

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRISTAN CHEEK,

APPELLANT

Appellate Case No. 2011-191471

RECORD ON APPEAL

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1 State of South Carolina) In the Court
 2 County of Charleston) Of General Sessions
 3
 4 Indictment No.: 2008GS1008464
 5
 6 State of South Carolina,)
 7 Plaintiff,))
 8 vs.) Transcript
 9) of Record
 10 Tristan Cheek,)
 11 Defendant.)

12
 13 April 18-19, 2011
 14 Charleston, South Carolina
 15

16 B E F O R E:

17 The Honorable Roger M. Young, Sr., Judge and a jury.

18
 19 A P P E A R A N C E S:

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1 a jury, you probably didn't go, Oh, I hope I get a
2 peeping Tom case. It may not be the most sexy, glorious
3 cases like you've see on CSI. That's not what we're
4 going to have this week. But we have a peeping Tom case,
5 a case that concerns us. A case that concerns the people
6 involved, people in this community.

7 You heard the judge say that the State has the
8 burden of proof. We have to prove the elements of the
9 offense beyond a reasonable doubt. That doesn't mean
10 beyond all doubt. And he'll instruct you that there are
11 very, very few things in this world that we will ever
12 know beyond all doubt, but beyond a reasonable doubt.

13 So Let's look at what the elements of a peeping
14 Tom are. We must prove that the defendant Tristan Cheek,
15 one, went upon the premises of another and, two, that he
16 either peeped through windows, doors or other like
17 places, either to invade the privacy of another or by
18 doing something that would tend to invade the privacy of
19 another.

20 It's not that complicated. You are going to hear
21 from two eyewitnesss, this happened at Remington Forest
22 Town Homes in Mt. Pleasant, right off of Rifle Range
23 Road, if you're familiar with the area, on July 27, 2008.
24 Phillip Slayter and Steven Skelton were at home. Steven
25 was still up and Phillip had already gone upstairs to

Ben Ballenger - Direct Examination by Ms. Gordon

1 Last name is spelled B-a-l-l-e-n-g-e-r.

2 DIRECT EXAMINATION

3 By Ms. Gordon:

4 Q Good morning, Officer Ballenger, how are you?

5 A Good morning. Good, how are you doing.

6 Q Thanks. Can you tell the jury where you're
7 employed?

8 A I'm employed with the Mt. Pleasant Police
9 Department.

10 Q And how long have you been with Mt. Pleasant
11 Police Department?

12 A I've been employed with them since September of
13 2006.

14 Q And what's your current position there?

15 A I'm a patrol officer on Team 3.

16 Q Were you employed there back on July 27th of
17 2008?

18 A Yes.

19 Q And in July of 2008, were you also a patrolman?

20 A Yes.

21 Q Were you on duty that day or that evening?

22 A Yes, I was.

23 Q And did you have occasion on July 27th of 2008 --
24 did you receive a call to go out to Remington Forest?

25 A Yes, we did.

Ben Ballenger - Direct Examination by Ms. Gordon

1 Q Tell me what happened, how you got that call?

2 A Our dispatch initially put out a call of a
3 suspicious person. We use a code for a prowler, but the
4 code is one we used. It was on [REDACTED] which is
5 in Remington Forest. It's the main road into Remington
6 Forest.

7 Q Now, where is Remington Forest located?

8 A It's off Rifle Range Road, in Mt. Pleasant, just
9 a little bit north of Ben Sawyer Boulevard.

10 Q And that's in Charleston County?

11 A Yes, ma'am.

12 Q Did you get an address where the suspect was
13 peeping?

14 A Yes. I don't recall the exact numbers on Cassidy
15 Court. I think it was 1374.

16 Q Would it refresh your recollection if you saw
17 your report?

18 A Yes, ma'am, it would.

19 Q Officer Ballenger, I'm just going to show you a
20 copy of your incident report and this first paragraph.
21 Did you indicate which residences the peeping Tom was
22 looking into?

23 A Yes, I did. The residence of [REDACTED]
24 Court and [REDACTED]

25 Q Do you recall what time you were called out?

Ben Ballenger - Direct Examination by Ms. Gordon

1 A I believe 22:51, 10:51 p.m.

2 Q And are you the first person -- first officer on
3 the scene?

4 A Yes, ma'am, I was.

5 Q Can you -- did you also get a description of the
6 person that you were looking for, the suspicious person?

7 A Yes, ma'am, we did.

8 Q Okay. And what kind of description did you get?

9 A Dispatch advised us that the complainant stated
10 the description as a white male, wearing a light colored
11 shirt and dark shorts.

12 Q Where were you when you got that dispatch?

13 A I believe I was on Chuck Dawley Boulevard. I
14 wasn't the initial officer dispatched, but I was closer
15 than the officer that was dispatched so I called him off
16 the call and told him that I would be in route to it
17 because I was a little closer.

18 Q Well, is Chuck Dawley, for those who aren't
19 familiar with that area, is Chuck Dawley pretty close to
20 Rifle Range?

21 A Yes, it is. It is the 526 Extension, connects to
22 Ben Sawyer.

23 Q So how long do you estimate it took you from the
24 time you got that dispatch to get over to Remington
25 Forest?

Ben Ballenger - Direct Examination by Ms. Gordon

1 A Maybe three to four minutes.

2 Q What did you do when you pulled in?

3 A The first thing I did when I pulled in was turned
4 my headlights off. That's something we're trained to do
5 any time we come into any call, so the person that may be
6 a suspect don't see us coming when our headlights are off
7 and we don't hit the accelerator and we kind of just
8 coast in. It gives us kind of the element of surprise in
9 case we go into a situation that maybe we weren't
10 expecting, they won't see our presence coming.

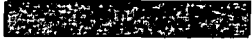
11 Q And at some point, did you see someone that met
12 the description of the suspicious person?

13 A Yes, ma'am, I did.

14 MS. GORDON: If we could pull up the diagram, get
15 that turned on.

16 By Ms. Gordon:

17 Q Behind you -- and if you can't see, sometimes
18 it's difficult for the witness because you're so close,
19 but if you ask just use this pointer to show on that
20 diagram where you came in and then where you saw the
21 suspect.

22 A This isn't showing up very well. Right here,
23 Rifle Range Road. I came in from here and turned my
24 headlights off at this spot and coasted up 
25 to around this general area.

Ben Ballenger - Direct Examination by Ms. Gordon

1 Q And that light's not working if you want to just
2 stand up.

3 A Yeah, it's hard to see. I entered [REDACTED]
4 right here and turned my headlights off. And drove
5 straight through here and my vehicle was approximately
6 here when I saw the suspect walking on this plot of
7 grass.

