 followed immediately afterwards?

9 A No, Mr. Glover did not want to -- he wasn't very
10 communicative.

11 Q Okay. Did you ask him any questions about the events
12 particularly when he was arrested?

13 A Yeah, we tried to talk with him. He's of a one-set
14 mind that he wanted a trial and I can elaborate why he
15 wanted that if you like me to answer.

16 Q Sure.

17 A It's before I inherited the case. It's my
18 understanding for both Mr. Glover and Britton All, who's a
19 prosecutor in the case, that Mr. Glover had assisted the
20 State in the prosecution of another gentleman. There was
21 subsequently sentence and sent to the HIV unit at the
22 D.O.C. and I think there's only one HIV unit. And
23 Mr. Glover is also HIV positive. And he was certain that
24 he'll be sent to the same place that he -- this other
25 gentleman was housed at and this particular person would

1 kill him. And so for Mr. Glover there was -- in his mind
2 there was no other option then a trial. He eventually
3 came around to a different view a week before trial. We
4 intended to plea that week.

5 Q Okay. So he insisted on trial for that reason that
6 you just stated?

7 A That's correct.

8 Q But he didn't prove you with any assistance to help
9 you defend him?

10 A Absolutely none.

11 Q Okay. When Mr. Glover was stopped, y'all made a
12 pretrial motion for any video for Office Schmit's car; is
13 that correct?

14 A That's correct.

15 Q What was the strategy behind not moving for the
16 videos of other cars that appeared at that location?

17 A I think what was the pretrial -- is this a pretrial
18 motion?

19 Q It is.

20 A I think it was what we were asking the judge for is a
21 standard motion that the State had any other videos that
22 we did not have specifically any videos from police cars.
23 My argument at trial was typically city cars are linked
24 with a video system. So if the blue light is activated,
25 the video should turn on. My experience however working

1 at the magistrate level and many city cases is that most
2 of the time the video system malfunctions and we do not
3 have a video. However, even though we had requested that
4 before from Britton All and she had told us beforehand
5 that there were no other videos, we felt like it was
6 something that we just need to put on the record that
7 safety purposes that if there was a video that we should
8 have that at that time.

9 Q Okay. Your pretrial motion was specific to Officer
10 Schmit's vehicle. Is there any particular reason that if
11 you're asking for all the vehicles that you've asked
12 specifically for his?

13 A I don't recall.

14 Q Okay. Mr. Glover was charged with a property crime
15 enhancement of petty larceny and also burglary second
16 violent; is that correct?

17 A That's correct.

18 Q And the -- he was charged under the 15 year violent
19 statute because he had two prior convictions for burglary;
20 is that right?

21 A That's correct.

22 Q Okay. Now, the State needed to prove two prior
23 convictions for burglary as elements of the new burglary
24 and also for sentencing for the enhancement of the
25 larceny; is that right? Is that your understanding?

1 A That's correct.

2 Q Okay. You offered to stipulate pretrial to those two
3 burglaries; is that right?

4 A That's right.

5 Q Okay. The State refused to stipulate stating that he
6 already had an out of county from Orangeburg en route to
7 testify as to that burglary; is that your recollection?

8 A Yeah, I think that's correct.

9 Q Why didn't you stipulate earlier on because the
10 Solicitor specifically stated that the reason it wouldn't
11 agree is the clerk was already en route why did you wait
12 until the very last minute to offer to stipulate?

13 A I don't recall what the -- what our thought process
14 was.

15 Q Okay. You made a motion to suppress the consents of
16 Mr. Glover's bag based on your search that Officer Schmit
17 didn't have his consent to search; is that correct?

18 A Right.

19 Q Okay. Did you and Mr. Glover discuss the stop and
20 subsequent search of his bag?

21 A We attempted to have that discussion with him.

22 Q Okay. And it's your testimony that he was not
23 cooperative?

24 A He was not cooperative.

25 Q Okay. What was your understanding of Mr. Glover's

1 custody status when he was asked to walk down the sidewalk
2 and back for Officer Schmit?

3 A We believe that he was seized at that point.

4 Q Okay. Did you raise that issue to the Court that he
5 was under detention at that point?

6 A Yeah, that's part of our suppression motion.

7 Q I want to talk a little bit about the surveillance
8 video. Do you recall that?

9 A I do.

10 Q When were you provided with that video if you recall?

11 A I don't recall off top my head.

12 Q Describe for me if you will how and what form it was
13 provided to you?

14 A It was in DVD form and if I remember it was a series
15 of multiple angles, screen shots. You can tell it had
16 been edited, so it wasn't the entire duration. I recall
17 multiple angles about four or five.

18 Q Okay. Was an unedited version provided to you?

19 A I don't believe so.

20 Q Did you ask for an unedited version?

21 A I don't recall.

22 Q Okay. At any time did the camera switch from color
23 to black and white?

24 A I don't remember.

25 Q Okay.

1 MR. WALLER: If I could -- Your Honor, do you
2 have a copy of the transcript?

3 THE COURT: Not in front of me, no.

4 BY MR. WALLER:

5 Q If I could direct your attention to page 109 of the
6 transcript line 17 and continuing down.

7 A Okay.

8 Q Were you aware that there were 32 cameras in that
9 bar?

10 A I don't remember if we knew that prior to that
11 statement.

12 Q Okay. You weren't provided with 32 camera angles?

13 A We were not.

14 Q Okay. At the time you found out that there were 32
15 camera angles, did you feel the need to make any
16 objections or motions at that time?

17 A We did not.

18 Q Okay. If I could get you to turn to page 112,
19 State's Exhibit Number 30 that video was admitted without
20 objection; is that correct?

21 A That's correct.

22 Q Okay. How many different camera angles did that --
23 the video that was admitted show?

24 A I think it was like about four or five.

25 Q Was it substantially the same as what was provided to

1 you?

2 A Yes.

3 Q Okay. Did cut back -- was it one screen jumping back
4 and forth, was it all four angles or five angles on all
5 show simultaneously how was it presented?

6 A I don't remember all four going at the same time. I
7 think it was sequential.

8 Q So sequential to they all run in succession?

9 A What I mean by that there was if I recall correctly
10 there's a clip, then another clip from a different angle
11 and another clip from a different angle.

12 Q Okay. Do you know whether or not the gentleman
13 purported to be Mr. Glover was present at any of the other
14 angles that you were provided?

15 A I don't know.

16 Q Do you know if anyone else was present in those
17 videos that weren't provided?

18 A I do not know.

19 Q What was the trial strategy behind not filing any
20 motions regarding the videos?

21 A Well, I guess we believe that the videos that were
22 shown were all that the State needed to substantiate
23 their case. And we didn't feel like based off our
24 conversation with Mr. Glover and what we had been provided
25 in terms of discovery at that point, that there was any

1 further need to request any additional videos. There was
2 no other allegations of other people in the bar at the
3 time.

4 Q But at this time it was your understanding there was
5 a 27 or 28 other camera angle ---

6 A That's correct.

7 Q --- that you didn't have?

8 A Right.

9 Q Okay. There was time both before and after this
10 incident cameras that you didn't have?

11 A That's correct. I was to add that there was -- the
12 cameras -- the angles that were provided would have shown
13 the entry of any person who entered that location walking
14 around the bar, walking into the back room. So all
15 pertinent video was available and shown.

16 Q Was there any indication that that was the only
17 entrance to the bar the front door?

18 A It wasn't testified to that.

19 Q Okay. Did you have any indication or reason to
20 believe that was the only entrance?

21 A It didn't come up.

22 Q Okay. Did you ask?

23 A I don't recall.

24 Q Okay. Mr. Hubbard I believe was the bar manager who
25 was testifying?

1 A That's right.

2 Q If I could again on page 112, he begins discussing
3 the video; is that your recollection?

4 A Yes.

5 Q What was the strategy behind not objecting to him
6 narrating the video and speculating and giving opinion as
7 to what was going on?

8 A I don't recall.

9 Q Okay. On the third page of page 114 excuse me, Mr.
10 Hubbard makes an identification of Mr. Glover on line 14
11 and continuing on. Is that your recollection?