8 Q What did you do when you saw the suspect?

9 A I got out of my vehicle and did what we call a
10 Terry Stop. He matched the description of the suspect in
11 the same area. He was the only pedestrian I saw out
12 there on that night. So I attempted to stop him and
13 basically do a field interview about his presence in the
14 area of the call.

15 Q Can you describe for the jury -- just kind of
16 tell them how that interaction went. What did you say?

17 A Sure. I got out of my vehicle. I saw the
18 suspect. I asked him to stop so I could, you know, he
19 matched the description of who we were looking for. Just
20 ask him a few -- maybe if he lived in the area, if he
21 knew what was going on. At first he turned and started
22 walking away from me and I asked him a second time to
23 stop and he said Why, I'm doing something, going
24 somewhere.

25 I asked him a third time to stop because like I

Ben Ballenger - Direct Examination by Ms. Gordon

1 say he did match the description, was the only person out
2 there at the time. He eventually did stop and I asked
3 him if he lived there and he said, I'm here to see a
4 friend. I said, Okay. What's your friend's name, what's
5 his address, to try to confirm it.

6 During this time his voice was shaking, he was
7 very nervous. He wouldn't make eye contact with me at
8 all. He did make a motion with his left hand towards his
9 pocket. A lot of people do that and for us as a safety
10 issue, I don't know what he may have any his pocket, so I
11 illuminated his hands, asking, you know, don't put your
12 hands in your pocket. I was able to see his arms and
13 hands clearly.

14 Q Did you notice anything about his hands and arms
15 when you were doing that?

16 A I noticed a tattoo on the left forearm, yes,
17 ma'am. Before I was able to get an answer about who he
18 was there to see, he fled on foot from me and a foot
19 chase began at that point.

20 Q If you can, again, just using the diagram behind
21 you, which I failed to mention for the record, that's
22 State's Exhibit No. 1. If you can show on that diagram,
23 where the defendant ran.

24 A Sure. Is it okay if I just stand up and do it?

25 Q Yes, that would be good.

Ben Ballenger - Direct Examination by Ms. Gordon

1 By Ms. Gordon:

2 Q Officer Ballenger, I am going to show you a
3 picture behind you. If you can go ahead and pull that
4 one that we zoomed in on. Do you recognize the tattoo on
5 that forearm?

6 A The red and blue star and the blue flame, yes,
7 ma'am, I do.

8 Q Are those the tattoos you saw on the defendant
9 the night of July 27th of 2008?

10 A Yes, ma'am.

11 Q Or the person that you went running after?

12 A Yes, ma'am.

13 MS. GORDON: You can take that down.

14 By Ms. Gordon:

15 Q Now, after he took off running -- were you able
16 to capture him that night?

17 A No, ma'am, we were not.

18 Q What did you do at that point? You said you
19 had -- y'all set a perimeter up. Were y'all able to
20 determine -- identify a suspect that you were looking
21 for?

22 A Within the perimeter, we did not. The pickup
23 truck that the witness stated he had saw in the area, we
24 ran the license tag on that and Officer Coleman went to
25 the residence that that was registered to and spoke with

Ben Ballenger - Direct Examination by Ms. Gordon

1 a female there, who advised him who was driving the truck
2 on that night.

3 Q And based on the investigation, did y'all develop
4 Tristan Cheek as the name of the suspect you were looking
5 for?

6 A Yes, ma'am, we did.

7 Q That night did you talk to the residents at -- I
8 don't want to say the wrong number -- [REDACTED]

9 A Was that Ms. Wolter.

10 Q That was the one with Ms. Wolter, yes?

11 A Yes.

12 Q It's [REDACTED] You spoke to Ms. Wolter?

13 A Yes, we did.

14 Q And were you able to determine whether or not
15 Tristan Cheek lived at that house?

16 A We were. She stated that he did not live there
17 and she did not know him personally.

18 Q Were you able to determine whether or not Tristan
19 Cheek owned that condo?

20 A We were and he did not own the condo.

21 Q Did you also speak with the two gentlemen or the
22 gentleman that had called 911 and his roommate?

23 A Yes, ma'am, we did.

24 Q And did they give you a statement and a
25 description of everything they saw that night?

Ben Ballenger - Direct Examination by Ms. Gordon

- 1 A Yes, they did.
- 2 Q At some point were you involved with trying to
3 serve an arrest warrant on Mr. Cheek?
- 4 A Yes.
- 5 Q And that was several days later?
- 6 A Yes, ma'am.
- 7 Q Where was that arrest made?
- 8 A It was on Allen street. The exact numerics would
9 be in my report. I don't recall the exact numerics.
- 10 Q Was it -- was it the same address as the address
11 that the tag came back to for the truck?
- 12 A Yes, ma'am, yes, ma'am.
- 13 Q Did you see the suspect that day?
- 14 A The day of the warrant service?
- 15 Q Yes?
- 16 A Yes, ma'am.
- 17 Q And were you able to identify the same tattoos
18 that day as the person that you saw running on the night
19 of July 27th?
- 20 A Yes, ma'am.
- 21 Q And do you see the person that you encountered on
22 the night of July 27th in this courtroom today?
- 23 A Yes, ma'am.
- 24 Q Can you point him out for the jury?
- 25 A Yes, ma'am, he's in the light blue shirt with the

Tristan Cheek - Direct Examination by Mr. Grimes

DIRECT EXAMINATION

1
2 By Mr. Grimes:

3 Q Good afternoon, Mr. Cheek.

4 A Good afternoon, Mr. Grimes.

5 Q I want to sort of ask you a few questions about
6 your background and let the jury know a little bit about
7 you.

8 A Yes, sir.

9 Q How old are you?

10 A I'm 28.

11 Q And where are from?

12 A From Phoenix, Arizona.

13 Q And how long did you live in Phoenix?

14 A Most of my life.

15 Q And where are your parents at now?

16 A My mothers in New Mexico, my father is deceased.

17 Q How far did you go in school?

18 A Just high school. I'm enrolling in college.

19 Q Okay. Where did you go the high school at?

20 A Mountain View High.

21 Q Is that in Arizona?

22 A Yes, sir.

23 Q Are you taking any continuing hours to continue
24 your education?

25 A I have. Just recently, actually.

Tristan Cheek - Direct Examination by Mr. Grimes

1 Q Where at?

2 A Trident Technical College.

3 Q And what were you planning to study at Trident
4 Technical College?

5 A I was going to start two years on a four-year
6 Civil Engineering Degree.

7 Q And did you enroll at Trident Tech?

8 A Yes, sir, yes, sir.

9 Q When did you enroll in classes?

10 A It was November.

11 Q Okay.

12 (WHEREUPON Defendant's Exhibit No.'s 23 and 24
13 were marked for identification.)

14 MR. GRIMES: May I approach, Your Honor.

15 THE COURT: You may.

16 By Mr. Grimes:

17 Q I just want to show -- I'm showing you what's
18 been marked as Exhibits 23 and 24, Defendants. At this
19 time for ID. Do you recognize what these documents are?

20 A Yes, sir. This is my class schedule and my
21 student ID.

22 Q Now that's the class schedule for Spring of this
23 year?

24 A That's correct. I'm actually -- actually I'm
25 going in May.

Tristan Cheek - Direct Examination by Mr. Grimes

1 Q Okay. So you haven't taken these classes at this
2 time?

3 A I haven't.

4 Q And you plan on taking them in May?

5 A Yes, sir, I do.

6 MR. GRIMES: Your Honor, I would move these in as
7 defendant's Exhibits 23 and 24 into evidence.

8 MS. GORDON: No objection, Your Honor.

9 THE COURT: Admitted.

10 (WHEREUPON Defendant's Exhibit No.'s 23 and 24
11 were admitted into evidence.)

12 By Mr. Grimes:

13 Q Now, I want to ask you a few questions about when
14 you moved to South Carolina. Do you recall when you
15 eventually moved here?

16 A I do. About seven years ago.

17 Q And what brought you to South Carolina?

18 A The beach, the weather.

19 Q Okay. And when you arrived here what kind of
20 work did you do?

21 A I did carpentry work.

22 Q Do you remember who you worked for?

23 A I think it was B. B. Woodwork when I first
24 started doing cabinets.

25 Q Okay. And what kind of other jobs have you held

Tristan Cheek - Direct Examination by Mr. Grimes

1 while you've been here?

2 A As you found out earlier, I worked at
3 Giusseppe's. I wanted to learn how to make pizzas. It
4 wasn't really for the money.

5 Q Okay.

6 A I give surfer lessons as well.

7 Q And speaking of surfing, I want to ask you a few
8 questions about that.

9 A Okay.

10 Q When did you start surfing?

11 A I started surfing five summers ago.

12 Q And what drew you to surfing?

13 A Just the peace. It was something you could do by
14 yourself and get a lot of mental time out there.

15 Q Okay. And how would you kind of rate yourself as
16 a surfer?

17 A Pretty excellent, I think.

18 Q Okay. And I want to ask you a few questions
19 about your use of marijuana?

20 A Okay.

21 Q When did you start using marijuana?

22 A About probably fourteen years ago.

23 Q And what caused that?

24 A Growing up in Phoenix, it was what everybody was
25 doing.

Tristan Cheek - Direct Examination by Mr. Grimes

- 1 Q How often do you spoke marijuana?
- 2 A Daily basis. I did. I don't smoke anymore.
- 3 Q Okay. And do you ever smoke while you're
- 4 surfing?
- 5 A All the time.
- 6 Q Okay. Did you ever meet anyone out there that
- 7 you may have shared marijuana with?
- 8 A Quite a few people, yes.
- 9 Q And have you ever met a guy that you know as
- 10 Surfer Joe?
- 11 A Yes, I do.
- 12 Q Okay.
- 13 A Or, yes, I did.
- 14 Q And do you know where Surfer Joe is now?
- 15 A I don't. We've lost contact over the last few
- 16 years.
- 17 Q All right. I'm going to ask you a few questions
- 18 about Lorraine. When did you meet her?
- 19 A I think it was 2007, 2008.
- 20 Q Okay. And it sounds like you guys started dating
- 21 and eventually moved in with each other?
- 22 A Yes.
- 23 Q Whose idea was it for you to move in with her?
- 24 A It was Rainy's idea.
- 25 Q And was she paying rent at the time?

Tristan Cheek - Direct Examination by Mr. Grimes

1 A No, sir, she wasn't.

2 Q Why not?

3 A The house was her mother's and it was already
4 paid for.

5 Q Were you contributing in any way financially to
6 the upkeep of the house?

7 A I was. Once I moved in, we got cable, a house
8 phone and I paid for the groceries and stuff like that.

9 Q Well, what exactly did you pay for?

10 A Anything that we wanted to do. At the time,
11 Rainy was having a hard time passing her exams to become
12 a school teacher and she didn't have a job. So we didn't
13 have any rent, so pretty much any money I made, it was
14 just for us.

15 Q Okay. And I want to turn your attention to June
16 of 2009 or the Summer of 2009?

17 A Okay.

18 Q Did you have any problems at that time?

19 A I won't blame it on the economy, but the business
20 I worked for, it was the Eagle Builders out of Kiawah
21 Island, they had to close their doors, let go quite a few
22 people and I was one of them.

23 Q And how did you handle that situation?

24 A The wrong way.

25 Q When you say the wrong way, explain to the jury

Tristan Cheek - Direct Examination by Mr. Grimes

1 | what you mean by that?

2 | A Shortly after, I lost my place to live.

3 | Actually, I lived in a tent for almost a month varying
4 | from my friend's house and on the beach and I made some
5 | bad choices to feed myself.

6 | Q And what bad choices did you make?

7 | A I used a couple of people's credit cards that
8 | didn't belong to me. I stole change.

9 | Q And how did you get those credit cards that
10 | didn't belong to you? Did you break into anything?

11 | A Cars. Yeah, I broke into cars.

12 | Q Did you --

13 | A I didn't break into it --

14 | Q Did you use anyone's card without their
15 | permission?

16 | A Yeah, kind of. But kind of --

17 | Q Whose car was that?

18 | A Mr. Darundo, Tara Darundo.

19 | Q The lady in the second row?

20 | A Yes.

21 | Q And you eventually were arrested and charged for
22 | the crimes that you did?

23 | A I was.

24 | Q Is it fair to say that you pled guilty to use of
25 | a vehicle without permission?

Tristan Cheek - Direct Examination by Mr. Grimes

- 1 A I did.
- 2 Q And to two counts of financial card theft?
- 3 A I did.
- 4 Q And to two counts of breaking and entering a
5 motor vehicle?
- 6 A I did.
- 7 Q And three charges of financial transaction card
8 fraud?
- 9 A I did.
- 10 Q And those are nonviolent charges?
- 11 A They are, sir.
- 12 Q And do you recall you pled in front of Judge
13 Nicholson?
- 14 A I did, yes.
- 15 Q Do you recall what sentence he gave you?
- 16 A I do. Five years on every one of them. Ran two
17 of them concurrent which was ten years and he gave me
18 probation. I was found eligible for probation and I was
19 thankful for that. I didn't go into it with any deal, I
20 just -- I knew I made a mistake and felt that that's what
21 I should do.
- 22 Q All right. Now, I want to direct your attention
23 back to July 27th of 2008?
- 24 A Okay.
- 25 Q We've heard a lot of testimony about you running

Tristan Cheek - Direct Examination by Mr. Grimes

1 from the police?