12 A Well, actually I think it was the prosecutor who puts
13 the alleged person as Mr. Glover, which I took issue with.

14 Q Okay. Well, that leads to my next question. Did you
15 take issue with it?

16 A I did.

17 Q Could you please point out where you objected to
18 Mr. Hubbard making identification?

19 A The video goes on for a bit and I recall Mrs. All
20 more than one time mention Mr. Glover's name.

21 Q That's correct. That's a different person
22 testifying. I'm asking about Mr. Hubbard's testimony?

23 A Okay. I apologize.

24 Q That's okay.

25 A If it's not at that point, then at a later point I

1 think I did object.

2 Q That's correct. You do agree though that on page 114
3 line 14 the question is at line excuse me -- at line 13
4 the question is ask can you point him out please and the
5 answer is indicating I believe it's him and then Mrs. All
6 says let the record reflect the victim, Mr. Hubbard, is
7 pointing at defendant, Mr. Tyris Glover?

8 A That's correct.

9 Q Okay. What was the strategy behind not objecting to
10 Mr. Hubbard's identification of Mr. Glover?

11 A I don't recall.

12 Q Did you feel that a proper foundation had been laid
13 for him to make an identification?

14 A No, I thought it was improper on Mrs. All's behalf.
15 I think I caught up to that.

16 Q Did you ever have any evidence or anything that would
17 suggest to you that Mr. Hubbard and Mr. Glover had been in
18 contact before?

19 A I didn't have any evidence of that. I think the --
20 if I recall the bar owner indicated that he knew
21 Mr. Glover by sight.

22 Q Okay. Not Mr. Hubbard?

23 A I thought it was the bar owner.

24 Q Okay. Mr. Hubbard I believe testified that he was
25 the bar manager?

1 A Okay.

2 Q Did you have any indication that he'd ever met with
3 Mr. Glover in person?

4 A Prior that testimony?

5 Q Yes.

6 A No.

7 Q If I could back up to page 108 line four and
8 continuing down to line 12. What is the strategy behind
9 not objecting to Mr. Hubbard speculating about what
10 happened to the cash register?

11 A I don't recall.

12 Q Okay. All right. Officer Schmit was the arresting
13 officer, is that your recollection?

14 A That's correct.

15 Q He arrested Mr. Glover on Millwood Avenue sometime
16 after -- several hours after this took place. He stopped
17 Mr. Glover and several other officers approached and
18 searched Mr. Glover's bag; is that your understanding?

19 A Yes.

20 Q On page 142 if I can get you to turn there for me,
21 Officer Schmit begin's discussing the video, did you have
22 any issue with Officer Schmit offering his opinions and
23 speculating as to the individual on the video's actions to
24 the jury?

25 A The specific line?

1 Q It continues for five pages.

2 A You mean his general commentary?

3 Q Yes.

4 A I don't recall if we did at the time.

5 Q Okay. During those five pages, you -- I believe this
6 was your -- you do object to Officer Schmit identifying
7 Mr. Glover as the person in the video?

8 A That's correct.

9 Q But you don't make any objections to him narrating
10 the video or speculating the video or offering opinion
11 evidence; is that correct?

12 A That's correct.

13 Q Did you ever consider making the objection that the
14 video evidence should stand on its own for the jury to
15 decide?

16 A We didn't.

17 MR. WALLER: Beg the Court's indulgence for one
18 second.

19 (WHEREUPON, a pause in the proceedings.)

20 MR. WALLER: Thank you, Mr. MacNealy. I have no
21 further questions.

22 THE COURT: Mr. Mitchell.

23 CROSS-EXAMINATION

24 BY MR. MITCHELL:

25 Q Good morning, Mr. MacNealy.

1 A Good morning.

2 Q Give us a little bit of a background of your
3 experience in -- specifically in criminal law?

4 A I went to Hycet (sic) law school. Prior to that, I
5 have graduate degrees at Princeton Seminary and Duke
6 University and under graduate degree at Milling College
7 and studied at Oxford. In terms of criminal experience,
8 upon graduation at Ohio State, I relocated down here, took
9 a job at the public defender's office and have been here
10 since.