2 A Yeah.

3 Q Is that accurate?

4 A It is. It is accurate.

5 Q Could you explain to the jury why you ran from
6 the police that night?

7 A If you recall, one of the officers, I'm bad with
8 names -- and I think this is kind of important, that's
9 why I'm telling you guys. He said he saw me reach into
10 my pocket. I had a bag of marijuana on me that I'd just
11 purchased and I was walking up and I had my keys in one
12 hand and he asked me to stop. I saw the squad car, but I
13 didn't see him yet. He asked me to stop and I went to
14 grab that bag of marijuana because I knew I had to get
15 rid of it.

16 And when he started asking me questions. He
17 asked me what you got, what do you have in your hand and
18 I felt there's no way of getting rid of the marijuana, so
19 I took off running.

20 Q And we've also heard testimony about they're
21 having to come out to Rainy's house a couple of times
22 looking for you?

23 A From what I understand that 's correct. I only
24 was there during one of the times they came.

25 Q All right. Well if you knew they were coming out

Tristan Cheek - Direct Examination by Mr. Grimes

1 looking for you, how come you didn't turn yourself in?

2 A I wanted to -- at the time, I had a job. I
3 wanted to get a little bit of money so I could get some
4 legal representation.

5 Q And I want to ask you a few questions about
6 Remington Forest, the condos you were at?

7 A Okay.

8 Q Before July 27th, 2008, had you ever been there
9 before?

10 A Never, not once.

11 Q Did you know anyone who lived there?

12 A I didn't, no. I -- unless Joe lived there. I'm
13 not sure if he was visiting or what. So if he lived
14 there then I could say yes.

15 Q Apart from Joe, do did you have any idea who else
16 may have lived there?

17 A No.

18 Q Did you not Ms. Wolters before?

19 A No, I sure didn't.

20 Q Had you ever ran across her at Rainy's or the
21 beach or anything?

22 A No, no. I mean, I wouldn't -- I mean, I can't
23 say no because Mt. Pleasant is small and if she goes to
24 bars, sooner or later we may have passed, but as far as
25 being introduced or -- you know, noticing her, I never

Tristan Cheek - Direct Examination by Mr. Grimes

1 had.

2 Q Well, you saw her testify yesterday?

3 A Yes.

4 Q Did you recognize her from anywhere?

5 A No.

6 Q And you've seen some pictures of the scene, of

7 her residence, is there any way to tell there's a female

8 living there, from the outside?

9 A From the pictures --

10 MS. GORDON: Objection, Your Honor.

11 THE WITNESS: No.

12 MS. GORDON: Calls for speculation.

13 THE COURT: Overruled.

14 By Mr. Grimes:

15 Q Let me rephrase the question a little bit. Is

16 there any way for you to tell that she lived there or

17 that a female lived in that duplex?

18 A Not from the inside or any kind of stretch, sir.

19 Q Now, I want to ask you about July 28th, 2008.

20 Why did you go out to Remington Forest that night?

21 A To purchase a bag of marijuana.

22 Q And who were you going to purchase the marijuana

23 from?

24 A A friend of mine.

25 Q Who was that?

Tristan Cheek - Direct Examination by Mr. Grimes

1 A Surfer Joe.

2 Q And how long have you known Surfer Joe?

3 A About a summer and a half, two summers.

4 Q And how would you describe your relationship with
5 him or your level of friendship with him?

6 A Well, I met him surfing and I don't know if
7 anybody's seen Fast Times at Ridgemont High, but the guy
8 looks just like Spicoli, which is one of the people in
9 the movie, Sean Penn played him. He looks just like him.
10 When I saw him, I just thought that was cool. We sat on
11 our surf boards and talked and then we went to the beach
12 and we smoked a joint together. I asked him if he smoked
13 and he was like, Yeah. So I said, Well, I got a joint in
14 my surf bag.

15 Q For an average, how often would you hang out with
16 him or see him?

17 A I wouldn't. I mean there's a popular surf spot.
18 It's 32nd, and when that gets over crowded with too many
19 surfers then you'll move down and go to like the 8th
20 block, which has got a good break, but not so many people
21 go there, and I'd see him there on occasion.

22 Q When you talk about 32nd and 8th, are you talking
23 about Sullivan's Island?

24 A No, Isle of Palms.

25 Q Isle of Palms. And did you guys trade e-mails,

Tristan Cheek - Direct Examination by Mr. Grimes

1 exchange phone numbers or anything?

2 A Not e-mails, but we did exchange phone numbers.

3 Q And have you -- do you know what his phone number
4 is now?

5 A No, that was a chop phone, one of those cheap
6 phones. It was an age ago.

7 Q And when was the last time that you saw Surfer
8 Joe?

9 A It would be probably six or seven months maybe
10 after that. It was a little while after that I saw him
11 at Music Farm, but it was a brief encounter. We weren't
12 there together or nothing.

13 Q Okay. So about two years ago, maybe a few months
14 off?

15 A That's true. That's probably accurate.

16 Q And do you have any idea where he's at?

17 A No. I assume Mt. Pleasant, Isle of Palms,
18 somewhere around in there -- or any beach.

19 Q Florida, California?

20 A It's possible. I mean, he was -- he would move
21 unless it was to somewhere extravagant like Costa Rica or
22 something.

23 Q All right. And so why did you call him to -- for
24 the marijuana?

25 A Well, I went through all my contacts and nobody

Tristan Cheek - Direct Examination by Mr. Grimes

1 | could do anything at the time and he was kind of like one
2 | of the last guys. I mean Surfer Joe ends up kind of at
3 | the bottom of your cell phone and I tried him and he
4 | said, Yeah, man. I'm hanging out with somebody, though.
5 | I don't really want them to know my business, but I got a
6 | little bit and it's personal, but I can sell it to you to
7 | get you by; and I said, All right. Cool.

8 | Q And had you ever bought marijuana from Surfer Joe
9 | before?

10 | A I'd never bought it from him before, no. I don't
11 | want to paint a bad picture of this guy. He wasn't a
12 | drug dealer, it was just he had his own personal bag and,
13 | you know, because he knew me from surfing, saw me around,
14 | he just felt, I guess he would do me a favor.

15 | Q Now, what truck did you drive out to Remington
16 | Forest?

17 | A The classic C-70 or --

18 | Q Was it Rainy's truck?

19 | A Yeah.

20 | Q Was there anything about it or anything?

21 | A Yeah, I like the loud noise that everybody
22 | says -- it was just straight pipes. It had a good sound.
23 | It was an old classic truck.

24 | Q And where did you park when you got out there?

25 | A Across from the swimming pool that I've been

Tristan Cheek - Direct Examination by Mr. Grimes

1 seeing on the map that you guys have been putting up
2 there.

3 Q Let me see if I can pull that up for you?

4 A It's right there, actually. Skelton, is that his
5 name?

6 Q The first witness was.

7 A Yeah, the first witness. Just what he said, I
8 was right in there in that second parking spot.

9 Q All right. And what were you going up to the
10 pool for?

11 A Well, Joe told me that -- like I said, he was
12 with somebody and he didn't want them to know his
13 business and said he'd be outside smoking a cigarette. I
14 said okay. He said when I pulled in, just to go all the
15 way to the end and make that right, right there and park
16 by the pool. I came up to about right here so I backed
17 up and after I got out I continued right around in here.

18 Q I hate to break you up a little bit. So did you
19 park where Mr. Skelton said you parked at?

20 A I did, he was correct.

21 Q And where did you go after you parked there?

22 A I went looking for Surfer Joe. He said he'd be
23 outside smoking a cigarette, so I was looking for him.
24 So I walk in here, I didn't see nobody. At that point, I
25 didn't step on grass, I didn't go towards nobody's place

Tristan Cheek - Direct Examination by Mr. Grimes

1 and I started texting him, Hey man, where you at. And he
2 said, Oh, I'm coming right out. Meet me at the swimming
3 pool. So at that time I turned back around and went back
4 to the swimming pool and I waited.

5 Q And how far -- now when you're by the swimming
6 pool, that's right by -- right next to 1358?

7 A Yes.

8 Q How far were you from -- I guess the bedroom
9 windows we've been seeing, when you're standing by the
10 pool?

11 A I was like right here.

12 Q All right. And where did Joe come from?

13 A Joe came from this direction from the right like
14 he said he would.

15 Q Okay. While you're waiting for Joe, were you
16 crouching down or looking -- do this or --

17 A Absolutely not.

18 Q Look into anyone's windows?

19 A Absolutely not.

20 Q Were you bent over in any way looking into
21 windows?

22 A Absolutely not.

23 Q And then how long did it take -- once you got to
24 the pool, how long did it take for Joe to get there?

25 A It was just a matter of minutes -- I mean maybe a

Tristan Cheek - Direct Examination by Mr. Grimes

1 minute, two minutes, it wasn't long at all.

2 Q Okay. And how long did you talk to Joe out
3 there?

4 A Well, we smoked a joint together, so we were
5 there for a couple of minutes.

6 Q Did Joe by any chance go toward a window?

7 A Joe did not. Not from -- the point I saw him
8 walking up and the point I saw him walking away, I didn't
9 see him doing anything like that either.

10 Q At any point when you were out there, did you go
11 toward any windows and start looking through them?

12 A I did not. The closest thing I could even come
13 to what they've been saying is when I was standing here
14 at this point, there was leaves on the ground and I
15 smoked a cigarette as well. I threw my cigarette down.
16 And I took one step forward and I stepped on the
17 sidewalk, but at no time did I go towards the building.

18 Q And after Joe left, what happened next?

19 A At that time, after he walked away, I started
20 walking back to my truck. My truck was here and I saw
21 the squad car here. I figured that if he -- if that cop
22 was inside the car and I got inside the truck with the
23 marijuana then it would be -- that he would have my truck
24 and me and there would be no way for me to hide that bag,
25 so I just continued to walk straight forward and that's

Tristan Cheek - Direct Examination by Mr. Grimes

1 | when the cop approached me. And when he approached me,
2 | that's when everything started.

3 | Q And do you dispute anything that Officer
4 | Ballenger said about your encounter with him?

5 | A I mean, I remember it pretty well. Not much. I
6 | mean, I don't have any grudge towards him or anything
7 | because I know he was just responding to a call.. There's
8 | no way he could have known what was going on except what
9 | he was told.

10 | When they came to my house, one of the other
11 | officers had me in custody and asked him if this was the
12 | guy and he looked at me and said, I don't know. Does he
13 | got a blue star on his arm, which is, my star is gray,
14 | but they cleared that up once he realized it's red.

15 | Q Well, apart from that --

16 | A Two years ago they said --

17 | Q Well, when you were out there and he says, you
18 | know, about he's talking to you and he said something
19 | about stop, do you dispute any of that?

20 | A It was a little different.

21 | Q Okay. Tell the jury what happened between you
22 | and Officer Ballenger?

23 | A I walked up. He said --

24 | MS. GORDON: Objection, Your Honor to anything
25 | the officer said.

Tristan Cheek - Direct Examination by Mr. Grimes

1 THE COURT: Well, it's hearsay unless you're
2 offering it for some other purpose.

3 MR. GRIMES: I just want to show what his
4 reaction to it was and the fact that it was said as
5 opposed to the truth of the matter said.

6 THE COURT: Overruled. Go ahead.

7 By Mr. Grimes:

8 Q Tell us about what happened between you and
9 Officer Ballenger?

10 A Okay. As I was walking up, he asked me to stop
11 and I went to my pocket, grabbed the bag of weed and he
12 said something and I said, Oh, I was just, you know,
13 coming from my friend's house and he said -- he started
14 walking toward me and said what do you got in your hand,
15 what's that in your hand and he put his hand on his gun
16 and I said, Whoa, you know, I was thinking maybe he
17 thought I had a weapon or something and so that's when I
18 decided it would be the best time to turn around and run.

19 Q All right. And again, did you do any type of
20 peeping Tom at all that night? Did you know that
21 Elizabeth Wolters lived there?

22 A I'm sorry?

23 Q Do you know if Elizabeth Wolters lived at --

24 A I do not.

25 Q Did you know who lived there?

Tristan Cheek - Cross-Examination by Ms. Gordon

1 A I did not.

2 Q At any point, did you look into any of those
3 windows?

4 A No, I did not.

5 Q Thank you. Please answer any questions Ms.
6 Gordon has for you.

CROSS-EXAMINATION

7
8 By Ms. Gordon:

9 Q Good afternoon, Mr. Cheek.

10 A Good afternoon, Ms. Gordon.

11 Q So when you first saw the police officer, you
12 were by your truck -- where on that diagram were you when
13 you first saw the police officer?