11 Q So you have dealt with property crimes like this
12 before and burglary crimes?

13 A That's correct.

14 Q So you were first chair on this; is that right?

15 A I was.

16 Q Okay. And Mr. Cooper was the second chair; is that
17 correct?

18 A That's correct.

19 Q What was your general theory of the case here?

20 A Well, we didn't have a defense provided by my client.
21 It was not a good case. We made that very clear to
22 Mr. Glover. We thought we would lose. What we try to do
23 is we had hoped to maybe -- a long shot maybe would get
24 one juror to want more from the city in terms of the case
25 that they're presenting and want more from the State and

1 not be satisfied and shot for a hung jury, which we did
2 not put much hope into we relayed that to Mr. Glover. But
3 we did the best with what we had.

4 Q Let's talk about the poking holes in the
5 investigator's case and their conduct. How does that
6 relate to Officer White?

7 A Prior to going up to general sessions at the time,
8 we're required to do one year at the magistrate level at
9 the public defender's office. So I had some interactions
10 with him through magistrate level cases. My personal
11 experience with him I did not think he was an upstanding
12 officer. I didn't have any hard evidence just my personal
13 dealings with him. There were rumors that he may have --
14 I wasn't even sure why -- whether he was fired or
15 released, so I don't know the back story behind that. But
16 in the event, the State was going to put him on the stand
17 I was hoping to find some evidence I could cross him with.

18 Q You made attempts to get his internal file?

19 A We did.

20 Q You also took issue with the fact that there were no
21 notes by some of the first responders; is that right?

22 A That's right.

23 Q So that was kind of the focus of the case. The
24 officer have not done their job. It has not been proven
25 that this is the same man on this video is that about

1 right?

2 A That's correct.

3 Q Moving to the video from the stop. Like you
4 testified before you made a motion to have that video
5 turned over; is that right?

6 A Yes.

7 Q And you also did it on the record?

8 A If it existed.

9 Q And the State's response to that was that ---

10 A It did not exist.

11 Q --- there was no existing video. And is that
12 uncommon in your experience?

13 A It's not.

14 Q Some of these dash cam videos work better than
15 others?

16 A That's correct.

17 Q Mr. Kevin Schmit testified to the video stop; is that
18 right?

19 A I believe so.

20 Q Or testified to arresting Mr. Glover; is that right?

21 A I believe so.

22 Q Okay. Now, you challenged the search -- Mr. Glover's
23 the search of his backpack?

24 A That's correct.

25 Q And you were hoping to exclude ---

1 A Argument on that and I think it was brought up on
2 direct was even if Mr. Glover had given consent, we
3 believe it would have been involuntary consent based off
4 of the seizure. We argued that the search was improper
5 and that the cigarettes that were seized should have been
6 suppressed.

7 Q The cigarettes were -- that hurt your case that those
8 cigarettes were found in his backpack?

9 A It wasn't damaging. There's really no evidence in my
10 opinion linking those cigarette's to the ones found at the
11 bar.

12 Q So the State's theory was that the cigarettes in his
13 backpack the ones stolen from ---

14 A I'm not even sure they made that to the link the same
15 brand. The State's case relied on fingerprint evidence
16 and video evidence.

17 Q Can you describe the fingerprint evidence that was a
18 fingerprint in the ---

19 A That was one thing we wanted to try to do to weaken
20 the State's case and again try to get one juror to want
21 more from the State. So we went at length showing that
22 around the world there's different standards on
23 fingerprint evidence, is not as scientific of a enterprise
24 it's often like many believe it is and that was our
25 argument and why there's certain standards. The expert --

1 so called expert they had put on we wanted to kind of test
2 his knowledge of his own field. And again it was merely
3 an attempt to get a juror to want more.

4 Q So his testimony was that the fingerprint was a
5 match, but it was y'all's strategy to try to call into
6 question the procedure used to come to that conclusion?

7 A That's correct.

8 Q And you went through I believe certain standards like
9 you said around the world. I believe you testified you
10 didn't have standard is that -- or just a lower standard?

11 A If I remember the United States, their standard is
12 much lower than the standard used by many countries around
13 the world. What I mean by that it's a threshold to accept
14 a positive hit.

15 Q You testified Mr. Glover he was uncooperative. He
16 was unwilling to give any kind of information to assist in
17 his trial; is that a fair assessment?

18 A That's correct.

19 Q He had two prior burglaries and that's what came with
20 the enhancement, right?

21 A Right.

22 Q You attempted to have that stipulated to, right, what
23 the Solicitor's stipulated to the fact they have to prove
24 that element to the jury?

25 A Right.

1 Q And that was to avoid any kind of character evidence
2 or Lyle stuff?

3 A That's correct.

4 Q That was argued at the trial, correct?

5 A That's correct.

6 Q And the State decided that they did not want to
7 stipulate?

8 A I believe so.

9 Q Now, these camera angles I know you're more familiar
10 with this video than I am, but it shows who the State
11 believes Mr. Glover going in there kind of -- what does
12 the video show exactly?

13 A If my memory serves me right, the first video was --
14 may have been the angle outside the bar of a gentleman
15 coming up to the door and making his way into the door.
16 And then there's an angle from the inside pointing towards
17 the front entrance of the bar showing a gentleman come
18 into the bar. There's an angle pointed kind of on top of
19 the bar, so showing a gentleman behind the bar at this
20 point. And then there's another angle I recall some kind
21 of a back room storage room showing a gentleman in the
22 back room.

23 Q Does it clearly show Mr. Glover's face?

24 A I think in a juror's mind it did.

25 Q So it was -- the video was fairly clear?

1 A I think so.

2 Q You believe all pertinent parts of that video were
3 presented to the jury?

4 A I do.

5 Q Mr. Hubbard's testimony he was -- I believe he was
6 manager owner of the bar, he was running the surveillance
7 system; is that correct?

8 A That's correct.

9 Q So when officer's arrived, I believe he had pulled
10 tapes; is that right and showed it to the officers?

11 A Yeah, I think the testimony was that he showed one of
12 the officers when they arrived on scene some of the video
13 footage and I think that officer recognized Mr.
14 Glover perhaps from prior experiences or I'm not sure, but
15 I think he recognized Mr. Glover.

16 Q They go to the distinctive limp or kind of ---

17 A There was a limp of some sort that was, you know,
18 very clear in the video.

19 Q You thought that was a distinctive -- the officer
20 determine that was a distinctive characteristic of Mr.
21 Glover?

22 A I think so.

23 Q And that's kind of how the dots got connected to him;
24 is that right?

25 A I think so.

1 Q Now, this video was played for the jury a couple of
2 times; is that right?

3 A I believe so.

4 MR. MITCHELL: No further questions. Thank you,
5 Mr. MacNealy.

6 THE COURT: Redirect.

7 MR. WALLER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WALLER:

10 Q Mr. MacNealy, you engaged in extensive
11 cross-examination of the fingerprint analysis expert for
12 the State; is that correct?

13 A That's right.

14 Q Okay. In your attempting to show that the evidence
15 wasn't as strong as they said it was; is that right?

16 A That's correct.

17 Q Did you consider consulting an expert on fingerprint
18 analysis?

19 A We did not.

20 Q Back to the video just briefly, Officer Schmit
21 testified that he viewed the video before stopping Mr.
22 Glover; is that your recollection?

23 A I think so.

24 Q And when he was testifying about the video, he
25 explained that it was consistent with night vision certain

1 angles; is that your recollection?

2 A I think so.

3 Q Okay. Were all the angles in night vision?

4 A No.

5 Q Okay. Again, did you feel the need to make any
6 motions or objections to the video being presented to you
7 in an unoriginal form?