14 A When I first saw -- I never saw a police officer
15 first, I just saw a squad car.

16 Q Okay. And where were you when you saw it?

17 A I was right here by my truck.

18 Q Okay. And he doesn't see you at that point?

19 A I don't know where he was. I don't know if he --

20 Q And you just assumed that -- you knew he was out
21 there looking for you?

22 A No, I didn't.

23 Q But you just assumed --

24 A I had just purchased a bag of marijuana and I
25 turned around and saw a cop car.

Tristan Cheek - Cross-Examination by Ms. Gordon

1 Q He didn't see you purchase the marijuana?

2 A I didn't know that because I didn't know how long
3 he'd been there.

4 Q And you just assumed if you got in the car, he
5 would assume you did something bad?

6 A No, if I got in the car, I would be stuck with a
7 bag of weed in my pocket.

8 Q And you assumed he would stop you?

9 A I'm sorry?

10 Q You assumed he was going to stop you?

11 MR. GRIMES: Objection. That calls for
12 assumptions.

13 MS. GORDON: It's his assumption.

14 THE COURT: Overruled. Go ahead.

15 THE WITNESS: Well, I already answered --

16 By Ms. Gordon:

17 Q I just want to make it clear. You assumed that
18 this officer was just going to know you did something
19 bad, so that's why you didn't get in your car?

20 A No, I didn't know how long that officer was
21 there. I didn't know if that officer saw me --

22 Q Well, where was Joe at this point?

23 A By that time he was probably over here, so I'm
24 sure if he heard a commotion -- I'm sure he's not going
25 to come out there and see what happened.

Tristan Cheek - Cross-Examination by Ms. Gordon

1 Q So how long were you in Remington Forest?

2 A I couldn't really say, it was two and a half
3 years, I mean.

4 Q So did Joe -- did you see Joe come out of a
5 condo?

6 A It was maybe ten, fifteen minutes.

7 Q Did you see Joe come out of a condo?

8 A Sure didn't.

9 Q And you don't know where he went -- you didn't
10 see him go back to the condo?

11 A He came from the right, came walking. He left
12 walking back to the right.

13 Q Now, didn't you tell Rainy that you bought the
14 marijuana from some black guys over by the old
15 Whitesides?

16 A I never told -- the Whitesides, it was right by
17 there.

18 Q And you told Rainy that you bought marijuana from
19 the black guys?

20 A No, I never did.

21 Q So if she said that, she was making that up?

22 A If she said that. She might --

23 MR. GRIMES: Objection --

24 THE COURT: Now, you're not allowed to bolster
25 witnesses -- excuse me not allowed to pit witnesses.

Tristan Cheek - Cross-Examination by Ms. Gordon

1 By Ms. Gordon:

2 Q Now, I want to talk about the 2009, you said you
3 fell on some hard times.

4 A Yes, ma'am.

5 Q And your response to those hard times were that
6 you thought you could just steal from anybody you wanted
7 to?

8 A That's not correct, no.

9 Q You broke into several cars at another apartment
10 complex?

11 A No, I don't believe so.

12 Q At an apartment complex on James Island?

13 A I believe one of the cars might have been over
14 there, yes.

15 Q And you took a wallet right out of a lady's purse
16 in a restaurant?

17 A That is incorrect.

18 Q Well, how did you get her card?

19 A I'm sorry?

20 Q How did you get the lady's credit card?

21 A Well, there was a center console inside --
22 there's always a center console in a car.

23 Q So this is one you got out of a car?

24 A Yes.

25 Q How many did you get out of cars?

Tristan Cheek - Cross-Examination by Ms. Gordon

1 A I'm not sure.

2 Q How many credit cards did you steal out of

3 people's cars?

4 A I only got into two cars.

5 Q So you got into two cars?

6 A Yes.

7 Q And you stole the credit cards?

8 A That's true.

9 Q And you ran that time too when the police tried

10 to arrest you?

11 A That's correct.

12 Q And then the car that you took from Tara -- Tara

13 didn't know that you took that car did you?

14 A It's kind of tough. I mean she --

15 Q You didn't call her up and tell her that you took

16 the car?

17 A I did not call her at that moment, no.

18 Q And, in fact, it wasn't even Tara's car?

19 A Previous to that, she had told me where the key

20 was and I could use it any time I wanted to.

21 Q But it was somebody else's car?

22 A I wasn't aware of that.

23 Q Did you ask for her to provide an affidavit on

24 your behalf?

25 A I did.

Tristan Cheek - Cross-Examination by Ms. Gordon

1 Q And do you know that in that affidavit she said
2 that she didn't give you permission to use the car?

3 A Well, that's -- she didn't give me permission at
4 that time.

5 Q And the car didn't belong to her?

6 A She give me permission maybe a month ago while
7 talking with my brother and myself, knowing that we
8 didn't have a way back toward the beach and she was nice
9 enough to say this is where I keep the spare key. I
10 mean, she wrote the affidavit she wasn't even thinking
11 about that.

12 Q She wasn't thinking right when she wrote the
13 affidavit?

14 A I didn't say that.

15 Q Okay. I'm sorry, I misunderstood you then.

16 Now, I just want to be clear for the jury that it
17 is your testimony that you were never closer than -- and
18 let me get the pointer so that I'm -- you were never
19 closer to 1358 than right here in the pool area?

20 A That's correct.

21 Q And that you never went anywhere near that
22 window?

23 A That's correct. Which, what I was thinking was
24 if he's over here looking out this window or looking from
25 this window --

Tristan Cheek - Cross-Examination by Ms. Gordon

1 Q I just want to know what you --
2 A And I'm here --
3 Q I just want to know where you said --
4 A How can you tell how far --
5 Q And they just misjudged that?
6 A I don't know.
7 Q You never met Steven Skelton or Phillip Slayter
8 before?
9 A Never had before.
10 Q Never had any?
11 A Seem like nice people.
12 Q They were nice people. Never had any run ins
13 with them?
14 A No.
15 Q They have no reason to make anything up against
16 you?
17 A I mean, I understand that they're trying to be
18 head of the neighborhood watch or something. I mean --
19 Q They don't have a grudge to hold -- they don't
20 have a grudge to hold against you?
21 A No, not that I know about.
22 Q Okay. Oh, and did you ever give Joe's phone
23 number to your attorney?
24 A I didn't have any phone anymore.
25 Q So when you got arrested, did you say, Hey, this

Tristan Cheek - Cross-Examination by Ms. Gordon

- 1 is the guy I was buying the pot from?
- 2 A You don't tell people -- you don't tell a cop
- 3 that you bought marijuana from somebody.
- 4 Q Even if you're arrested --
- 5 A And I had no idea this would go this far, almost
- 6 three years later.
- 7 Q Even if they're going to arrest you for peeping
- 8 Tom?
- 9 A That's correct.
- 10 Q And we don't know a last name for Joe?
- 11 A You don't ask somebody you're buying marijuana
- 12 for their last name.
- 13 Q But you guys were friends?
- 14 A We knew each other from surfing.
- 15 Q And you're --
- 16 A We were on a friendly basis.
- 17 Q And you're still a surfer, right?
- 18 A Yes, I am.
- 19 Q And y'all still hang out in the same circles?
- 20 A We don't. I live on Folly Beach now.
- 21 Q So Folly Beach surfers don't know Isle of Palms
- 22 surfers?
- 23 A Folly Beach surfers and Isle of Palms surfers are
- 24 rivals. They don't like each other.
- 25 Q I didn't know that.