8 A We do not.

9 MR. WALLER: No further questions.

10 MR. MITCHELL: Nothing further, Your Honor.

11 THE COURT: All right. You may come down.

12 Thank you very much.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 THE COURT: Next witness.

16 MR. WALLER: Nothing further, Your Honor.

17 THE COURT: From the State?

18 MR. MITCHELL: Nothing from the State, Your
19 Honor.

20 THE COURT: All right. Thank you very much
21 counsel. I'll accept proposed orders in 30 days.

22 MR. WALLER: Thank you, Your Honor.

23 END OF REQUESTED TRANSCRIPT

24

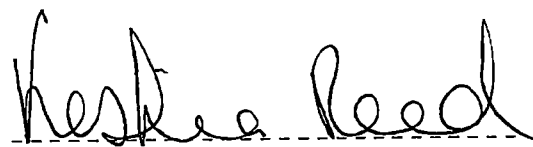
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 45, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Richland County, South Carolina, on the 15 day of July, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 6th day of August 2016.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyris B. Glover, #157418,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-01525

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 10, 2014. Respondent file a Return on July 7, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on July 15, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Jeremy J. MacNealy, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during February 2012 term of the Richland County Grand Jury for Burglary – 2nd Degree (Violent) (2012-GS-40-00854) and Property Crime – 3rd or Subsequent Offense (2012-GS-40-00857). He

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was represented by Counsel MacNealy and James D. Cooper, III, Esquire.¹ On April 26-27, 2012, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon, where he was convicted as indicted. Judge McMahon sentenced Applicant to twelve (12) years' for Burglary – 2nd Degree (Violent) and ten (10) years' for Enhancement/Property Offense – 3rd or Subsequent Offense, to be served concurrently.

Applicant filed a notice of appeal and was represented by Appellate Defender David Alexander. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence by unpublished opinion. State v. Tyris Bernard Glover, 2014-UP-043 (Ct. App. filed February 5, 2014). The Remittitur was sent on February 24, 2014.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was ineffective in:
 - a. Failing to contemporaneously object to the in-court identification by witness Ron Hubbard;
 - b. Failing to investigate the unaltered surveillance video; and
 - c. Failing to properly object to arresting officer's interactions with Applicant.

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

¹ Counsel Cooper passed away prior to the PCR hearing.

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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

GP #3

Ineffective Assistance of Trial Counsel

Failing to contemporaneously object to the in-court identification by witness Ron Hubbard

First, Applicant alleges Counsel was ineffective in failing to object to the in-court identification made by witness Ron Hubbard. Hubbard was the general manager of Sharky's Bar where the crime took place. Applicant takes issue with the fact that Hubbard's identification was based off of what he saw on the surveillance footage. Hubbard identified Applicant as the individual he recognized from the video surveillance. (Trial Tr. p. 114, lines 9-24).

This Court finds this allegation without merit. The remedy for any suggestiveness of an in-court identification is cross examination and argument. State v. Lewis, 363 S.C. 37, 42-43, 609 S.E.2d 515, 518 (2005)(declining to require trial court to evaluate factors enunciated in Neil v. Biggers, 409 U.S. 188, 199 (1972), where first-time identifications take place in court because "the judge is present and can adequately address relevant problems; the jury is physically present to witness the identification, rather than merely hearing testimony about it; and cross-examination offers defendants an adequate safeguard or remedy against suggestive examinations"). Here, Counsel's strategy in cross examining Hubbard was to highlight the fact that the responding officer, Officer White's report contained inaccuracies. This was also argued in closing by Counsel. (Trial Tr. p. 306, lines 22-23). As to Hubbard's identification of Applicant, Counsel questioned him in a manner to let the jury know that they will be watching the video themselves and will be able to judge the reliability of the identification. (Trial Tr. p. 124, line 14 – p. 125, line 6; p. 127, lines 15-19). In closing argument, Counsel also challenged Hubbard's testimony that he could see Applicant's face on the video:

If you recall Mr. Hubbard said and I asked him I think about three times and I almost couldn't believe what I was hearing, I asked him, are you sure you could see Mr. Glover's face in that video? Yep, he's sure. Now you all watched that video on the big blowup screen. I think you know the answer to that.

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(Trial Tr. p. 307, lines 11-16). This Court finds Counsel made the strategic decision to not object to Hubbard's in-court identification because he wanted to use the identification to impeach his credibility. This was certainly a reasonable strategy in handling the issue.

Applicant cannot show that if such objection was made that it would have been granted. Applicant has failed to meet his burden in proving prejudice. There also exists overwhelming evidence of Applicant's guilt. Therefore, this allegation is denied and dismissed.

Failing to investigate the unaltered surveillance video

Next, Applicant alleges Counsel was ineffective in failing to obtain the unaltered surveillance footage prior to trial. Applicant also argues the original video from all cameras should have been admitted. Counsel testified that the video surveillance was turned over by the solicitor's office through discovery. He testified that he was not provided footage from all thirty-two (32) cameras. He explained the version he received did not show Applicant's face and that he could not be positively identified from the video.

First, Applicant claims Counsel was ineffective in failing to obtain all available surveillance footage. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). Applicant has not provided this Court with any evidence to show that the surveillance footage from the other cameras would have been helpful in any manner. This Court finds it is likely the cameras would have reaffirmed what was shown to the jury in the clip that was introduced.

Notably, this allegation rests entirely on speculation because no records were produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct

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an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). Applicant failed to present any evidence to this Court as to how this investigation could have changed the result of the trial.

Second, Applicant argues Counsel was ineffective in failing to object to surveillance video being admitted in an altered fashion. He argues that Counsel should have objected under Rule 1002, SCRE. This Court disagrees. The video was properly authenticated and admitted as evidence. There has been no evidence presented that any alterations or deletions affected the substance of what was recorded.

Applicant has failed to prove prejudice in this regard. Applicant must show that an objection under Rule 1002, SCRE, would have been successful. This Court finds that it is likely that objection would have been overruled. “The question of whether to admit evidence under [Rules 1001 to 1004, collectively known as the best evidence rule,] is also addressed to the discretion of the trial court.” State v. Mitchell, 399 S.C. 410, 421, 731 S.E.2d 889, 895-96 (Ct. App. 2012) *citing* State v. Halcomb, 382 S.C. 432, 443-44, 676 S.E.2d 149, 154-55 (Ct.App.2009) (parentheticals in original). Therefore, Applicant cannot prove that it is likely the result of the trial would have been different had trial counsel made an objection under Rule 1002, SCRE. These allegations are denied and dismissed with prejudice.

Failing to properly object to arresting officer’s interactions with Applicant

Finally, Applicant alleges Counsel was ineffective in failing to properly object to the arresting officer’s interactions with Applicant. Specifically, Applicant argues the officer improperly asked him to walk towards his car to see if his gait resembled that of the assailant captured on surveillance video. This Court finds that allegations amounts to a challenge to the search and seizure conducted by the officer. The court of appeals affirmed Applicant’s

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conviction on the grounds that Applicant gave consent to the search and that the seizure was proper. See S.C. Code Ann. § 17-27-20(b) (2003); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974) (Post-Conviction relief is not a substitute for an appeal); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (A Post-Conviction relief application cannot assert any issues that could have been raised at trial or on appeal.) The appellate court's finding bars this allegation from being raised in this proceeding. Even examined on the merits, this Court finds Applicant freely complied with the officer's request to walk towards his car.

In any event, Applicant cannot prove prejudice as the evidence of his guilt is clear. He was captured on video committing the crime. He was located on Millwood Avenue wearing the same clothes as the assailant in the video. Packs of cigarettes were recovered from Applicant during a search of his bag that matched the brand stolen from the bar. This allegation is denied and dismissed with prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22 day of December, 2015.


 G. THOMAS COOPER, JR.
 Presiding Judge

COLUMBIA, South Carolina

WITNESSES

(S) JP WILLIAMS – Columbia Police
Department

ARREST WARRANT NUMBER

K689032

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date

FEB 09 2012

VERDICT

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.

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CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JAN 14 2012
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA
Foreperson of Petit Jury
Date

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

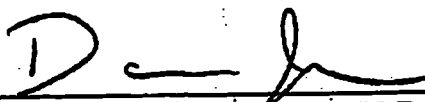
INDICTMENT

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 636 HARDEN 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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
D.C.C.F.A.S.
RICHLAND COUNTY
SOUTH CAROLINA
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)

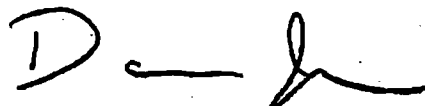
INDICTMENT

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