Tristan Cheek - Cross-Examination by Ms. Gordon

1 A Yeah.

2 Q Now, also I just briefly want to ask you about

3 Trident Tech. You enrolled in Trident Tech in November

4 of 2010?

5 A Yes.

6 Q You never once went to a class?

7 A No.

8 Q And you're not enrolled for next semester?

9 A Not yet, no.

10 Q So you enrolled for Spring, but never went?

11 A No, I had the Pell grant that was approved.

12 Q You got a Pell grant?

13 A Yes, I did.

14 Q Our taxpayer dollars are paying for you to go to

15 school?

16 A My taxpayer dollars are pay as well.

17 Q Where are you working?

18 A Before all this, I was working for Integrity

19 Woodwork.

20 Q When's the last time you worked?

21 A Last time I worked was in December.

22 Q December of 2010?

23 A Yes.

24 Q When you were running from the police?

25 MR. GRIMES: Objection. May we approach? We

1 have a matter of law.

2 THE COURT: All right. Let me send the jury out
3 for a minute.

4 (WHEREUPON the jury left the courtroom at
5 2:11 p.m.)

6 THE COURT: Yes, sir?

7 MR. GRIMES: I guess I would move for a mistrial
8 based on the solicitor's last question about him running
9 from the law. Mr. Cheek had been charged I think with
10 resisting arrest in, I believe, 2010. He was kind of on
11 the run. There's been no evidence in this case so far
12 that he was running from the law in 2010 or doing
13 anything -- she interjected that on purpose to inflame
14 the jury and just to show that he's someone who's running
15 away from the police.

16 MS. GORDON: That's my last question.

17 THE COURT: Well, it doesn't matter if it was
18 your last one.

19 MS. GORDON: He has already previously stated
20 that he had ran from the police and that he ran from the
21 police the last time he was arrested.

22 THE COURT: And so what's your point in asking
23 him about another crime.

24 MS. GORDON: I wasn't going the ask him about
25 another crime.

1 THE COURT: Well, what were you going to ask him
2 about? That day in question?

3 MS. GORDON: He said -- he talked about his last
4 job. I said when's the last time you worked he said
5 December of 2010 and I said that's when you were running
6 from the police.

7 THE COURT: And that was what?

8 MS. GORDON: When you were running from the
9 police.

10 THE COURT: In 2010.

11 MS. GORDON: He says December of 2010.

12 THE COURT: And what was he running from the law
13 for?

14 MS. GORDON: It's hard to know at that point.

15 THE WITNESS: Actually I wasn't running from the
16 law in December.

17 THE COURT: Well, I guess I'm trying to figure
18 out at what point do we usually allow evidence of crimes
19 other than the one that they're put on trial for to be
20 entered into evidence, especially when they occurred
21 subsequent to the case in point. So what's the whole
22 point of putting that in.

23 MS. GORDON: Well, I was not -- I will not -- I
24 was not planning to go any further into it.

25 THE COURT: Well, it doesn't matter, you did. So

1 | what's the point?

2 | MS. GORDON: The point -- he's already testified
3 | that he's been running from the police and his testimony
4 | was that he was employed and getting a Pell grant. But,
5 | Your Honor, the State will withdraw the question. I
6 | don't think there was any reference to any other
7 | particular crime. He's already stated that he was
8 | running from the police previously.

9 | THE COURT: Well, I'm going to deny the mistrial.
10 | I will instruct the jury that they're to disregard the
11 | last statement.

12 | MR. GRIMES: Your Honor, I think for the record,
13 | we have -- as I understand the law in mistrials, we don't
14 | think there is curative instruction to cure her comment.
15 | The only one I can think of would be a curative
16 | instruction along the lines of, ladies and gentlemen of
17 | the jury the last question by the solicitor was improper,
18 | deliberately improper, you may consider the fact that the
19 | solicitor has asked a deliberately improper question
20 | concerning reasonable doubt and that's the only curative
21 | instruction that can cure this.

22 | THE COURT: Well, I'm not going to comment on
23 | whether or not it was deliberate. I will just tell them
24 | that it was an improper question and that they are to
25 | disregard the question and the answer.

1 Bring the jury back in.

2 (WHEREUPON the jury entered the courtroom at
3 2:16 p.m.)

4 THE BAILIFF: Jurors all present, Your Honor.

5 THE COURT: All right. Folks, when we left out
6 of here, the solicitor had asked a deemed to be improper
7 question and you also began to hear a bit of an answer.
8 I'm going to instruct you to disregard the last question
9 that the solicitor asked as well as the answer, and I
10 don't want you to consider it in any way either now or
11 during your deliberations.

12 All right. Anything else on cross?

13 MS. GORDON: Nothing further, Your Honor.

14 THE COURT: Anything on redirect examination?

15 MR. GRIMES: No, sir, Your Honor.

16 THE COURT: You can step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Okay. You have another witness?

19 MR. GRIMES: No, sir. Defense rests at this
20 time.

21 THE COURT: Anything in reply?

22 MS. GORDON: Nothing, Your Honor.

23 THE COURT: All right. Folks, you have now heard
24 all the evidence in the case and we're going to, in a few
25 minutes, bring you back in and have the closing arguments

1 THE COURT: All right. Do we have everybody?

2 All right. Bring them on in.

3 (WHEREUPON the jury entered the courtroom at
4 4:16 p.m.)

5 THE BAILIFF: Jurors all present, Your Honor.

6 THE COURT: All right. Be seated.

7 **VERDICT**

8 THE COURT: All right. Mr. Foreman, I understand
9 the jury has reached a verdict; is that correct?

10 THE FOREMAN: Yes, Your Honor, we have.

11 THE COURT: Is it unanimous?

12 THE FOREMAN: It is.

13 THE COURT: Would you hand that to the Bailiff,
14 please.

15 All right. Mr. Cheek, stand up.

16 On Indictment 2008GS108464 on the charge or
17 indictment for peeping Tom, the verdict of the jury is
18 guilty. That is signed by the foreman of the jury.

19 If that is, in fact, your verdict, would you
20 indicate that by raising your right hand. Everyone raise
21 your right hand. Raise your right hand. Okay.

22 Let the record reflect all jurors have raised
23 their right hand.

24 Do you wish to poll the jury?

25 MR. GRIMES: Yes, sir.

1 THE COURT: All right. Madame Clerk.

2 You can be seated.

3 POLLING OF THE JURY

4 THE CLERK: Mr. Foreman, is this your verdict.

5 THE JUROR: Yes, it is.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes, it is.

8 THE CLERK: Juror No. 24, Patricia Boone, is this
9 your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Juror No. 52, Sara Clinkscales. Is
14 this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 175, John Macfie. Is this
19 your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror 154, Julia Khoury. Is this
24 your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 THE JUROR: Yes.
3 THE CLERK: Juror No. 230, Terry Rouse, is this
4 your verdict?
5 THE JUROR: Yes.
6 THE CLERK: Is it still your verdict?
7 THE JUROR: Yes.
8 THE CLERK: Juror No. 22, James Blakely.
9 THE FOREMAN: That's me.
10 THE CLERK: Okay. Juror 128, Lewis Hill. Is
11 this your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 THE JUROR: Yes.
15 THE CLERK: Juror No. 241 Walter Settimio. Is
16 this your verdict?
17 THE JUROR: Yes.
18 THE CLERK: Is it still your verdict?
19 THE JUROR: Yes.
20 THE CLERK: Juror No. 83, Marilyn Ellis. Is this
21 your verdict?
22 THE JUROR: Yes.
23 THE CLERK: Is it still your verdict?
24 THE JUROR: Yes.
25 THE CLERK: Juror No. 184 Lea McDowell. Is this

1 your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror No. 250 Karl Smalls. Is this
6 your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Your Honor, the jury has been polled
11 and the verdict stands.

12 THE COURT: All right. Well, folks, I want to
13 thank you for your service on this jury. You know, it's
14 a tough job that we ask you to do, but y'all show up,
15 which is important, not everybody does. But we take care
16 of that. You sat, you listened to the evidence, you
17 weighed through the facts that are disputed and you go
18 back and deliberate and your verdict obviously shows that
19 you did that. You took your time too and so we
20 appreciate what you have done. We don't ask any more
21 than that.

22 Now, as far as whether you're needed for the rest
23 of the week, here's what the deal is. Right now, I'm
24 95 percent sure we won't need you back tomorrow. We may
25 need you back on Thursday. And here's how I would like

1 from Judge Nicholson. So he's already being supervised.
2 I know that. Judge Nicholson placed -- hung ten years
3 over his head so if he messed up, Judge Nicholson told
4 him -- he gave him some restitution from there. He was
5 given 260 days and never followed up on -- it's probably
6 a moot point now. I think that was one of the reasons
7 Judge Nicholson gave him the probation.

8 And you've heard this case and he's -- certainly
9 if he saw anything or did anything, he didn't think
10 anything special about it. It was just basically just
11 looking -- it was a terrible mistake, he was looking in
12 those windows and then looked in the other window and
13 then ran from the police. Nothing aggravated, nothing
14 that would warrant three years in prison. The only
15 reason the State's asked for that is because for some
16 reason he's made the solicitor's radar and he's requested
17 a trial. We'd ask the Court to be as lenient as
18 possible.

19 As to the sex offender registry issue, hopefully
20 that -- I know you can't drop that at this point, but we
21 look at it -- he shouldn't have to register because this
22 is arbitrary and capricious to have a peeping Tom
23 register. There's no underlying evidence of sexual
24 misconduct. It should be a law or something where a
25 judge could make a finding where if it was not sexually

1 related then he shouldn't have to register. And without
2 that, I think it violates his right to due process and
3 fundamental fairness, and we'd ask that he not have to
4 register as a sex offender and if the Court denies that I
5 just want to clear that for any appeal.

6 Thank you, Your Honor.

7 THE COURT: You want to say anything?

8 MR. CHEEK: May I, please?

9 THE COURT: Yeah.

10 MR. CHEEK: Your Honor, I stand before you today.
11 I'm not an angel. I've made a lot of mistakes. This
12 other peeping Tom charge, I believe has been put on me
13 because of this original charge. Officer Byrd or
14 Detective Byrd went to this victim's house. The victim
15 saw a picture of me. He said the man I saw is not in
16 these pictures. The officer proceeded to tell that woman
17 that we think we know who this man is, his name is
18 Tristan Cheek. It was Officer York that got this put on
19 me.

20 I also want to say that during the trial, I
21 wasn't on the run in December. I didn't have an
22 warrant -- I came in freely to the courthouse. That's
23 not the point. The point was I was arrested in October
24 and went to jail. I learned my lesson. I got tore up by
25 a k-nine. This dog tore me up. I met another man who he

1 MR. GRIMES: We did have him evaluated by Doctor
2 Burke if you would like to see that.

3 THE COURT: I don't want to hear that now. He
4 can -- bygones.

5 Sentence of the Court is three years in the
6 Department of Corrections. You'll get credit for the
7 time served and we will put down there that they can have
8 you evaluated and I hope that when you get out, you'll be
9 on the way to leading a productive life and having your
10 mental health issues treated. Good luck to you.

11 MR. CHEEK: Thank you, Your Honor.

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13 * * * * * END OF TRANSCRIPT * * * * *

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FWR20080804706

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2008P09612

ARREST WARRANT NUMBER

1111204

DATE OF ARREST

August 2, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 03 2008

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008464

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2008

THE STATE

vs.

TRISTAIN ANTHONY CHEEK

DOB: 1982-10-02

W/M

Indictment for

Peeping Tom

FILED

2008 NOV -6 PM 12:27

JULIE J. ARMSTRONG
CLERK OF COURT

BY

08-4842-1

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By: *Sarah C. Cude*
 DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 3, 2008 the Grand Jurors of Charleston County present upon their oath:

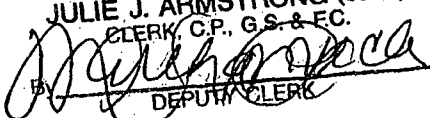
Peeping Tom

That in Charleston County, South Carolina, on or about July 27, 2008, the Defendant, TRISTAIN ANTHONY CHEEK, did go on or about the premises located at [REDACTED] Mt. Pleasant, County of Charleston, South Carolina, for the purposes of spying upon or invading the privacy of the persons therein; in violation of Section 16-17-470(a) of the South Carolina 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.



TRIP RIESEN
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & EC.

DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

53

COUNTY OF CharlestonSTATE VS.TRISTAIN ANTHONY CHEEK

AKA:

Race: W Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC01641653*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Peeping or EavesdroppingINDICTMENT/CASE#: 2008GS1008464A/W#: 1111204Date of Offense: 7/27/2008S.C. Code §: 16-17-0470CDR Code #: 0120

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-17-0470 of the S.C. Code of Laws, bearing CDR Code # 0120☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Elizabeth S. Gordon
Gordon, Elizabeth16952
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Whitney PostersCourt Reporter: Brenda Sigwald

SCCA/217 (06/2010)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: get mental health evaluation while at SCDC; must register as sex offender☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: 213Sentence Date: 4/19/11

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & P.C.

DEPUTY CLERK

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 5th, 2012



Dayne C. Phillips
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT