

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURT DAVIS,

APPELLANT

APPELLATE CASE NO 2017-000190

RECORD ON APPEAL

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1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State)

6)
7 v.)

Transcript of Record
16-GS-32-1403

8 Curt A. Davis)

9 Defendant.)

10
11 January 23 - 24, 2017
Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable Eugene C. Griffith, Jr., Judge;
15 and a jury.

16
17 A P P E A R A N C E S:

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Attorney for the State

19 Bradley M. Kirkland, Esquire
20 Attorney for the Defendant

21
22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

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1 (The following proceedings were held on
2 January 23, 2017.)

3 **THE COURT:** All right. Folks, think we're
4 ready to pick the first jury.

5 Ms. Rankin, State ready?

6 **MS. RANKIN:** State's ready, Your Honor.

7 **THE COURT:** Mr. Kirkland, are you ready?

8 **MR. KIRKLAND:** Ready, Your Honor.

9 **THE COURT:** All right. Ms. Rankin, call the
10 case.

11 **MS. RANKIN:** Thank you, Your Honor. May it
12 please the Court. State calls for trial State of
13 South Carolina versus Curt Davis, indictment
14 2016-GS-32-01403, indictment for burglary second
15 degree.

16 **THE COURT:** All right. Ladies and gentlemen of
17 the jury, the State's called a case versus Curt
18 Davis for burglary second degree. So y'all
19 understand, the indictment from which the prosecutor
20 read from is a paper document. It's containing
21 allegations of what the State believes it can prove.

22 Now, these are mere allegations against
23 Mr. Davis telling him what to be prepared to come
24 into court to defend himself against. This
25 allegation is not proof of anything; they're factual

1 allegations that the State must prove during the
2 trial. Mr. Davis has pled not guilty, and by that
3 plea, has asked for a jury trial.

4 Mr. Kirkland, will you introduce yourself and
5 your client to the jury panel?

6 **MR. KIRKLAND:** Yes, sir. My name is Brad
7 Kirkland. I work for myself. And this is my
8 client, Curt Davis.

9 Stand up, Curt.

10 Thank you.

11 **THE COURT:** Ms. Rankin, how about introducing
12 everyone at your table also.

13 **MS. RANKIN:** This is Investigator Mark
14 Miramontes from the Lexington Police Department.
15 And this is Investigator Kevin Wilson. He works for
16 the Solicitor's Office as well as I.

17 **THE COURT:** All right. Now, as I ask these
18 questions, I'm going to ask, hopefully, yes/no
19 questions. I don't need an explanation. If I do, I
20 may call you up and speak with you one-on-one. So
21 let me -- answer the question I'm asking. The gist
22 of my questions are going to be, do you know
23 anything about the case, the people testifying, the
24 people involved. And if you do, would that cause an
25 issue for you not to be fair and impartial to both

1 sides, all right?

2 Now, first question, does any member of the
3 jury panel know anything about this allegation made
4 by the Solicitor's Office against Mr. Curt Davis,
5 which alleges to have occurred on March 21st of '15
6 on a building and business known as the Grease
7 Monkey on Sunset Boulevard? Does any member of the
8 jury panel know anything about the factual
9 allegations made in this case; if so, please stand?

10 No one's standing.

11 Is any member of the jury panel related by
12 blood, marriage or close personal friends to any of
13 the people just introduced to you; if so, please
14 stand?

15 No one's standing.

16 Any member of the jury panel ever been
17 represented by any of the attorneys just introduced
18 to you, please stand?

19 No one's standing.

20 Any member of the jury panel ever been employed
21 in any capacity in the business known as the Grease
22 Monkey here in Lexington County; if so, please
23 stand?

24 No one's standing.

25 Potential witnesses to be called -- I'm going

1 to read the list of the witnesses and then ask you a
2 similar question about related by blood or marriage,
3 close friends -- potential witnesses: Caitlin
4 Voravudhi, Mark Miramontes, Erin Sturges, Rick
5 Hazewinkel, Thomas Gibson, Terry Rice, Anthony
6 Brantley.

7 Any member of the jury panel related by blood,
8 marriage, close personal friends to any of those
9 potential witnesses, please stand?

10 No one's standing.

11 Any member of the jury panel, member of your
12 immediate family member of any organizations which
13 primary focus is concerning violence and victims,
14 such as Citizens Against Violent Crimes, Bikers
15 Against Child Abuse, or any temperance
16 organizations, such as MADD mothers or SADD
17 students? Plus, any member of the jury panel,
18 member of your immediate family a member of any of
19 those type organizations, please stand?

20 No one's standing.

21 Any member of the jury panel, member of your
22 immediate family employed in any capacity as a law
23 enforcement officer; if so, please stand?

24 (Jurors stand.)

25 **THE COURT:** All right. Ma'am, tell me your

1 name.

2 **JUROR:** Amanda Powell, juror 156.

3 **THE COURT:** Ms. Powell, member of your family
4 or you're employed in a law enforcement capacity?

5 **JUROR:** My mother works for the South Carolina
6 Department of Public Safety.

7 **THE COURT:** And the fact that your mother works
8 for public safety, would that create an issue for
9 you to be fair and impartial in this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much.

12 Gentleman in the beige, tell me your name.

13 **JUROR:** Todd Manz, juror number 124.

14 **THE COURT:** And you or a member of your family
15 employed as law enforcement?

16 **JUROR:** My sister is a police officer in
17 Georgia.

18 **THE COURT:** And would the fact your sister's in
19 law enforcement create an issue for you to be fair
20 and impartial in this case?

21 **JUROR:** No.

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

23 All right. Ma'am, in the blue and black, tell
24 me your name.

25 **JUROR:** Juror number 7, Bobbie Ancrum. My

1 husband is a CO at Lexington...

2 **THE COURT:** Lexington County Department of
3 Corrections -- I mean, Lexington County Correctional
4 Facility?

5 **JUROR:** Yes, sir.

6 **THE COURT:** And is he currently employed there?

7 **JUROR:** Yes, he is.

8 **THE COURT:** All right. Now, would that create
9 an issue for you to be fair and impartial in this
10 case?

11 **JUROR:** No.

12 **THE COURT:** Thank you, Ms. Ancrum.

13 All right. Ma'am, in the hounds tooth jacket,
14 tell me your name.

15 **JUROR:** Deborah Hamilton, juror 82. I'm
16 employed by SLED in an administrative capacity
17 office of the chief.

18 **THE COURT:** And so you're an administrative
19 assistant to the chief?

20 **JUROR:** I'm an administrative coordinator to
21 the chief.

22 **THE COURT:** Now, would that fact -- this case
23 is all local law enforcement, Ms. Rankin?

24 **MS. RANKIN:** Yes, sir.

25 **THE COURT:** The fact that you assist the chief

1 at SLED, would that affect your ability to be fair
2 and impartial in this case, understanding there will
3 be no employees of SLED testifying?

4 **JUROR:** No, sir.

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

6 All right. Ma'am, last but not least, tell me
7 your name.

8 **JUROR:** Tamara Jeffcoat, 101. And my husband
9 works for South Carolina Department of Public
10 Safety.

11 **THE COURT:** And would that fact affect your
12 ability to be fair and impartial in this case?

13 **JUROR:** It will not.

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

15 **BAILIFF:** One in the back, Your Honor.

16 **THE COURT:** Tell me your name, please, ma'am.

17 **JUROR:** Juror number 5, Barbara Alexander. My
18 husband's retired, but --

19 **THE COURT:** That's good enough. Tell me what
20 did he retire from?

21 **JUROR:** DEA.

22 **THE COURT:** All right. Would that fact, your
23 husband was involved in his career in law
24 enforcement, can you be fair and impartial in this
25 case?

1 **JUROR:** I can be.

2 **THE COURT:** Thank you, ma'am.

3 All right. This is kind of a either side
4 question, and I don't need no facts, but any member
5 of the jury panel, member of your immediate family
6 ever been a victim of or accused of a violent crime;
7 if so, please stand? And you don't have to tell me
8 which way it was, just do you have some semblance?

9 So question is, any member of your family or
10 you personally were either accused of or a victim of
11 a violent crime?

12 (Jurors stand.)

13 **THE COURT:** Now, Ms. Shepherd, you stood up and
14 answered that question. You're juror number?

15 **JUROR:** 189.

16 **THE COURT:** You or a member of your family?

17 **JUROR:** Me.

18 **THE COURT:** You. Now, would that affect your
19 ability to be fair and impartial in this case?

20 **JUROR:** No, sir.

21 **THE COURT:** Thank you very much.

22 **THE CLERK:** Your Honor, she was protected for
23 tomorrow, so she's not --

24 **THE COURT:** Oh, you're protected for tomorrow,
25 so you're off the list for today. So we're okay.

1 Fair enough.

2 All right. Ma'am, over here in the multicolor,
3 tell me your name.

4 **JUROR:** Mary Wise, juror number 220.

5 **THE COURT:** All right. Same question, either
6 you or a member of your family either been accused
7 of or a victim of a violent crime, would that affect
8 your ability to be fair and impartial?

9 **JUROR:** My sister was.

10 **THE COURT:** And -- I don't need to know the
11 details, but -- you know the details. And so would
12 that impact your ability to be fair and impartial?

13 **JUROR:** I think it would because the fact that
14 she was wrongly accused.

15 **THE COURT:** Okay. All right. Thank you very
16 much. I'll excuse her from this case.

17 All right. Ma'am, in the front with the black
18 sweater, tell me your name.

19 **JUROR:** Amber Bonnette, number 26.

20 **THE COURT:** And same question, either you're
21 close in family to someone who's either been accused
22 of or a victim of a violent crime, you stood up.
23 Would that fact create an issue for you being fair
24 and impartial in this case?

25 **JUROR:** No, sir.

1 **THE COURT:** Okay. Thank you very much.

2 All right. Ma'am, in the blue jean jacket,

3 tell me your name.

4 **JUROR:** Michele Trabold-Bellino, 201.

5 **THE COURT:** And same question, can you be fair

6 and impartial in spite of this family member

7 being --

8 **JUROR:** I don't think that should be a problem.

9 **THE COURT:** You can do it?

10 **JUROR:** Yes.

11 **THE COURT:** Thank you very much.

12 Gentleman in the striped shirt, tell me your

13 name.

14 **JUROR:** Joseph Monts, number 139.

15 **THE COURT:** Can you be fair and impartial?

16 **JUROR:** Yes, sir.

17 **THE COURT:** Thank you very much.

18 All right. Ma'am, in the fuchsia, tell me your

19 name.

20 **JUROR:** Kristina Gamble, juror number 74.

21 **THE COURT:** And can you be fair and impartial

22 in spite of the person -- the friend, family member

23 or yourself, whoever it is?

24 **JUROR:** My family. Yes, I can.

25 **THE COURT:** All right. Thank you very much.

1 All right. Last but not least, tell me your
2 name.

3 **JUROR:** Kristin Hoover, juror number 93.

4 **THE COURT:** Hoover?

5 **JUROR:** Uh-huh.

6 **THE COURT:** All right. And can you be fair and
7 impartial?

8 **JUROR:** Yes.

9 **THE COURT:** All right. Thank you very much.

10 All right. Folks, any member of the jury panel
11 read anything, heard anything, seen anything on any
12 public media, whether it be WIS, WLTX or radio,
13 newspaper, Facebook, Instagram, Twitter or
14 otherwise? Has any member of the jury panel heard
15 anything about this case involving the allegations
16 against Mr. Curt Davis and the Grease Monkey
17 incident in March of 2015; if so, please stand?

18 No one's standing.

19 Now, this is important, it's kind of a lengthy
20 explanation: Early on Ms. Frick placed y'all under
21 oath and I'm not certain she explained it fully, but
22 eventually, once you're selected as a juror, you're
23 going to be required to take an oath to listen to
24 the evidence closely, keep an open mind and to not
25 discuss the case until all of the evidence has been

1 received by the Court and the instructions on the
2 law of what the law in South Carolina is currently.

3 Now, I'll give you a for instance: On December
4 29th, the law changed slightly as to the order and
5 different things about the closing arguments done in
6 general sessions cases. It was done December 29th.
7 And last week I had trial and we modified the way
8 I'd done it for a number of years because of the
9 change in law by the Supreme Court. It is my job to
10 keep up with that and that's what I do in a trial is
11 rule on legal issues and instruct juries on what the
12 law is.

13 So my question is, is any member of the jury
14 panel going to be able to disregard any
15 misunderstanding they may have as to what the law is
16 or what they heard it might be or what the Internet
17 says it is, disregard that and accept the law as I
18 am instructing it to you, because that is what
19 you're going to be required to take an oath to do?
20 So does any member of the jury panel not understand
21 that the Court, that means the presiding judge in
22 every trial, is the instructor of the law and you
23 must disregard any misunderstanding of the law, if
24 there is one? Anybody not going to be able to take
25 that oath, please stand.

1 (There was no response.)

2 **THE COURT:** Does any member of the jury panel
3 not understand that the State bears the burden of
4 proving the guilt of a person accused, that a
5 defendant does not have to disprove anything, they
6 don't even have to testify? As a matter of fact, I
7 observe that most people in trials wait till the
8 State puts their case up before they decide whether
9 they want -- how they're going to proceed, whether
10 presenting evidence or not.

11 Any member of the jury panel not understand
12 that a defendant is presumed innocent and the State
13 bears the burden of proving the guilt on those
14 allegations? If y'all don't understand that, please
15 stand.

16 No one's standing.

17 Any member of the jury panel know any reason
18 whatsoever they can't be fair and impartial, be good
19 listeners in every trial this week, including this
20 one against Mr. Davis; if so, please stand?

21 No one's standing. All right, got one.

22 Tell me your name, please, sir.

23 **JUROR:** Michael Daniels, juror number 52.

24 **THE COURT:** And my last question, do you know
25 of any reason you can't be fair and impartial to

1 both sides?

2 **JUROR:** Um...

3 **THE COURT:** Wait a minute. My question to you
4 is, do you think you can be fair and impartial or do
5 you have concerns you cannot?

6 **JUROR:** I have concerns that I couldn't be.

7 **THE COURT:** All right. I want to talk to you
8 up here because I don't want you to tell me -- I
9 want to hear it personally. So come on up here
10 right now.

11 (Whereupon, the following bench conference
12 was held with the juror on the record, in the
13 presence of the jury panel, but out of the hearing
14 of the jury panel.)

15 **THE COURT:** What's your juror number?

16 **JUROR:** 52.

17 **THE COURT:** Tell me your --

18 **JUROR:** Basically, based on my religious
19 beliefs, I don't believe that -- I believe in, like,
20 separation of kingdoms. So you got spiritual
21 kingdom, you have a natural kingdom. So I don't
22 believe that it's my place to judge or anything like
23 that.

24 **THE COURT:** Okay. Well, here's what -- back in
25 my home circuit, I deal with certain people that

1 have similar beliefs and religious beliefs and I
2 don't make them sit on a jury, but I make them, so
3 they're not getting out of not serving, I make them
4 sit and observe the first trial. Basically, sit in
5 the audience, the jury listens, you just get to sit
6 and listen, but you're never sent back to the jury
7 room to discuss the case when the time comes. Will
8 you do that?

9 **JUROR:** Yes, sir.

10 **THE COURT:** All right. He's going to be a
11 court observer on the first trial.

12 **THE CLERK:** Yes, sir.

13 (The bench conference was concluded.)

14 **THE COURT:** Anybody else?

15 (There was no response.)

16 **THE COURT:** All right. Is there any voir dire
17 that I glossed over that either side, Ms. Rankin or
18 Mr. Kirkland, y'all want me to ask?

19 **MS. RANKIN:** None from the State, Your Honor.

20 **MR. KIRKLAND:** Your Honor, I would ask that you
21 ask all the questions that I had submitted in my
22 voir dire, my proposed voir dire.

23 **THE COURT:** I think I've hit most of those in
24 my general questions. Is there any one in
25 particular that I missed?

1 **MR. KIRKLAND:** I think -- I'm simply doing
2 this, Your Honor, because it is extensive. I think
3 you may very well have covered the vast majority of
4 them, but to preserve the record, I'm required to
5 submit it in writing and object to anything that
6 wasn't asked, and that's what I'm doing, Your Honor.

7 **THE COURT:** Okay. Fair enough. I think I've
8 been sufficiently complete on your proposed voir
9 dire and asked the ones I believe are appropriate,
10 so you're protected on the record --

11 **MR. KIRKLAND:** Thank you, Your Honor.

12 **THE COURT:** -- and we'll go forward.

13 All right. Folks, Ms. Frick will have a list
14 generated on the computer. They're going to
15 generate a list of names randomly from your
16 number --

17 Do y'all want them to come up here or do y'all
18 want them to stand in their seats? Do y'all care?

19 **MR. KIRKLAND:** I don't care, Your Honor.

20 **THE COURT:** Ms. Rankin, do you care?

21 **MS. RANKIN:** I don't care. That's up to you.

22 **THE COURT:** Let's stand them right there,
23 Mr. Mills.

24 All right. Here's the way we're going to work,
25 I did this in Edgefield last week, Ms. Frick will

1 call your name and let you stand there. The lawyers
2 get to look at you and they've heard you answer my
3 questions or not answer my questions, the roll call,
4 everything. And it's kind of a very quick and fast
5 way to get to know you, a lot of guesswork involved
6 and -- I used to strike blue-eyed people when I was
7 a lawyer. I kept brown-eyed people and so that was
8 my rhyme and reason. If they had brown eyes, I took
9 them because I've got brown eyes.

10 In any event, we'll let them select -- they
11 both have a certain number of "please excuse the
12 jurors". And I try to figure out why lawyers keep
13 jurors or why people get rid of jurors, I've got no
14 clue. It's maybe a gut feeling, it just works.

15 So what we're going to do, we're going to take
16 turns picking jurors until we end up with 13, 12
17 jurors and an alternate in this case, and then I'm
18 going to excuse the balance of you to leave and
19 we'll call in tomorrow night about coming in
20 Wednesday morning.

21 **THE CLERK:** As I call your name, please stand
22 at your seat and remain standing until I give you
23 further instructions, please.

24 148, David Nishtick.

25 (Whereupon, David M. Nishtick, a white male,

1 stood.)

2 **THE CLERK:** What say you for the State?

3 **MS. RANKIN:** Please present the juror.

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

5 **MR. KIRKLAND:** Please excuse the juror.

6 **THE CLERK:** Have a seat, please, sir.

7 127, Matthew Maxwell.

8 (Whereupon, Matthew D. Maxwell, a white
9 male, stood.)

10 **THE CLERK:** What say you for the State?

11 **MS. RANKIN:** Please present the juror.

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

13 **MR. KIRKLAND:** Please excuse the juror.

14 **THE CLERK:** Have a seat, please, sir.

15 185, Jennifer Schlierholz.

16 (Whereupon, Jennifer M. Schlierholz, a white
17 female, stood.)

18 **THE CLERK:** What say you for the State?

19 **MS. RANKIN:** Please present the juror.

20 **MR. KIRKLAND:** Please excuse the juror.

21 **THE CLERK:** Have a seat, please, ma'am.

22 125, Richard Maxheimer.

23 (Whereupon, Richard W. Maxheimer, a white
24 male, stood.)

25 **THE CLERK:** What say you for the State?

1 **MS. RANKIN:** Please present the juror.

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

3 **MR. KIRKLAND:** Please excuse the juror.

4 **THE CLERK:** Have a seat, please, sir.

5 103, Laurie Johnson.

6 (Whereupon, Laurie A. Johnson, a white
7 female, stood.)

8 **THE CLERK:** What say you for the State?

9 **MS. RANKIN:** Please present the juror.

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

11 **MR. KIRKLAND:** Please seat the juror.

12 **THE CLERK:** Come forward and have a seat in the
13 jury box, ma'am.

14 187, Daniel Shaw.

15 (Whereupon, Daniel A. Shaw, a white male,
16 stood.)

17 **THE CLERK:** What say you for the State?

18 **MS. RANKIN:** Please present the juror.

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

20 **MR. KIRKLAND:** Please seat the juror.

21 **THE CLERK:** Come forward and have a seat in the
22 jury box, sir.

23 177, Elizabeth Salazar.

24 (Whereupon, Elizabeth A. Salazar, a white
25 female, stood.)

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

2 **MS. RANKIN:** Please present the juror.

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

4 **MR. KIRKLAND:** Please seat the juror.

5 **THE CLERK:** Come forward and have a seat in the
6 jury box, ma'am.

7 Number 7, Bobbie Ancrum.

8 (Whereupon, Bobbie A. Ancrum, a black
9 female, stood.)

10 **THE CLERK:** What say you for the State?

11 **MS. RANKIN:** Please present the juror.

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

13 **MR. KIRKLAND:** Please excuse the juror.

14 **THE CLERK:** Have a seat, ma'am.

15 63, Christine Dowd.

16 (Whereupon, Christine G. Dowd, a white
17 female, stood.)

18 **THE CLERK:** What say you for the State?

19 **MS. RANKIN:** Please present the juror.

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

21 **MR. KIRKLAND:** Please seat the juror.

22 **THE CLERK:** Come forward and have a seat in the
23 jury box, ma'am.

24 166, Amy Rhoden.

25 (Whereupon, Amy S. Rhoden, a white female,

1 stood.)

2 **THE CLERK:** What say you for the State?

3 **MS. RANKIN:** Please present the juror.

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

5 **MR. KIRKLAND:** Pleat seat the juror.

6 **THE CLERK:** Come forward and have a seat in the
7 jury box, ma'am.

8 Number 91, Shirley Holliday.

9 (Whereupon, Shirley A. Holliday, a black
10 female, stood.)

11 **THE CLERK:** What say you for the State?

12 **MS. RANKIN:** Please excuse the juror.

13 **THE CLERK:** Have a seat, please, ma'am.

14 155, Harold Pollard.

15 (Whereupon, Harold W. Pollard, Jr., a white
16 male, stood.)

17 **THE CLERK:** What say you for the State?

18 **MS. RANKIN:** Please present the juror.

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

20 **MR. KIRKLAND:** That was 155?

21 **THE CLERK:** Yes, sir.

22 **MR. KIRKLAND:** Please seat the juror.

23 **THE CLERK:** Come forward and have a seat in the
24 jury box, sir.

25 93, Kristin Hoover.

1 (Whereupon, Kristin T. Hoover, a white
2 female, stood.)

3 **THE CLERK:** What say you for the State?

4 **MS. RANKIN:** Please excuse the juror.

5 **THE CLERK:** Have a seat, please, ma'am.
6 97, Gayle Ipock.

7 (Whereupon, Gayle H. Ipock, a white female,
8 stood.)

9 **THE CLERK:** What say you for the State?

10 **MS. RANKIN:** Please present the juror.

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

12 **MR. KIRKLAND:** Please seat the juror.

13 **THE CLERK:** Come forward and have a seat in the
14 jury box, ma'am.

15 143, Sandra Moscato.

16 (Whereupon, Sandra L. Moscato, a white
17 female, stood.)

18 **THE CLERK:** What say you for the State?

19 **MS. RANKIN:** Please present the juror.

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

21 **MR. KIRKLAND:** Please seat the juror.

22 **THE CLERK:** Come forward and have a seat in the
23 jury box, ma'am.

24 33, Gina Busshart.

25 (Whereupon, Gina B. Busshart, a white

1 female, stood.)

2 **THE CLERK:** What say you for the State?

3 **MS. RANKIN:** Please excuse the juror.

4 **THE CLERK:** Have a seat, please, ma'am.

5 104, Jackie Jones.

6 (Whereupon, Jackie J. Jones, a black male,
7 stood.)

8 **THE CLERK:** What say you for the State?

9 **MS. RANKIN:** Please excuse the juror.

10 **THE CLERK:** Have a seat, please, sir.

11 156, Amanda Powell.

12 (Whereupon, Amanda S. Powell, a white
13 female, stood.)

14 **THE CLERK:** What say you for the State?

15 **MS. RANKIN:** Please present the juror.

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

17 **MR. KIRKLAND:** Please excuse the juror.

18 **THE CLERK:** Have a seat, please.

19 95, Jason Hulion -- excuse me -- it's Hulion,
20 right?

21 **JUROR:** Hulion.

22 **THE CLERK:** Thank you. Sorry. I pronounced it
23 wrong all the way.

24 (Whereupon, Jason B. Hulion, a white male,
25 stood.)

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

2 **MS. RANKIN:** Please present the juror.

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

4 **MR. KIRKLAND:** Please excuse the juror.

5 **THE CLERK:** Have a seat, please, sir.

6 17, William Barnes.

7 (Whereupon, William D. Barnes, a white male,
8 stood.)

9 **THE CLERK:** What say you for the State?

10 **MS. RANKIN:** Please present the juror.

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

12 **MR. KIRKLAND:** Please seat the juror.

13 **THE CLERK:** Come forward and have a seat in the
14 jury box, sir.

15 165, James Ramsey.

16 (Whereupon, James A. Ramsey, a white male,
17 stood.)

18 **THE CLERK:** What say you for the State?

19 **MS. RANKIN:** Please present the juror.

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

21 **MR. KIRKLAND:** Please excuse the juror.

22 **THE CLERK:** Have a seat, please, sir.

23 191, Brenda Speech.

24 (Whereupon, Brenda S. Speech, a white
25 female, stood.)

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

2 **MS. RANKIN:** Please present the juror.

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

4 **MR. KIRKLAND:** Please seat the juror.

5 **THE CLERK:** Come forward and have a seat in the
6 jury box, ma'am.

7 152, Cindy Peake.

8 (Whereupon, Cindy S. Peake, a white female,
9 stood.)

10 **THE CLERK:** What say you for the State?

11 **MS. RANKIN:** Please present the juror.

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

13 **MR. KIRKLAND:** Please seat the juror.

14 **THE CLERK:** Come forward and have a seat in the
15 jury box, ma'am.

16 169, Martiffia Riley.

17 (Whereupon, Martiffia T. Riley, a black
18 female, stood.)

19 **THE CLERK:** What say you for the State?

20 **MS. RANKIN:** Please present the juror.

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

22 **MR. KIRKLAND:** Please seat the juror.

23 **THE CLERK:** Come forward and have a seat in the
24 jury box, ma'am.

25 Alternates, Your Honor?

1 **THE COURT:** Single alternate will be plenty.

2 **THE CLERK:** One alternate, strikes one and two?

3 **THE COURT:** Yes, ma'am.

4 **THE CLERK:** Number 213, Lana Widener.

5 (Whereupon, Lana L. Widener, a white female,
6 stood.)

7 **THE CLERK:** What say you for the State?

8 **MS. RANKIN:** Please present the juror.

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

10 **MR. KIRKLAND:** Please seat the juror.

11 **THE CLERK:** Come forward and have a seat in the
12 jury box.

13 That's the alternate, Your Honor.

14 **THE COURT:** All right. Are there any matters
15 of law the Court needs to take up regarding the
16 selection process employed or the composition of the
17 jury from either the State or the defense?

18 **MS. RANKIN:** None from the State, Your Honor.

19 **MR. KIRKLAND:** No, Your Honor.

20 **THE COURT:** Very well.

21 All right. Everybody not selected, I want
22 y'all to call in. I've got some things to do this
23 afternoon. This jury's going to work in the
24 morning. I want y'all to call in tomorrow night
25 after 6:00, listen to the recording. My guess is

1 it's going to say, Please report at nine o'clock,
2 9:30 Wednesday morning. Follow the instructions on
3 the recording. Y'all got it? All right. Head out.

4 (The remaining jury panel was excused.)

5 **THE COURT:** I've got a couple things to do this
6 afternoon that don't involve this case, but we're
7 going to start this in the morning first thing at
8 9:30. So here's the, kind of, preliminary
9 instructions: Y'all as 13 will report directly to
10 the jury room. Mr. Mills will show it to you
11 momentarily. It's kind of back this way.

12 Anyway, y'all are not allowed to discuss the
13 case until you hear all the evidence. So if anybody
14 asks you anything about the case, say, Judge
15 Griffith told us not to discuss it. So leave it
16 alone, do not discuss it.

17 Now, another thing is don't invite yourself
18 into a conversation by going on a social media site
19 saying, I'm on a jury. Well, what case is that?
20 And there you go, you've got a conversation started.
21 You don't need that. Just don't put it on social
22 media. If you do, that just creates issues for me.

23 Now, I also don't need you to do any
24 independent research. Some people get curious and
25 want to know what burglary second is or what about

1 this case, was anything written on it. If y'all do
2 that, then you're kind of undoing what I've taken
3 great pains to get 13 good listeners who don't know
4 much about the case at all.

5 And so I tell you that everything you need to
6 decide this case, y'all will get right here in the
7 courtroom on the court record with my supervision
8 with everybody present, and that's the best way,
9 because then all 13 of you hear it all at the same
10 time and you get to see how the person acts and
11 respond to questions, how they say it, what they
12 say, all those responses. If you go get something
13 on the street corner or off of Facebook or wherever,
14 that just muddies the water for me because I'm not
15 supervising it, I don't exactly know what you read
16 or who said it.

17 Anyway, that just doesn't make my goal easy to
18 achieve as I want a fair and impartial jury
19 listening closely to the testimony and evidence that
20 the parties put up, that's the best way to present a
21 case. And so I'm going to try to do that, and so
22 y'all can help me by not going, telling somebody
23 you're on a jury, starting a conversation and doing
24 independent research, looking something up. Y'all
25 will get it all in here. I promise you you'll get

1 enough in here to make your decision. You'll get
2 the law as I understand it in South Carolina.

3 That microphone is right in the middle of me
4 and you, isn't it?

5 In any event, I allow jurors to take notes if
6 you want to, you're not required to, but if you want
7 a notepad, you'll get one in the jury room in the
8 morning. You're welcome to take notes; I have to.
9 You're not required to take notes. If you don't
10 want to, don't do it.

11 I generally pass around a little bit of candy
12 to eat while we're listening because I eat a piece
13 of hard candy because it kind of helps me. I allow
14 juries to do the same thing. And so Jacob's got to
15 get some more this afternoon because my jury last
16 week ate all I had. That happens, you just got to
17 replenish it once in a while.

18 Now, I don't know whether y'all know any of the
19 parties in the courthouse, it doesn't matter. The
20 lawyers and the parties involved in the trials will
21 be standoffish. They won't -- good morning might be
22 the whole conversation. Do not take that as a sign
23 of bad manners. They're not allowed to talk to you
24 outside the courtroom. In here, y'all will get to
25 know them. They'll call witnesses, interact with

1 you and present the case.

2 But for purposes of the rules, they're not
3 allowed to speak to you outside, normally good
4 morning, good afternoon or, you know, something
5 along those lines. No one is supposed to try to
6 communicate with y'all outside the courtroom to
7 influence you. So if that happens, let Mr. Mills
8 know.

9 Now, red blazers, the bailiffs, it is their job
10 to communicate with you. They will meet and greet
11 you coming in the door, how you doing, you're on the
12 fourth floor. They'll get you in here and all that
13 sort of stuff. So they will be very pleasant and
14 greet you and try to help you out and make you
15 comfortable, that's what they do. The lawyers and
16 the parties are not allowed to do that. He is --
17 more or less, that's his job and so he'll take good
18 care of you, I promise.

19 I think those are my preliminary instructions.
20 So y'all follow Mr. Mills. He'll take you to the
21 back, show you where the jury room is. That's where
22 you report tomorrow morning first thing.

23 All right. Y'all are free to go on. See you
24 in the morning.

25 **MR. KIRKLAND:** Your Honor, one issue before

1 they leave.

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

5 **THE COURT:** All right. Mr. Barnes, one of my
6 potential witnesses -- I say my potential witnesses,
7 I read a list of them -- may have worked with you a
8 time in the past. Did you recognize him? I don't
9 think he recognized you till after you came up.

10 **JUROR:** No.

11 **THE COURT:** Okay. Anyway, if you have worked
12 with one of the investigators in the past, would
13 that create an issue for you being fair and
14 impartial to both sides?

15 **JUROR:** Is it -- I think Kevin looks familiar
16 here.

17 **THE COURT:** That's the one.

18 **JUROR:** Yeah, I --

19 **THE COURT:** Well, the fact that y'all are
20 guessing, tells me y'all haven't seen each other in
21 a while.

22 **JUROR:** Yeah. Well, I've not seen him dressed
23 up so nicely. That will not create an issue for me
24 whatsoever.

25 **THE COURT:** All right. We're good?

1 Okay. That's all I need to know. I need good
2 listeners. I don't want anybody influenced the
3 wrong way and that's perfect. It must have been a
4 long time ago.

5 **JUROR:** It's been a few months, several months.

6 **THE COURT:** I worked at the Winn-Dixie when I
7 was a youngster and I see some fellows still working
8 there and they still speak. We had good times.

9 All right. Y'all are free to go. Follow Mr.
10 Mills.

11 (Jury excused for the day.)

12 **THE COURT:** All right. So we've got a pretrial
13 issue or two that we're going to do at two o'clock
14 when our witnesses are here. So we're down till
15 2:00?

16 **MS. RANKIN:** Yes, sir.

17 **THE COURT:** All right. I've got an
18 appointment, like I said, at 1:00. I'll try to be
19 here at two o'clock sharp. We'll get to work and
20 get that done and move on.

21 (Whereupon, there was a luncheon recess.)

22 **THE COURT:** What did y'all tell me we needed
23 this afternoon? A Biggers hearing?

24 **MS. RANKIN:** Your Honor, we have a Biggers
25 hearing and I believe that Mr. Kirkland wanted to .

1 suppress the search. We'll do it however Your Honor
2 prefers. I think we can do it -- all of the
3 testimony at once and then just pull the motions
4 out.

5 **THE COURT:** Okay. I've got to hear the facts
6 to decide. All right. Let's go. Call your
7 witness.

8 **MS. RANKIN:** All right. State calls Caitlin
9 Voravudhi.

10 **THE COURT:** And, for the record, I pronounced
11 her name correctly during the voir dire.

12 **MS. RANKIN:** You did. I gave you a
13 pronunciation.

14 **THE COURT:** And it worked like a charm.

15 CAITLIN VORAVUDHI,

16 having been duly sworn, testified as follows:

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

19 **THE WITNESS:** My name is Caitlin Voravudhi.
20 Last name is V-o-r-a-v-u-d-h-i.

21 DIRECT EXAMINATION

22 BY MS. RANKIN:

23 **Q** Officer Voravudhi, you work at Lexington Police
24 Department?

25 **A** Yes, ma'am.

1 Q And you were involved in this case, the
2 responding officer?

3 A Yes, ma'am.

4 Q Who did you make contact with at the Grease
5 Monkey?

6 A I spoke to Terry Rice, who was the complainant.

7 Q Okay. And did you get the -- did you get the
8 story from him about what he saw?

9 A Yes, ma'am.

10 Q Okay. Did you watch a surveillance video?

11 A I did.

12 Q And did that surveillance video show a suspect?

13 A Yes, ma'am.

14 Q And was that suspect identified?

15 A Yes, ma'am.

16 Q And who identified the suspect?

17 A The complainant did, as well as other employees
18 at the incident location.

19 Q Okay. Do you remember the other employee?

20 A I believe his name was Anthony.

21 Q And Terry Rice is the complainant?

22 A Yes, ma'am.

23 Q And who did they identify him as?

24 A Curt Davis.

25 Q When you left Grease Monkey, where did you go?

1 A I went back on the road.

2 Q Did you do any further investigation in this
3 case?

4 A We did. We received a call that the subject
5 might have been staying at a hotel in the area.

6 Q Did you check the hotel?

7 A We did.

8 Q And what did you find?

9 A We found Mr. Davis staying at the hotel.

10 Q Was he the sole occupant of the room?

11 A Yes, ma'am.

12 Q Was the room registered in his name?

13 A It was.

14 Q When you made contact with him, what did you
15 observe?

16 A We observed him in the room. We also observed
17 the clothing that he was wearing in plain view in
18 the room, but we had placed him under arrest prior
19 to -- to that once we identified him positively.

20 Q So there was an arrest warrant for Mr. Davis
21 already in place?

22 A Yes, ma'am.

23 Q And what was that charge?

24 A Burglary second degree.

25 Q And you say the clothing was in plain view,

1 what clothing was that?

2 **A** The clothing observed in the video. It was an
3 orange long-sleeve T-shirt, as well as black
4 sneakers with green shoelaces.

5 **Q** Did the defendant make any statement to you?

6 **A** He advised he did not have anything to do with
7 the incident.

8 **Q** Did he ask you or give consent for you to
9 search his room?

10 **A** Once he was placed under arrest, he asked us to
11 gather his belongings to take with him to the jail.

12 **Q** Is that the clothing items you identified
13 earlier?

14 **A** Yes, ma'am.

15 **Q** And based on your investigation, those clothing
16 items were the same as the ones worn in the
17 surveillance video?

18 **A** Yes, ma'am.

19 **Q** Did you gather those clothing items?

20 **A** I did.

21 **Q** Place them into evidence?

22 **A** They were given to Corporal Sturges who
23 transported them to the police department while I
24 transported the subject to the jail. And then once
25 at the police department, I placed them into

1 evidence.

2 Q And that was the same clothing items you
3 gathered at the hotel?

4 A Yes, ma'am.

5 MS. RANKIN: Thank you. I don't have any
6 further questions.

7 CROSS-EXAMINATION

8 BY MR. KIRKLAND:

9 Q I'm not going to try to pronounce your name.

10 A It's Voravudhi.

11 Q Officer. All right. So you were -- you were
12 the responding officer that made that -- that went
13 to the scene originally, correct?

14 A The scene at Grease Monkey?

15 Q Grease Monkey.

16 A Yes, sir.

17 Q All right. And, at some point in time, did you
18 receive the call that someone had knew where Curt
19 Davis was?

20 A I did not. I got the information from my
21 sergeant.

22 Q You got the information from your sergeant.
23 Were you ever made aware of who had -- who the
24 tipster, I suppose, was?

25 A It was the original complainant.

1 Q Okay. The complainant.

2 All right. Now, so they made the call, told
3 you where he was, you went to his hotel room --

4 A Yes, sir.

5 Q -- correctly -- correct? Excuse me.

6 And when you got to the hotel room, tell me
7 what happened. You knocked on the door, I presume?

8 A Yes, sir.

9 Q When you knocked on the door, what happened
10 next?

11 A Mr. Davis answered the door. We asked for his
12 ID. We positively identified him and placed him
13 under arrest per the warrant.

14 Q At that moment, you placed him under arrest?

15 A Yes, sir.

16 Q Now, when you were -- when he was standing at
17 the door and he -- did he give you his ID?

18 A He did.

19 Q Did he have it in his pocket?

20 A I can't remember.

21 Q You don't remember?

22 A Yes, sir.

23 Q But he did hand you his ID?

24 A Yes.

25 Q You did correctly identify him?

1 **A** Uh-huh.

2 **Q** You did advise him that he had a warrant?

3 **A** Yes.

4 **Q** And then you did ask him to turn around, place
5 his hands behind his back?

6 **A** He was placed under arrest, yes.

7 **Q** Well, I'm asking did you say, you know, could
8 you please, you know, put your hands behind your
9 back, you're under arrest and that sort of thing?

10 **A** Yes, sir.

11 **Q** And all this occurred right there at the door?

12 **A** Yes, sir.

13 **Q** Okay. Now, at the time that he came to the
14 door -- well, I don't even need to go into that.

15 So the plain view that you're referring to,
16 when did the plain view occur? When did that occur?
17 When did you plainly view what was in that room? Or
18 could you see over his shoulder?

19 **THE COURT:** Let her answer it.

20 **MR. KIRKLAND:** Well, I just want to give her an
21 example of what I'm asking.

22 **BY MR. KIRKLAND:**

23 **Q** Did you have to go into the room? Did you see
24 over his shoulder or when did the plain view occur?

25 **A** We were able to see some items, I can't

1 remember which, from the doorway.

2 Q Okay. You don't recall which, though?

3 A I don't.

4 Q Do you remember where they were in the hotel
5 room?

6 A I can't.

7 Q Okay. That's fine.

8 MR. KIRKLAND: That's all the questions that I
9 have for this particular witness, Your Honor. Thank
10 you.

11 THE COURT: You can step down.

12 MS. RANKIN: State calls Mark Miramontes.

13 MARK MIRAMONTES,

14 having been duly sworn, testified as follows:

15 THE CLERK: Once seated, state your full name,
16 spelling your last.

17 THE WITNESS: My name is Mark Miramontes. Last
18 name is spelled M-i-r-a-m-o-n-t-e-s.

19 DIRECT EXAMINATION

20 BY MS. RANKIN:

21 Q Investigator Miramontes, you work for Lexington
22 Police Department?

23 A I do.

24 Q And you were the investigating officer on the
25 this case?

1 **A** Yes, ma'am.

2 **Q** What did you do when you responded to Grease
3 Monkey?

4 **A** I was the investigator on call that morning and
5 I was called by the sergeant on duty, Hazewinkel.
6 And when I got there, the reporting officer, Ms. --
7 Officer Voravudhi, was there already. And I was
8 explained what had happened, that somebody had gone
9 into the building. And I asked if there was any
10 video. They said there was. They were trying to
11 get somebody to show them how to -- they were trying
12 to get somebody on the phone to show them how to
13 download the video or review the video, and we
14 waited for a little bit. And as soon as the video
15 started, they -- they were able to identify the
16 individual on the video.

17 **Q** And when you say they, do you remember who that
18 was?

19 **A** Yes. It was the manager, Terry Rice, and the
20 -- I believe there was one other employee at the
21 time and it was Anthony McBee or something like
22 that, his last name. I'm trying to remember his
23 last name.

24 **Q** Brantley?

25 **A** Brantley. I'm sorry.

1 Q And you said they immediately identified --

2 A Yes. As soon as the video started playing,
3 they said, Oh, yeah, that's Davis. And watch this,
4 as soon as he walks in, he's going to start swaying
5 back and forth.

6 They just knew him as somebody that did a lot
7 of drinking at the time.

8 Q And when you watched the video, did you -- did
9 you see him swaying back and forth?

10 A Yes. He walks -- he walks over to the keypad,
11 the armed keypad on the wall. And when he -- when
12 he opens it up, he's trying to press the buttons,
13 and he's swaying back and forth like somebody that's
14 under the influence and he can't stand still. After
15 he presses the keys, he walks over to the register
16 and he tries -- he's also swaying again trying to
17 get the key to fit into the drawer to open it to get
18 the money out.

19 Q Did you make any suggestions to them as to who
20 to identify?

21 A No. No. They came out and said, oh, that's --
22 they identified him as soon as he walked in the
23 door.

24 Q And they identified him as Curt Davis, the
25 defendant?

1 **A** Yes, ma'am.

2 **Q** You pulled the surveillance video?

3 **A** I did.

4 (State's Exhibit Numbers 1 through 5,
5 photographs, marked for identification.)

6 **Q** I'm handing you State's 1 through 5. Are those
7 still photos from the surveillance?

8 **A** They are.

9 **Q** Is that the same individual that you saw on the
10 surveillance video?

11 **A** Yes.

12 **Q** Based on your investigation, did you swear out
13 an arrest warrant for Curt Davis?

14 **A** I did.

15 **Q** And for what charge?

16 **A** It was burglary second.

17 **Q** And when did you do the warrant?

18 **A** Right after I left, I went back to the police
19 department and I got the warrant and met with the
20 judge, Judge Jeffcoat, at the time.

21 **Q** So within an hour?

22 **A** Yes.

23 **MS. RANKIN:** Thank you. I have no further
24 questions.

25 **MR. KIRKLAND:** If I can have one moment, Your

1 Honor.

2 **THE COURT:** Sure.

3 **MR. KIRKLAND:** I may not have any questions,
4 but let me check something.

5 (Pause.)

6 **MR. KIRKLAND:** I don't have any questions for
7 this witness, Your Honor.

8 **THE COURT:** Step down.

9 **MS. RANKIN:** State calls Terry Rice.

10 TERRY RICE,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. RANKIN:

14 **Q** Spell your last name.

15 **A** Rice, Terry.

16 **Q** Mr. Rice, were you formerly employed at the
17 Grease Monkey?

18 **A** Yes, ma'am.

19 **Q** Were you employed there at the time of this
20 case?

21 **A** Yes, ma'am.

22 **Q** And what was your -- what was your role at
23 Grease Monkey at the time?

24 **A** I was store manager.

25 **Q** Okay. And what are some of your duties as

1 store manager?

2 A Closing, open, making sure employees are at
3 work on time.

4 Q And how do you know the defendant?

5 A He was my roommate and my assistant manager.

6 Q So he worked at Grease Monkey as well?

7 A Yes.

8 Q Was he working there at the time of this case?

9 A Yes.

10 Q He was an employee at this time?

11 A Yes, ma'am.

12 Q How long had it been since you had seen -- the
13 day of this incident, how long had it been since you
14 had seen Curt?

15 A I don't know.

16 Q Had there been a prior incident where Curt did
17 not show up for work?

18 A Yes.

19 Q Okay. And what was that incident?

20 A He was incarcerated.

21 Q Okay. Do you remember about how long that was?

22 A No, ma'am.

23 Q And how long would you say that you've known
24 Curt?

25 A Three years.

1 Q You spent a lot of time with him?

2 A Off and on.

3 Q So you would recognize his build?

4 A Yes, ma'am.

5 Q His movements?

6 A Yes, ma'am.

7 Q Did you open Grease Monkey that morning?

8 A Yes, ma'am.

9 Q And what did you observe?

10 A That the door was unlocked.

11 Q Did Mr. Davis have a key?

12 A That I know of.

13 Q Did you view a surveillance video in this case?

14 A Yes, ma'am.

15 Q Did you recognize the individual on that

16 surveillance video?

17 A Yes, ma'am.

18 Q And who did you recognize it as?

19 A Curt Davis.

20 Q Handing you State's 1 through 5. Are those

21 still shots from that surveillance?

22 A Yes, ma'am.

23 Q Do you recognize the individual in those still

24 shots?

25 A Yes, ma'am.

1 Q And who is that?

2 A Curt Davis.

3 Q Okay. And how are you able to recognize him?

4 A I noticed it by -- I noticed it by his shoes,
5 by the way he stands at the counter, the way he
6 walks.

7 Q You noticed that from the surveillance video?

8 A Yes, ma'am.

9 Q Did anybody make any suggestions to you that it
10 may be Curt? Did anybody tell you who it was?

11 A No.

12 Q And you told law enforcement?

13 A Yes, ma'am.

14 MS. RANKIN: Thank you. I don't have anything
15 further.

16 MR. KIRKLAND: Your Honor, once again, I may
17 not have questions. Let me think for half a second.

18 (Pause.)

19 CROSS-EXAMINATION

20 BY MR. KIRKLAND:

21 Q Let me ask you one question: Employees that
22 have keys to the Grease Monkey, those employees are
23 allowed to come into the building, correct?

24 A Yes.

25 MR. KIRKLAND: Okay. Thank you. No more

1 questions.

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

3 **MS. RANKIN:** Your Honor, State calls Anthony
4 Brantley. And if I can just have just a second.

5 (Pause.)

6 ANTHONY BRANTLEY,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Once you're seated, state your full
9 name, spelling your last on the record, please.

10 **THE WITNESS:** Yes, ma'am. Good afternoon.
11 Anthony Brantley, B-r-a-n-t-l-e-y.

12 DIRECT EXAMINATION

13 BY MS. RANKIN:

14 **Q** Mr. Brantley, were you formerly employed at the
15 Grease Monkey?

16 **A** That is correct.

17 **Q** At the time of this case?

18 **A** Yes, ma'am.

19 **Q** What was your role there?

20 **A** I was the assistant manager.

21 **Q** And what were some of your duties as assistant
22 manager?

23 **A** I open and close, handled till money, run the
24 daily operations of the shop pretty much.

25 **Q** And did you open or close the night before this

1 incident?

2 **A** Yes, I believe I did clo -- no, it might have
3 been -- it's been a long time ago, so I can't
4 remember. It was either one of us, one of the two.
5 I can't remember for sure. I think it was me and
6 that I locked up tight and, you know, did everything
7 the way it was supposed to be done, did it that way
8 every day.

9 **Q** Okay., And did you speak with Terry Rice the
10 next morning?

11 **A** Yes, ma'am. He called me -- I wasn't scheduled
12 to come in until later on that morning. And he
13 called me and asked me if I had entered the
14 premises. And I told him, No, I hadn't been there.

15 And he said that when he had entered, you know,
16 tried to get in the door, the door was already
17 unlocked, the alarm was turned off, which there's
18 only three people that had an alarm code to that
19 building, myself, Terry and Mr. Davis. And nor
20 Terry or I had been there prior to Terry calling me
21 and saying, hey, you know, this place has been
22 opened, money's missing, and I need you to come up
23 here.

24 **Q** And did you go up there?

25 **A** I sure did.

1 Q Did you view a surveillance video in this case?

2 A I sure did, yes, ma'am.

3 Q Did you recognize anyone on the surveillance
4 video?

5 A Yes, ma'am.

6 Q And who did you recognize?

7 A Curt Davis.

8 Q And how long have you known Curt Davis?

9 A I worked with Curt, alongside Curt, daily,
10 eight to ten hours a day, for probably about nine,
11 ten months, somewhere in that range.

12 Q So you're familiar with his build, his
13 movements?

14 A Yes, ma'am.

15 Q Did you see any of that on the surveillance
16 video?

17 A Yes, ma'am, I did.

18 Q Did anybody make any suggestions to you that it
19 might be him or tell you who to pick?

20 A No, ma'am.

21 Q This is State's 1 through 5. Are those still
22 shots of the surveillance?

23 A Yes, ma'am. That's the surveillance that I
24 personally cued up for the police.

25 Q And do you recognize the person in the

1 surveillance?

2 **A** Yes, ma'am, I do. That would be Mr. Davis.

3 **Q** Okay. And how are you able to recognize him?

4 **A** Just by his build and you can actually see his
5 face in the photo. And in the -- in the actual
6 video where there's movement, you can just tell it's
7 him by his gestures and his body language as the way
8 he moves. Like I said, I worked with him daily for
9 many hours a day every day and you get familiar with
10 people.

11 **Q** And Mr. Davis was an employee at one point?

12 **A** Yes, he was. He was actually the assistant
13 manager prior to myself being appointed to that
14 position, that's the reason he had a set of keys and
15 the code for the alarm. And he disappeared for a
16 while. And, you know, no call, no show 14 days in a
17 row, that's automatic termination. After three
18 days, you're terminated, and he didn't show up for
19 quite some time.

20 And then as far as what I had been told, I
21 don't know this for a fact, but I had been told that
22 he was incarcerated while he was absent.

23 **Q** But you know that he was terminated at the time
24 of this case?

25 **A** Yes, ma'am.

1 **Q** He was no longer an employee at Grease Monkey
2 on March 21st?

3 **A** That's correct. And I was actually appointed
4 to his position because he had been terminated.

5 **MS. RANKIN:** Thank you. I don't have anything
6 further.

7 CROSS-EXAMINATION

8 BY MR. KIRKLAND:

9 **Q** Just a few minutes ago, the prosecutor, I
10 think, talked to you in the hallway before your
11 testimony. Did she speak with you just a few
12 minutes ago before you --

13 **A** Yeah, briefly.

14 **Q** What did she ask you?

15 **A** She just asked me if Curt had been employed
16 there upon the incident that occurred.

17 **Q** I see.

18 **A** And I informed her outside that, no, he was
19 not.

20 **Q** And that's the only question that she asked
21 you?

22 **A** That -- yeah, that was it.

23 **Q** Okay. I assumed that was the question.

24 Now, you said that you were the assistant
25 manager?

1 **A** Yes, sir.

2 **Q** Now, Terry Rice, am I correct in saying that he
3 was the manager?

4 **A** He was the head manager, the shop manager.

5 **Q** So hiring and firing decisions would be Terry
6 Rice's decision and not your decision?

7 **A** That's correct.

8 **Q** So you would not have been -- you did not fire?

9 **A** No, sir, I did not. That was not on me. And
10 matter of fact, it's up to Terry in a way, but he
11 has to -- he would have to inform the corporate
12 office and corporate office --

13 **Q** I understand, but do you know whether he did
14 any of that or not?

15 **A** Corporate office, I know, terminated him for no
16 call, no show.

17 **Q** Well, how did you know that the corporate
18 office terminated him?

19 **A** Because I spoke to the regional manager, which
20 is named Brian, and Brian had informed me that Curt
21 was no longer there and that was -- like I said,
22 that was the reason that I was appointed to that
23 position.

24 **Q** But, ultimately, like I said, Terry Rice would
25 be the person, as the manager of the business, that

1 would know one way or the other whether somebody is
2 employed there or is not?

3 **A** That's correct.

4 **MR. KIRKLAND:** All right. That's all the
5 questions that I have.

6 **THE COURT:** Okay. You can step down.

7 **THE WITNESS:** Thank you, sir.

8 **MS. RANKIN:** Your Honor, I think we can clear
9 it up if I can recall Terry Rice.

10 **THE COURT:** I think it's pretty clear to me.
11 He knew who was working there because he's got the
12 job. He can argue it, but you can call Terry back,
13 but...

14 **MS. RANKIN:** State calls Terry Rice.

15 **THE COURT:** Mr. Rice, you're still under oath.
16 They've got a couple more questions for you, but
17 remember you've already been placed under oath.

18 TERRY RICE,
19 having been previously duly sworn, resumed the
20 witness stand and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. RANKIN:

23 **Q** Mr. Rice, I'd asked you before if Mr. Davis was
24 employed at the time of this incident. Mr. Davis
25 was an employee of Grease Monkey at one time; is

1 that correct?

2 **A** Correct.

3 **Q** At the time of this incident, was he an
4 employee of Grease Monkey?

5 **A** No, he wasn't.

6 **Q** And why was he terminated?

7 **A** He was terminated for no call, no shows.

8 **MS. RANKIN:** Thank you. I have nothing
9 further.

10 CROSS-EXAMINATION

11 BY MR. KIRKLAND:

12 **Q** Just a couple of minutes ago she asked you if
13 at the time of this incident, was he an employee of
14 Grease Monkey, and you said, yes, he was; is that
15 correct?

16 **A** Yes, I did.

17 **Q** Okay. So between the moment that you walked
18 out of this door, did anybody talk to you about this
19 case?

20 **A** No.

21 **Q** Nobody talked to you about this case?

22 **A** No.

23 **Q** So why now the change in your testimony?

24 **A** I am nervous. This is the first time I've ever
25 done this.

1 **Q** I understand that. So the first time you're
2 saying was not correct due to nervousness?

3 **A** Correct.

4 **MR. KIRKLAND:** No more questions, Your Honor.

5 **THE COURT:** Okay. You can step down.

6 **MS. RANKIN:** Thank you, Your Honor. No further
7 witnesses.

8 **THE COURT:** All right.

9 (Pause.)

10 **THE COURT:** Mr. Kirkland, what you -- we've got
11 a Biggers identification?

12 **MR. KIRKLAND:** Yes.

13 **THE COURT:** And we've got also the validity of
14 the search incident to arrest in the hotel room?

15 **MR. KIRKLAND:** Yes.

16 **THE COURT:** Argue whichever one you want.

17 **MR. KIRKLAND:** All right. I'll go ahead and
18 start with -- and I think that this case gives us a
19 good outline and I'm not going to -- so much of the
20 case is about a hotel room --

21 **MS. RANKIN:** Which one are you doing first?
22 Search?

23 **MR. KIRKLAND:** I'm going to do search first, do
24 suppression first.

25 So I'm not going to just read it to you, you

1 can just read it at your leisure, of course, Your
2 Honor. But it gives us a good idea of how, in South
3 Carolina -- this is a Court of Appeals case from --
4 2014 it was decided. And here's the issue that I
5 have -- let me find my notes again, Your Honor --

6 When they approached the room, Your Honor, they
7 immediately are able to identify him as the suspect
8 standing at the door. He presents them with an
9 identification. The officer gave no testimony
10 whatsoever that -- that he posed any sort of danger
11 or that they felt threatened in any way, so there
12 was no reason for a protective sweep.

13 Additionally, he was arrested right there at
14 the door itself; therefore they -- and they could
15 see into the room they said. Consequently, there
16 was no indication that there were any other people
17 in the room, unlike the case that I handed up to
18 you.

19 Since there was no particular danger at the
20 time and the arrest was made immediately and there
21 was no one else in the room and therefore exigent
22 circumstances would not have existed that evidence
23 would have been destroyed, my argument is, and I'm
24 really basing it on the analysis of this case
25 despite the fact that the defendant lost in that

1 case, the analysis, my -- my understanding is, Your
2 Honor, that in a situation such as that, there is
3 absolutely no reason to not go ahead and get a
4 search warrant prior to entering the room.

5 They did testify, and I -- and I will admit
6 that this is -- it's on a tape. They asked him, at
7 some point in time after he's being arrested and
8 dragged out, Do you want us to leave your stuff here
9 or do you want us to take your stuff? And he does
10 say, Yes. I will argue that that is not the sort
11 of -- that's not consent to search. That was
12 consent, potentially, to, you know, bag up his stuff
13 and put it into his property, but that's not consent
14 to search. I mean, the option was leaving
15 everything there.

16 There's also on -- there's also on that tape,
17 which you're going to see tomorrow -- well, no, you
18 may not ever see that tape. I'm not going to get
19 into that since you haven't seen the tape, but
20 nevertheless, Your Honor, she testified that he had
21 said to get the stuff, but that was the situation.

22 So my argument is that he was identified
23 immediately, and we also are running now into, which
24 I had not anticipated, and I wish I had the case
25 with me. I know that a friend of mine actually

1 argued this case. It was the Supreme Court case in
2 South Carolina, I believe, that limits knock and
3 talks. There was no indication other than an
4 anonymous tip that he was staying at a particular
5 hotel room. We don't know --

6 **THE COURT:** It wasn't anonymous; they
7 identified him.

8 **MR. KIRKLAND:** Correct, but what I'm saying is
9 they identified him when they -- the door of the
10 hotel room. There was no indication that they spoke
11 to the manager, confirmed what room he is. There
12 was no testimony whatsoever.

13 The only thing that we conclude they could --
14 could conclude, based on what we heard, is that they
15 just approached the room, because there's no
16 testimony of how they got to a particular room, no
17 testimony. So, therefore, I would argue that this
18 is also, potentially, an illegal knock and talk
19 based on -- and I can get you the name of that case.
20 I actually was looking at it yesterday and didn't
21 think it was going to be an issue, but it has now
22 become an issue, so I'll find the issue {sic}.

23 So I'm going to argue that this is an illegal
24 knock and talk based on this South Carolina case
25 that I'll get to you, that there was no -- that he

1 was identified instantly, was arrested in the
2 doorway, that she couldn't remember -- she said she
3 saw some items, but she could remember nothing about
4 where they were or what they were, just items that
5 were involved in the case, the arrest was made
6 immediately, no other people were in the room;
7 therefore, there was no danger, no protective sweep,
8 no exigent circumstances, they had him. There was
9 nothing to stop them from getting a warrant.

10 **THE COURT:** And so you're making this argument
11 over the T-shirt and the tennis shoes?

12 **MR. KIRKLAND:** Yeah. That's a big deal.

13 **THE COURT:** Okay. But they're in the video.

14 **MR. KIRKLAND:** They're in the video, correct,
15 but the question is were they seized from the hotel
16 room?

17 **THE COURT:** I get that, but even if you
18 suppress these, the case can still go forward
19 because she's got two people identifying him saying
20 they know what he looks like, smells like, walks
21 like, talks like, identify him {indicating} like
22 that.

23 **MR. KIRKLAND:** Correct.

24 **THE COURT:** Okay. I'm with you.

25 **MR. KIRKLAND:** Yeah, I'm with you. But the

1 shoes and the shirt are a very, very, very big deal
2 in this case, as you'll see as the case goes on.
3 And what I'm suggesting is that this was an improper
4 search -- it was an improper knock and talk and then
5 it turned into an improper search of his room. And
6 that's our position on that.

7 **THE COURT:** I don't believe it was a knock and
8 talk because they had an arrest warrant in their
9 hand, but I want to see that case where you're
10 describing that warrantless search.

11 **MR. KIRKLAND:** I'll get it for you tonight,
12 Your Honor.

13 **THE COURT:** Okay. I guess I'll take that under
14 advisement, but --

15 **MR. KIRKLAND:** Yes, sir.

16 **MS. RANKIN:** Your Honor, he's talking about the
17 case that says that you have to have, essentially,
18 something more than an anonymous tip. The case
19 hinges on a drug tip that they just went up to the
20 door and knocked on it. I think this is absolutely
21 something more than that. You've got the
22 complainant, who's already identified him, calling
23 and saying, We think he's staying over here. I
24 think that's absolutely something more --

25 **THE COURT:** Okay. That may be factually

1 specific. Okay, I got that.

2 What about the ID? What are you going to argue
3 on that?

4 **MR. KIRKLAND:** Oh, you want me to go ahead and
5 get into that one?

6 **THE COURT:** Yeah. Because, I mean, I can't --
7 I can't decide this one because you've got to get me
8 that case.

9 **MR. KIRKLAND:** Okay. Oh, I got you.

10 The identification, what I'm going to argue,
11 Your Honor, is that these folks had not seen him for
12 some period of time. They admitted to have not
13 being -- seeing him for some period of time and that
14 -- and for that reason alone, we're arguing that the
15 identification should be excluded.

16 **THE COURT:** Well, they both testified, and the
17 officer did too, said the two people that worked
18 there identified him and immediately from his
19 mannerisms, his gestures, his body posture, his
20 gate, his swaying because they knew him to be a
21 heavy drinker. I mean, they gave numerous things.
22 They weren't guessing. They knew spot on who it
23 was. I mean, that's what they said.

24 **MR. KIRKLAND:** Right. And I have to argue what
25 I have and this is what I have.

1 **THE COURT:** Well, I think as far as
2 identification, they're going to clear the threshold
3 under Biggers. They didn't hesitate in their
4 identification of him. They knew him, had
5 experience working with him ten hours a day, seven,
6 eight months. Even some lapse in time, they still
7 will have that knowledge in their head to be able to
8 make an effective identification. And it was on the
9 video at the gas station; it wasn't in a police
10 station where it was set up.

11 So identification I don't think I can go with
12 you, but I'll sit on the search warrant.

13 **MS. RANKIN:** Your Honor, I do have more to add
14 for the search warrant.

15 **THE COURT:** Okay.

16 **MS. RANKIN:** Your Honor, I would argue under
17 the plain view doctrine, that a search warrant was
18 unnecessary. At the point the officer testified
19 that they could see -- when they went to the hotel
20 room, they could see some items that were the same
21 as the surveillance at that point. I don't think
22 there was any indication of any sort of protective
23 sweep for them even really entering the room for any
24 reason. It was -- it was in plain view. They could
25 see it.

1 **THE COURT:** And he requested them pick it up.

2 **MS. RANKIN:** Right. I think at that point a
3 search warrant is unnecessary. And then I would
4 also argue, Your Honor, under inevitable discovery,
5 that they would have found this.

6 **MR. KIRKLAND:** And, of course, Your Honor,
7 since I'm bringing you a case, anything that she
8 wants to add tomorrow is fine because I didn't
9 provide that.

10 **THE COURT:** She's got the stronger position,
11 that's why I'm giving you the chance.

12 **MR. KIRKLAND:** Oh, absolutely. I understand,
13 Your Honor.

14 **THE COURT:** She's got plain view. The
15 officer's there, the reason, the defendant said
16 something to him initiating him to go pick it up. I
17 mean, there's all sort of reasons.

18 **MS. RANKIN:** Your Honor, I would argue also
19 under consent, I think the question of, you know,
20 him saying, Gather my things, will -- lucky for the
21 police that it was the things that he wore in the
22 surveillance, I don't think you get to pick and
23 choose.

24 **THE COURT:** Let me read his case in the morning
25 and I'll make a very quick decision.

1 **MS. RANKIN:** I can get you the case now --

2 **MR. KIRKLAND:** I can probably e-mail it to you
3 -- or, yeah. I can get it for you before the end of
4 the day.

5 **LAW CLERK:** I'm looking at State v. Bash
6 dealing with knock and talks. It's a 2015 --

7 **THE COURT:** I don't think it's a knock and
8 talk.

9 **MR. KIRKLAND:** Is Dayne Phillips the arguing
10 attorney on that one for the Office of Appellate
11 Defense?

12 **THE COURT:** They knew who they were looking
13 for. They knew his name, had an arrest warrant in
14 their hand. I mean, that's not really investigating
15 a crime, they're looking for the guy.

16 **MR. KIRKLAND:** Right. It's an arrest warrant
17 verus a search warrant. And I understand that
18 there's a big difference between the two because the
19 arrest warrant does not automatically give you the
20 right to search a room. And, in fact, when you read
21 through that case that I gave you, the Court of
22 Appeals took these issues very, very seriously as to
23 whether or not they could enter the room and search
24 the room once they've already detained the person.
25 And so I just ask you to look at that case and the

1 case we're going to get to you.

2 **THE COURT:** I may call my former law clerk
3 because he was clerking for the judge that authored
4 that opinion when that opinion was written.

5 **MS. RANKIN:** Your Honor, I'll get you that case
6 this afternoon.

7 **THE COURT:** All right.

8 **MR. KIRKLAND:** I just have two quick motions in
9 limine, I mean, just things that I just want to
10 bring up. I know that the prosecutor is going to
11 probably take care of this, but I want to put it on
12 the record.

13 The first thing that I'm concerned about is the
14 officers had not ever seen Curt Davis before that we
15 have heard yet, not during this hearing. So I'm
16 going to object if they try to identify him on the
17 tape. My understanding is that they can say that,
18 oh, yeah, I watched the tape and this is -- and
19 that's definitely the guy. There's nothing I can do
20 if you've already ruled on the Neil v. Biggers of
21 the people at the Grease Monkey. So I would make a
22 motion in limine to prevent them to -- from not
23 identifying him or attempting to identify him.

24 And I will also make a motion in limine that no
25 reference be made to swaying and drinking. The

1 reason why is that is far more prejudicial than
2 probative. And as you just said yourself, based on
3 your ruling on the Neil v. Biggers, there's a list
4 of six things. This swaying and drinking thing is
5 just 404(b) type of stuff and I would argue that it
6 was more -- it's more prejudicial than probative.

7 **MS. RANKIN:** I didn't plan on asking if he was
8 an alcoholic.

9 **MR. KIRKLAND:** If they say it however, the
10 bell's been rung and then I have to --

11 **THE COURT:** I tend to agree with you on the
12 identification by the police officers because they
13 didn't know him. They asked for his identification
14 when they got to the hotel room to verify it was
15 him.

16 The other two guys, that's probably what she's
17 going to lead with. I don't want to try her case
18 for her, but, I mean, she's got good identification.
19 She's going to get by Biggers, but --

20 **MR. KIRKLAND:** Right. And I'm good with the
21 identification. You've ruled that it's admissible.
22 The only part of the identification that I'm
23 concerned with is an allegation that he was an
24 alcoholic and they recognized his sway.

25 **THE COURT:** She said she's not going to ask if

1 he was an alcoholic. She's not going to do that.

2 **MS. RANKIN:** No, sir.

3 **MR. KIRKLAND:** Well, we'll just see if it gets
4 said tomorrow.

5 **MS. RANKIN:** Well, I mean, here's the thing:
6 If he asks it --

7 **MR. KIRKLAND:** I'm not asking it.

8 **MS. RANKIN:** -- he can't jump up and say, I
9 want a mistrial. So if he elicits that response by
10 his question, Your Honor, that's his bell that he
11 rang.

12 **MR. KIRKLAND:** Oh, I've done it 19 years, I
13 know those rules. I'm careful.

14 I think that's it. I think we're done.

15 **MS. RANKIN:** Your Honor, I do have the priors.
16 And what I've done, I have -- I've redacted certain
17 information out of it, so just a sentence, social
18 security number, that kind of thing. We plan to
19 introduce these as the certified priors with
20 redactions.

21 **MR. KIRKLAND:** One issue concerning that --
22 this is not the law in South Carolina, I am fully
23 aware of that -- we are willing to stipulate to
24 those convictions, and I would ask the Court to
25 issue an order that -- that the prosecution honor

1 our stipulation. They are not currently required
2 under the law to do that, but, obviously, that makes
3 it way more difficult for us to get, what I would
4 call, a fair trial.

5 **THE COURT:** Well, I agree with you, that's the
6 law of the case and she's got to prove her case and
7 she gets to introduce them if she's got certified
8 copies of priors properly redacted.

9 **MS. RANKIN:** Thank you, Your Honor.

10 **MR. KIRKLAND:** Thank you, Your Honor. We're
11 done.

12 **THE COURT:** All right. I want to read that
13 case, but just so you know, unless it really flips
14 me around, I'm going to go along with the plain
15 view --

16 **MR. KIRKLAND:** Oh, I understand.

17 **THE COURT:** -- the officer saw it, she was
18 there, she's making a lawful arrest and she saw it,
19 and he kind of acquiesced by asking them to get it.
20 So that's my lean just so I don't catch you off
21 guard tomorrow. If your case is really good, then I
22 may change my mind, but it seems to me it was plain
23 view based upon the testimony I've heard. So let's
24 read your case and I'll decide that in the morning
25 first thing.

1 **MR. KIRKLAND:** We appreciate it, Your Honor.

2 Thank you.

3 **THE COURT:** I'll be here probably before 9:00
4 if we need anything pretrial.

5 **MS. RANKIN:** Thank you, Your Honor.

6 **MR. KIRKLAND:** What time would you like the
7 attorneys to show up?

8 **THE COURT:** 9:00.

9 **MR. KIRKLAND:** Thank you, Your Honor. We
10 appreciate it.

11 **MS. RANKIN:** Thank you, Your Honor.

12 (The proceedings were concluded for January
13 23, 2017.)

14 (The following proceedings were held on
15 January 24, 2017.)

16 (State's Exhibit Numbers 6 through 10 marked
17 for identification.)

18 **MR. KIRKLAND:** Before we bring the jury in, do
19 you want to finish up these last couple of things on
20 the record?

21 **THE COURT:** What do we've got to finish up?

22 **MR. KIRKLAND:** I think we've decided on the
23 motion in limine.

24 **THE COURT:** Yes.

25 **MR. KIRKLAND:** Then if that's the case, then

1 the only thing I need to do is just put on the
2 record the case I handed up yesterday. I just need
3 to put on the record what I handed to you and that
4 -- that was sent to you today, just put the name of
5 that case, and that'll be it and we're ready to
6 roll.

7 **THE COURT:** All right. Put it on. Let's go.

8 **MR. KIRKLAND:** Yesterday I brought up a case,
9 Your Honor, and --

10 **THE COURT:** Just quote it, don't dillydally,
11 they're coming.

12 **MR. KIRKLAND:** It was State v. Johnson, 763
13 S.E.2d 36.

14 **THE COURT:** All right. You're protected.

15 (The jury enters the courtroom at 9:29 A.M.)

16 **THE COURT:** All right. Folks, it's time to
17 begin the case. What's going to happen first is the
18 State gets to provide some opening comments to you
19 as to kind of introducing the case to you, then the
20 defense gets to do the same thing. Once they're
21 done with that, the State will begin calling its
22 witnesses. Just give your careful attention to the
23 parties.

24 And understand, if a legal issue comes up,
25 meaning one side or the other objects, say, I

1 object, Judge, that's against Rule 403, normally I
2 can rule right there on the spot. Sometimes the
3 lawyers want to be heard more fully to say, Rule 403
4 means and what I -- and give me a fuller explanation
5 of why they believe it is or it isn't applicable.
6 When I have to hear that, I've got to give a full
7 record to them, meaning give them an opportunity to
8 be heard fully.

9 When that happens, I won't need y'all in here.
10 So I'll say, I've got a matter of law, y'all step in
11 the jury room, let me hear what they're going to
12 say, because they'll banter back and forth a little
13 bit and that's not part of your job, it's my job.

14 Y'all's job is to answer the questions of fact
15 that the case presents. And by doing that, y'all
16 get to listen to the witnesses and see the witnesses
17 and evaluate it after you hear it all and you get my
18 closing instructions.

19 So with those preliminary instructions, y'all
20 please stand. Ms. Frick will place you under oath.

21 (The jury was duly sworn at 9:31 A.M.)

22 **THE COURT:** All right. Ms. Rankin.

23 **MS. RANKIN:** Thank you. May it please the
24 Court.

25 **THE COURT:** Yes, ma'am.

OPENING STATEMENT

MS. RANKIN: Good morning.

I'm an avid reader. And I read a book recently and the author made a note, it was a crime novel, the author made a note that every once in a while, someone will do something so direct and so obvious that it is no more than what it appears. There's no magic. There's no trickery. There's no diving deep, pulling at straws trying to figure out what happened. What you see is what you get. And it reminded me of this case.

On March 21st, 2015, the defendant, Curt Davis, went into the Grease Monkey right here in Lexington and he stole money out of the till. The defendant was a former employee of the Grease Monkey. And you'll hear from employees who will verify that he worked there at one time, but did not work there on the day of this incident. He didn't have permission to be there. He went in and he took something that wasn't his.

Now, you'll hear from law enforcement, Mark Miramontes from Lexington Police Department. He'll tell you that he went to the Grease Monkey and he dusted for prints, didn't find any. And you'll see a surveillance video and you'll see why, because

1 when someone is doing something they're not supposed
2 to do, they cover up as much as they can. And
3 you'll see the defendant on the video with his hands
4 covered with a shirt sleeve when he's touching
5 things. That's not what people do when they're at a
6 place doing something they should be doing.

7 You'll hear from Caitlin Voravudhi from the
8 Lexington Police Department. She'll tell you that
9 she watched the surveillance as well. And when they
10 found the defendant, they found clothing that was
11 very similar to the clothing that was in the
12 surveillance video.

13 And you'll be able to see all of this and judge
14 for yourself. But just remember that something
15 sometimes is what it seems; it is exactly what you
16 see. So I'd ask that you listen closely to all of
17 the testimony, look at all of the evidence, and at
18 the end of this case, I'll come back before you and
19 ask that you find the defendant guilty of burglary
20 second degree. Thank you.

21 **THE COURT:** Thank you, ma'am.

22 Mr. Kirkland.

23 **MR. KIRKLAND:** Thank you, Your Honor. May it
24 please the Court.

25 **THE COURT:** Yes, sir.

1 **MR. KIRKLAND:** I actually agree with virtually
2 everything that Casey Rankin just said except for --
3 with one exception, Curt Davis is not the person
4 that robbed or -- I shouldn't use the term robbed --
5 burglarized the Grease Monkey. This case is a --
6 it's not unique, but it is a little bit different
7 than a lot of the cases that run through this
8 courtroom.

9 In the -- I would say at least 70 percent of
10 the time, there is somebody that makes a complaint
11 or the police are called and there are witnesses to
12 what occurred. In this situation, there were
13 absolutely no witnesses. No one was present at the
14 Grease Monkey at the time that the Grease Monkey was
15 burglarized.

16 So the only thing that they have as direct
17 proof, and you're going to see these bags over here
18 are bags of evidence that she was referring to, and
19 they're not into evidence yet so I won't start
20 showing you these things, but we're going to start
21 looking at them later. And the reality is this:

22 The workers at the Grease Monkey, what they did
23 was they came in the morning, after they noticed
24 that the -- the money was missing out of the till,
25 they called the police. The police came out. And

1 the Grease Monkey employees had a video, they had
2 video surveillance of the business. And the Grease
3 Monkey employees looked at the video and they said
4 to themselves, I think I recognize that guy, and I
5 think it's Curt Davis. I think it's a guy that
6 we -- you'll hear all this -- I think it's a guy
7 that used to work here some months ago.

8 You're going to hear the police officers that
9 went out to the -- they located Curt Davis just a
10 few hours later, from what I recall, at a hotel and,
11 at that time, the officers asked Curt Davis to
12 identify himself. He gave them his identification.
13 They had already obtained an arrest warrant for him,
14 and so they arrested him right there on the spot.

15 Now, why I say this is somewhat interesting and
16 a little bit different than some cases is there is
17 absolutely -- you're the jury, you're the judges.
18 No police officer is a judge. The only thing that a
19 police officer does in a case is they determine if
20 probable cause exists that a crime may have been
21 committed.

22 Now, probable cause is the absolute lowest
23 standard there is in the law. There just has to be
24 any evidence whatsoever to support the fact that a
25 group of judges, you 12 and the alternate, if the

1 alternate ends up making it on the jury, the only
2 thing that the police do is they don't decide guilt
3 or innocence, they don't decide what the facts are.
4 All they do is gather up the evidence, they bring it
5 here, they show it to you and then you folks are the
6 judges.

7 So the police, my understanding is they're
8 going to say is they recovered some clothing that
9 was similar. Well, that's not for them to determine
10 whether this clothing appeared similar or not that
11 they recovered out of Curt Davis' room.

12 The workers at the Grease Monkey are going to
13 say that they thought that they recognized him.
14 Quite frankly, they don't even need to testify to be
15 perfectly honest with you because all of the
16 evidence that they relied on to make a determination
17 in their head that Curt Davis may have been the
18 person that committed this, you're going to actually
19 get to physically see it yourself because this is
20 what they saw and they are not judges. They are
21 witnesses, and they're police officers that simply
22 gather evidence to present to you.

23 So the only thing that we're asking this jury,
24 and this is the only thing that I -- and it's an
25 unusual situation -- is you look at the evidence,

1 you look at the video tape, you look at the various
2 pieces of evidence that make it into evidence, I
3 don't know what will or what will not, you look at
4 that evidence yourself and you determine yourself.
5 Don't rely on anybody's opinion, don't rely on any
6 statements that I think, I recognize, whatever, look
7 at it yourself. Curt Davis is right here.

8 Matter of fact, walk over here, Curt. Come
9 over here and stand by me right here.

10 This is Curt Davis. This is him, okay? Now,
11 you've got to decide if this guy right here is the
12 guy that was on the video tape. I'm not going to go
13 into any details about the video tape because I'm
14 going to talk to you about that at the end just as
15 Casey Rankin, Assistant Solicitor Casey Rankin,
16 mentioned to you.

17 Once you've seen the evidence, we're going to
18 start talking about exactly what sort of arguments
19 we have that -- of course, I'm going to argue that
20 that is not Curt Davis on the tape and she's going
21 to argue that it is Curt Davis on the tape, but our
22 arguments are not evidence. Nothing that I'm saying
23 to you is evidence. In fact, what I'm trying to do
24 is get you to focus on the actual evidence itself,
25 which is contained right here on this table.

1 Those witnesses, their primary purpose is going
2 to be to say that, yes, this is the stuff that we
3 recovered; yes, that goes into evidence. Look at
4 the -- look at the various pieces. You determine if
5 that's -- if the shirt is, in fact, similar that
6 they recovered from the hotel room.

7 Look at Curt Davis right here. I mean, I want
8 you to look at him right now, and I'm going to bring
9 him back up again at the end of the case. And I
10 want you to determine if you can tell beyond a
11 reasonable doubt that this is the guy on the tape
12 and if you can tell beyond a reasonable doubt that
13 the clothing that they found in his room was the
14 clothing that they claim was being worn at the time
15 of the burglary. That's all that we're asking.
16 We're asking you to be the jurors.

17 The oath that you just took, all I'm asking is
18 that you uphold it. And we believe at the end of
19 this jury {sic}, if you look at the evidence
20 yourself, you don't get influenced by other people's
21 opinions about the evidence, that you form your own
22 opinion as a judge of the facts, that you will, at
23 the end of this case, acquit Curt Davis. Thank you.

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

25 **MS. RANKIN:** State calls Anthony Brantley.

1 ANTHONY BRANTLEY,
2 having been duly sworn, testified as follows:

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

5 **THE WITNESS:** Yes, ma'am. Good morning.
6 Anthony Gene Brantley, B-r-a-n-t-l-e-y.

7 DIRECT EXAMINATION

8 BY MS. RANKIN:

9 **Q** Mr. Brantley, what do you do for a living?

10 **A** I'm a mechanic.

11 **Q** Were you an employee at the Grease Monkey?

12 **A** Yes, ma'am.

13 **Q** Were you an employee at the Grease Monkey on
14 March 21st, 2015?

15 **A** Yes, ma'am, I was.

16 **Q** And what were -- what were your duties?

17 **A** I was the assistant manager, open and close,
18 daily operations of the business, and also working
19 on customers' cars.

20 **Q** Did you open or close the business before this
21 incident?

22 **A** Yes, ma'am. Truthfully -- actually, I don't
23 remember if I closed or not. It was between me and
24 a co-worker, but, you know, the same procedures are
25 done by both of us every single day and night. It's

1 a way it's set up to be done by the company, so
2 either one would have done the exact same way.

3 Q And who is the other employee?

4 A Terry Rice.

5 Q And what are the procedures for opening or
6 closing?

7 A When you close, you count down the till, count
8 up your receipts, make sure all the numbers match,
9 make sure everything is equal and even, put it in an
10 envelope, make sure you keep out \$150 for till so
11 you can start the business the next morning. And
12 then when you come in the next morning, you count
13 that money out, make sure it's the way it was when
14 you left it, or whoever left it the night before,
15 make sure it's all even, and then open the doors and
16 start business.

17 Q So \$150 is left in the till every night?

18 A Yes, ma'am.

19 Q Now, what time does Grease Monkey open and
20 close for the day?

21 A They open at 8:00 and close at 6:00.

22 Q And that's every day, seven days a week?

23 A No. They're closed on Sundays. And they close
24 at 5:00 on Saturday, I'm sorry.

25 Q Did you get a phone call in regards to this

1 case?

2 **A** I did. I was home getting ready; I was coming
3 in later that day. Mr. Rice had called me and asked
4 me if I had been inside the shop, you know, prior to
5 him arriving there that morning. I informed him
6 that I had not; I had not been there since the
7 previous day. And he told me that he needed me to
8 come in, that something had gone down and we needed
9 to call the police. And I headed up there.

10 **Q** And when you got there, you said something had
11 gone down. What did you learn had gone down?

12 **A** When I spoke with Mr. Rice, he had informed me
13 that when he arrived at the shop that morning, the
14 front door was unlocked, which would not be done by
15 any -- either manager or assistant manager. It
16 would have been locked upon leaving the premises the
17 previous night. Said the alarm was turned off and
18 that the cash drawer, when he went straight to the
19 cash drawer, because that's the first thing he went
20 to when he, you know, saw that everything was open,
21 the cash -- the cash drawer was completely empty.

22 **Q** Do you have surveillance at Grease Monkey at
23 the time?

24 **A** Yes, ma'am, we sure did.

25 **Q** And did you pull that surveillance?

1 **A** I sure did.

2 (State's Exhibit Number 11, video, marked
3 for identification.)

4 **Q** Handing you what's been marked for ID as
5 State's 11. Do you recognize that?

6 **A** I do.

7 **Q** And is that the surveillance that you pulled?

8 **A** That is the surveillance that I pulled.

9 **Q** And did you review that surveillance at my
10 request?

11 **A** Yes, ma'am, I did.

12 **Q** Are those your initials?

13 **A** They are.

14 **Q** Stating that you have reviewed it?

15 **A** That is correct. Yes, they are.

16 **Q** And has that surveillance been altered or
17 manipulated in any way?

18 **A** No, not at all.

19 **MS. RANKIN:** Your Honor, at this time, the
20 State would move State's 11 into evidence.

21 **THE COURT:** Any objection?

22 **MR. KIRKLAND:** Your Honor, as long as that's
23 the same video that was provided to me, then no
24 objection.

25 And it appears to be. No objection.

1 **THE COURT:** 11 is admitted without objection.

2 (State's Exhibit Number 11, video, admitted
3 into evidence.)

4 (During the playing of State's Exhibit
5 Number 11, the following occurred.)

6 BY MS. RANKIN:

7 **Q** All right. What are we looking at here?

8 **A** Okay. That is the view from the camera in the
9 corner that -- it faces down at the cash register,
10 the till box or, you know, the register/till box,
11 the same thing, and the computer. And that's where
12 the customers are rung in and out, all the
13 information for the vehicle's put in. Then there's
14 a printer out inside the bays of the shop that
15 prints out the vehicles' information and fill
16 capacities and fluid capacities and all that, and
17 all the service information.

18 And that would be the waiting area where the
19 chairs are lined up against the wall.

20 **Q** Mr. Brantley, you see the time stamp in the
21 corner?

22 **A** Yes, ma'am.

23 **Q** Is that time stamp accurate?

24 **A** No. It was an hour off because of the daylight
25 savings.

1 Q And which way an hour?

2 A I think it was an hour up. It should have been
3 one hour down from that.

4 Q Mr. Brantley, do you recognize the person on
5 that surveillance?

6 A I do.

7 Q And who is that person?

8 A That is Mr. Curt Davis.

9 Q The same Curt Davis that's here today?

10 A Yes, ma'am.

11 Q And how do you know Curt?

12 A I worked with Curt for several months at Grease
13 Monkey and, you know, hung out outside of work too,
14 had barbecues together and things. So I got to know
15 him pretty good.

16 Q So y'all were also friends?

17 A Yes.

18 Q And you worked with this man day in and day out
19 for several months, hung out with him outside of
20 work?

21 A Yes, ma'am.

22 Q How are you able to recognize him on that
23 surveillance?

24 A Well, like you said, worked with him several
25 months and outside of work hanging out, you can look

1 at him by his body language, just the way he carries
2 himself. And, you know, anybody can see that, even
3 though he's kind of got his face covered there, that
4 that's him with facial hair.

5 Q So even with a cap pulled halfway over, you
6 know his face?

7 A Yes, ma'am.

8 Q And what is he doing here? What is on the side
9 there?

10 A Right there is where the alarm code panel is.
11 That's where you would go in to turn the alarm off
12 so that it wouldn't ring out and sound and, you
13 know, get authorities to show up to the premises.

14 Q And do you know what the defendant's job title
15 was when he worked at Grease Monkey?

16 A When he was employed there, he was the
17 assistant manager. So he had a set of keys and
18 alarm code.

19 Q So he would have known how to turn it off?

20 A Absolutely.

21 Q He would have known how to get in the front
22 door?

23 A Yes, ma'am.

24 Q The set of keys that he had, did they also
25 include a key to the till?

1 **A** Yes, ma'am, they did. But it -- one of the
2 procedures at night when you close up is even though
3 you're leaving that money in the till, you leave the
4 till closed but ajar so that if something like this
5 was to happen, they don't damage anything trying to
6 steal the money. Because they would rather lose,
7 you know, according to the corporate office, they'd
8 rather lose \$150 cash rather than have to replace --

9 **MR. KIRKLAND:** Objection; hearsay.

10 **THE COURT:** It's procedure. It's not -- it's
11 not going to be a factual issue, I don't think.

12 (State's Exhibit Number 11 was concluded.)

13 BY MS. RANKIN:

14 **Q** Mr. Brantley, I'm handing you what's been
15 marked State's 1 through 5 for identification. Do
16 you recognize those?

17 **A** Yes, ma'am.

18 **Q** And what are those?

19 **A** Those are stills of the footage that we just
20 watched.

21 **MS. RANKIN:** Your Honor, at this time, the
22 State would move State's 1 through 5 in evidence.

23 **MR. KIRKLAND:** No objection.

24 **THE COURT:** No objection, 1 through 5 are in.

25 (State's Exhibit Numbers 1 through 5,

1 photographs, admitted into evidence.)

2 BY MS. RANKIN:

3 Q Is that Curt Davis?

4 A That appears to be him.

5 Q Do you recognize that person?

6 A I do.

7 Q Who is it?

8 A That is Curt Davis.

9 Q And that person?

10 A That is Curt Davis.

11 Q And that person?

12 A Once again, Curt Davis.

13 Q And that person?

14 A And that's Curt Davis on his way out the door.

15 Q We paused a moment ago and you said you could
16 see half his face?

17 A Yeah.

18 Q You can see a little better there. And you
19 recognize that face as the defendant?

20 A Yes, ma'am, I do.

21 Q Now, the surveillance system at Grease Monkey,
22 do you have any knowledge of what it was before it
23 was this one?

24 A Yeah. It was actually a very poor surveillance
25 system, and it wasn't recorded. It had a box there

1 for recording, but it was faulty and that was --
2 that surveillance system was existing prior to the
3 corporate company taking it over, because it was a
4 privately-owned business and then he sold it to a
5 corporate. And the corporate company came in and
6 replaced the whole surveillance system throughout
7 the shop.

8 Q And at the time of this incident, was the
9 defendant an employee of Grease Monkey?

10 A No, ma'am, he wasn't, not when the cameras were
11 replaced.

12 Q At the time that he was an employee, which
13 surveillance system was in place?

14 A The very poor, shotty, black and white,
15 nonrecorded, you know.

16 Q And was it common knowledge that this system
17 was in place and was poor?

18 A Well, I mean, if you worked there, you would
19 see that. And we all knew it didn't record. It was
20 basically just there as a deterrent for anybody who
21 would think of doing something silly as to, you
22 know, rob the business. It was -- that's basically
23 all it was at that time.

24 Q So between the time the defendant was
25 terminated and the time of this incident, the entire

1 surveillance system got revamped?

2 **A** Yes, ma'am.

3 **Q** Into what it is now?

4 **A** Yes, ma'am.

5 **MS. RANKIN:** Beg the Court's indulgence.

6 (Pause.)

7 **Q** In looking at the surveillance and these still
8 shots, is there anything that stands out to you as
9 being similar to what you know Curt Davis to wear or
10 do?

11 **A** The shoes I'd seen him wear before with those
12 -- the neon laces in them. And other than that, you
13 know, the clothes, I've never seen those clothes,
14 but I -- you can tell by the way that, like I said,
15 he moves and walks and stands, just his actions.

16 **Q** So his body movements and the shoes?

17 **A** Yeah.

18 **Q** And you'd see him wear those shoes every day?

19 **A** Not every day, but I'd seen them previous.

20 **Q** And what about the shoes stood out to you?

21 **A** The laces on them.

22 **MS. RANKIN:** Thank you, Mr. Brantley. I don't
23 have anything further.

24 **MR. KIRKLAND:** May it please the Court, Your
25 Honor.

1 **THE COURT:** Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. KIRKLAND:

4 **Q** I noticed when you saw the first picture, you
5 identify -- so from that picture right there, you
6 said that you can identify Curt Davis? His face
7 isn't visible. You can identify him from that?

8 **A** Well, from that -- from that point there, no, I
9 couldn't, but once he rounded the door --

10 **Q** You said just a moment ago that you could
11 recognize him?

12 **A** I watched the -- I've watched the surveillance
13 video several times. I pulled it up for the
14 officers and went over it and over it to make sure
15 that I wasn't fingering the wrong person.

16 **Q** Now, the -- you mention that Curt Davis was
17 terminated at some point in time. Do you recall,
18 and you don't -- just as best you can, do you recall
19 the date of that termination or the month maybe?

20 **A** I know it was -- this took place in March, so
21 it was at least a month and a half, two months.

22 **Q** At least?

23 **A** At least.

24 **Q** Could have been a little more?

25 **A** Could have been more, could have been less.

1 I'm not positive.

2 Q Okay. Now, the -- you mentioned that it
3 appeared that the person that had walked into the
4 business, at some point, sort of goes over to the
5 right side of the screen. I won't pull it back up.

6 A Right.

7 Q Everybody remembers it. And you said that that
8 is the location of the key pad, the key code?

9 A That's correct.

10 Q Now, does every employee have the same key code
11 to get to turn off the alarm?

12 A No.

13 Q So each individual employee has a separate key
14 code?

15 A As far as I know. Now, I don't know if -- I
16 was given a code and that was the code I used. It
17 was never determined whether, to my knowledge,
18 whether each one of us had a separate code or
19 didn't. I just knew the code that I was given was
20 the one I used when I was appointed to that position
21 as assistant manager.

22 Q Now, do you remember the date that they
23 installed the new security system?

24 A I couldn't tell you a date. I know it was in
25 between Mr. Davis' termination and --

1 Q But you can't remember the dates?

2 A -- the incident. No, I couldn't tell you the
3 dates exactly.

4 Q Was the key code pad or any part of that part
5 of the security upgrade?

6 A No, just the surveillance cameras and the
7 recording system.

8 MR. KIRKLAND: All right. Thank you very much.
9 That's all the questions that I have.

10 MS. RANKIN: No redirect, Your Honor.

11 THE COURT: You may step down.

12 MS. RANKIN: State calls Terry Rice.

13 TERRY RICE,

14 having been duly sworn, testified as follows:

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

17 THE WITNESS: Terry Rice, R-i-c-e.

18 DIRECT EXAMINATION

19 BY MS. RANKIN:

20 Q Are you nervous, Mr. Rice?

21 A Yes, ma'am.

22 Q All right. What do you do for a living?

23 A I'm a lead tech at my job.

24 Q And where is your job?

25 A Express Oil Change.

1 Q And were you an employee at Grease Monkey at
2 one point?

3 A Yes, ma'am.

4 Q Were you an employee there at the time of this
5 case?

6 A Yes, ma'am.

7 Q And what was your job title?

8 A Manager.

9 Q And what were some of your duties as manager of
10 Grease Monkey?

11 A Open, close responsibilities, customer service.

12 Q Were you also responsible for hire and fire of
13 employees?

14 A Yes, ma'am.

15 Q And can you tell me if you closed up shop, what
16 was the procedure for that?

17 A Closing up shop is counting drawer, making sure
18 you make the deposit and setting the alarm to go
19 home.

20 Q Do you remember who closed on the night before
21 this incident?

22 A Yes, ma'am.

23 Q And who was that?

24 A Myself.

25 Q And did you close by the same procedure as you

1 always do?

2 **A** Yes, ma'am.

3 **Q** And do you leave money in the till?

4 **A** Yes, ma'am.

5 **Q** How much money do you leave?

6 **A** It was a hundred dollars.

7 **Q** Did you work the next day?

8 **A** Yes, ma'am.

9 **Q** Were you the first person at the shop?

10 **A** Yes, ma'am.

11 **Q** What did you observe when you got to the shop?

12 **A** I noticed that the door was unlocked and that

13 the alarm wasn't going off to turn it off.

14 **Q** And what did you do when you noticed the door

15 was unlocked and there was no alarm going off?

16 **A** I proceeded to look at the drawer, proceeded to

17 do my daily duties.

18 **Q** Did you notice anything missing from the

19 drawer?

20 **A** Yes, ma'am.

21 **Q** And what was missing?

22 **A** Money.

23 **Q** Was all of it missing, some of it missing?

24 **A** Just the roll of quarters and the ones, fives

25 dollar bills.

- 1 Q So all of the cash was missing?
- 2 A Yes, ma'am.
- 3 Q Did you make a phone call to Anthony Brantley?
- 4 A Yes, ma'am.
- 5 Q Had he been in the shop --
- 6 A No, ma'am.
- 7 Q -- to your knowledge?
- 8 A No, ma'am.
- 9 Q Was the defendant, Curt Davis, an employee at
- 10 the Grease Monkey at one point?
- 11 A At one point, he was.
- 12 Q At the time of this incident, was he an
- 13 employee of the Grease Monkey?
- 14 A No.
- 15 Q Do you remember when he was terminated?
- 16 A I don't know.
- 17 Q Do you remember if it was one month, two
- 18 months? I don't need an exact day.
- 19 A I would say two to three months.
- 20 Q And as manager of the Grease Monkey, were you
- 21 in charge of the hiring and firing?
- 22 A Yes, ma'am.
- 23 Q Did you terminate the defendant's employment?
- 24 A Yes, I did.
- 25 Q And why did you terminate it?

- 1 **A** It was a no call, no show.
- 2 **Q** That means he didn't show up for work?
- 3 **A** Exactly.
- 4 **Q** Did you meet with Anthony Brantley the morning
- 5 of this incident?
- 6 **A** Yes, ma'am.
- 7 **Q** Did you watch the surveillance video with
- 8 Mr. Brantley?
- 9 **A** Yes, ma'am.
- 10 **Q** And in that surveillance video, could you
- 11 identify the individual that was on it?
- 12 **A** Yes, ma'am.
- 13 **Q** And who was that individual?
- 14 **A** Curt Davis.
- 15 **Q** Now, you said that he was an assistant manager
- 16 there. How long had you known Mr. Davis?
- 17 **A** I've known Mr. Davis three years.
- 18 **Q** And is that strictly from working with him?
- 19 **A** I was his roommate also.
- 20 **Q** So you not only saw him day in and day out at
- 21 work, you saw him day in and day out at home?
- 22 **A** Yes, ma'am.
- 23 **Q** For three years?
- 24 **A** Yes, ma'am.
- 25 **Q** Would you say that you know him well?

1 **A** Yes.

2 **Q** Do you recognize this photo?

3 **A** Yes, ma'am.

4 **Q** Can you identify the person in that photo?

5 **A** Yes, ma'am.

6 **Q** Who is that?

7 **A** Curt Davis.

8 **Q** And how are you able to identify him?

9 **A** I know the clothing and the tennis shoes that
10 he wears.

11 **Q** When you watched the surveillance, did you
12 notice anything about his demeanor or his actions
13 that seemed familiar?

14 **A** Just the way he conducted himself.

15 **Q** And you would know that because you spent day
16 in, day out for three years with this man?

17 **A** Yes, ma'am.

18 **Q** So it's safe to say that you know the way he
19 moves?

20 **A** Yes, ma'am.

21 **Q** And the way he --

22 **MR. KIRKLAND:** Objection, Your Honor. That's
23 leading.

24 **THE COURT:** Sustained. Rephrase.

25 BY MS. RANKIN:

1 Q Do you know his habits and the way he conducts
2 himself?

3 A I don't know.

4 Q You know the way he moves?

5 A Yes, ma'am.

6 MR. KIRKLAND: Your Honor, that's leading
7 again.

8 MS. RANKIN: It's a yes or no question.

9 MR. KIRKLAND: Correct, which is why it's
10 leading. The answer is contained --

11 THE COURT: We don't need commentary. That's
12 not a leading question if he knows.

13 Rephrase your question and move on.

14 BY MS. RANKIN:

15 Q Did the defendant, at the time of this
16 incident, have permission to enter the Grease
17 Monkey?

18 A No, ma'am.

19 Q Was the defendant in possession, as far as you
20 recall, of a set of keys to Grease Monkey?

21 A As far as I know.

22 Q As manager of the Grease Monkey, if you
23 terminated someone, would you generally get the keys
24 back from them?

25 A Yes.

1 Q Did you get keys back from the defendant?

2 A No.

3 Q As far as the defendant's position at Grease
4 Monkey, would he have had the ability to turn the
5 alarm off?

6 A Yes.

7 Q To your knowledge, from the time of his
8 termination to the time of this incident, were the
9 alarm codes changed?

10 A Yes.

11 Q Do you know if the particular one that was used
12 in this incident was changed from the time of his
13 termination?

14 A No.

15 MS. RANKIN: Thank you. I have nothing
16 further.

17 CROSS-EXAMINATION

18 BY MR. KIRKLAND:

19 Q I want to talk to you first about the key
20 codes. You mentioned that the key codes had been
21 changed subsequent to this incident, correct?

22 A Excuse me?

23 Q The key codes for the alarm system, you
24 mentioned just a moment ago that the key codes had
25 been changed since the date of the incident, the

1 burglary?

2 A Yes.

3 Q Okay. Now, the time of his termination, I
4 think you said, was maybe a couple of months. You
5 don't remember the exact period of time?

6 A Exactly.

7 Q So you hadn't seen him till that period of
8 time?

9 A Exactly.

10 Q So -- so the video you're claiming is him,
11 there had been at least a two month or so period
12 since you'd last seen him?

13 A Correct.

14 Q Now, you also mentioned, and I'm just curious
15 about this, you also mentioned that there was a
16 hundred dollars in the till, but didn't you tell the
17 police there was \$150 in the till?

18 A We kept a hundred dollars in the till.

19 Q So you'd have no idea where the number 150 came
20 from?

21 A Correct.

22 Q Now, do you recall that the police asked you to
23 write a statement for them? Do you remember doing
24 that?

25 A Yes.

1 **Q** Let me hand you this statement and just let you
2 look through it. I don't intend to put it into
3 evidence, but I just want to let you refresh your
4 recollection.

5 **A** (Witness reviewing document.)

6 **Q** You remember that?

7 **A** Yes, I do.

8 **Q** Now, in this statement -- in fact, it's just a
9 two or three-sentence statement. All you say in the
10 statement is that you recognized him as Curt Davis;
11 is that correct?

12 **A** Yes.

13 **Q** You don't mention anything about his body
14 movement; you don't mention any particulars about
15 his appearance; you don't mention anything else
16 other than you just simply recognize him?

17 **A** Yes, sir.

18 **Q** Okay. All right.

19 **MR. KIRKLAND:** Let me check one thing, Your
20 Honor. I may have more questions.

21 (Pause.)

22 **MR. KIRKLAND:** That's all I have, Your Honor.
23 Thank you.

24 **THE COURT:** Any redirect?

25 **MS. RANKIN:** Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. RANKIN:

Q The hundred dollars that you mentioned, is that the cash money that was kept in the register?

A Yes, ma'am.

Q Was there also coins?

A Yes, ma'am.

Q Was there a certain amount of coins that was kept?

A No, just to make it a hundred dollars.

Q So the coins plus the cash made it a hundred dollars?

A Yes, ma'am.

MS. RANKIN: Thank you. I have nothing further.

THE COURT: Okay. You can step down.

MS. RANKIN: State calls Caitlin Voravudhi.

CAITLIN VORAVUDHI,

having been duly sworn, testified as follows:

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

THE WITNESS: Caitlin Voravudhi. Last name V-o-r-a-v-u-d-h-i.

1 DIRECT EXAMINATION

2 BY MS. RANKIN:

3 Q You're an officer at Lexington Police
4 Department?

5 A Yes, ma'am.

6 Q And what's your rank?

7 A Patrolman first class.

8 Q And how long have you been in law enforcement?

9 A Four and a half years.

10 Q All of them at Lexington PD?

11 A Yes, ma'am.

12 Q And what are some of your training experiences
13 in law enforcement?14 A I have advanced roadside impairment training,
15 school resource officer, basic training.

16 Q Were you the responding officer in this case?

17 A Yes, ma'am.

18 Q And where did you respond to?

19 A The Grease Monkey on Sunset Boulevard.

20 Q Is that in Lexington County?

21 A Yes, ma'am.

22 Q And what was the nature of the call?

23 A It was a burglary.

24 Q And when you got there, who did you speak with?

25 A I spoke with a complainant, Terry Rice.

1 **Q** Okay. And did you learn from him what
2 happened?

3 **A** Yes, ma'am.

4 **Q** And as a result, what were your actions?

5 **A** I observed the scene, observed the cash
6 register in which the complainant, Mr. Rice, stated
7 that the cash was missing from, and he also showed
8 me the door code panel. At that point, I started
9 taking pictures of the incident location and then
10 had notified my sergeant to notify an investigator
11 to come out.

12 (State's Exhibit Numbers 12 through 16,
13 photographs, marked for identification.)

14 **THE COURT:** Any objection?

15 **MR. KIRKLAND:** Which picture is it? Just so I
16 know what you're talking about.

17 Oh, it's just those? Got it.

18 **THE COURT:** Any objection to those?

19 **MR. KIRKLAND:** No, sir.

20 BY MS. RANKIN:

21 **Q** Handing you State's 12 through 16, and those
22 are the photos that you took?

23 **A** Yes, ma'am.

24 **Q** Did you notice any sign of forced entry?

25 **A** I did not.

1 **THE COURT:** All right. They've been
2 identified. You've got no objection to them coming
3 in?

4 **MR. KIRKLAND:** No, I don't have any objection
5 whatsoever.

6 **THE COURT:** All right. They're in without
7 objection.

8 (State's Exhibit Numbers 12 through 16,
9 photographs, admitted into evidence.)

10 BY MS. RANKIN:

11 **Q** What is that a picture of?

12 **A** That is the back door to the Grease Monkey.

13 **Q** And that?

14 **A** That was how the cash register was found.

15 **Q** And that?

16 **A** That is the alarm panel.

17 **Q** And that one?

18 **A** That is the front desk inside the Grease
19 Monkey.

20 **Q** And, finally, that one?

21 **A** That is the same door of the back of the Grease
22 Monkey.

23 **Q** At some point, was an identification made?

24 **A** Yes, ma'am.

25 **Q** And was it made from the surveillance video?

1 **A** Yes, ma'am.

2 **Q** And who was identified?

3 **MR. KIRKLAND:** Objection, Your Honor. That's
4 hearsay.

5 **THE COURT:** Who's not hearsay. It's overruled.
6 She can answer that.

7 **THE WITNESS:** Curt Davis.

8 BY MS. RANKIN:

9 **Q** And did you know Curt Davis?

10 **A** I do not.

11 **Q** And upon learning the identity, what did you
12 do?

13 **A** I notified the investigator.

14 **Q** And, at some point, did you get a tip on this
15 case?

16 **A** Yes.

17 **Q** Who did that tip come from?

18 **A** It came from the original complainant, Terry
19 Rice.

20 **Q** And as a result of that tip, what did you do?

21 **A** He had called Investigator Miramontes and
22 advised him that he thought he was staying --

23 **MR. KIRKLAND:** Objection, Your Honor. That's
24 hearsay.

25 **THE COURT:** That will be hearsay, so sustained.

1 **THE WITNESS:** We were advised that he might be
2 staying in a hotel.

3 **MR. KIRKLAND:** Objection, Your Honor. That's
4 still hearsay.

5 BY MS. RANKIN:

6 **Q** As a result of the tip that you got, what did
7 you do?

8 **A** I went to the hotel.

9 **Q** And what hotel was that?

10 **A** It was the Quality Inn.

11 **Q** And did you check the Quality Inn for the
12 defendant?

13 **A** I did.

14 **Q** And was he there?

15 **A** He was.

16 **Q** Handing you what's been marked as State's 6.
17 Are you familiar with this?

18 **A** Yes, ma'am.

19 **Q** And what is it?

20 **A** It's a map of the town of Lexington, part of
21 it.

22 **Q** Okay.

23 **MR. KIRKLAND:** Without objection, Your Honor,
24 to this exhibit.

25 **THE COURT:** The map will be in as Number 6

1 without objection.

2 (State's Exhibit Number 6, map, admitted
3 into evidence.)

4 BY MS. RANKIN:

5 Q Ms. Voravudhi, can you come down?

6 A (Witness leaves the witness stand.)

7 Q Can you point out on this map where the Grease
8 Monkey would be in Lexington?

9 A It's right here {indicating}.

10 Q Can you point out where the Quality Inn would
11 be?

12 A Right here {indicating}.

13 Q And that's where the defendant was found?

14 A Yes, ma'am.

15 Q And how did you verify that he was there?

16 A We went to the front office and asked the
17 clerk.

18 (Witness resumes the witness stand.)

19 Q When you went to the front office and asked the
20 clerk, did you go to the room?

21 A We did.

22 Q When you approached the room, what did you do?

23 A Knocked on the door and Mr. Davis answered,
24 asked for his ID and positively identified him, and
25 then placed him under arrest per the warrant.

1 Q Was there an arrest warrant already in place?

2 A Yes, ma'am.

3 Q For this case?

4 A Yes, ma'am.

5 Q Was he the sole occupant of the room?

6 A He was.

7 MR. KIRKLAND: Objection, Your Honor,
8 foundation for that.

9 BY MS. RANKIN:

10 Q When you checked the front desk, who was the
11 room registered to?

12 A Curt Davis.

13 MR. KIRKLAND: That is -- that's hearsay.

14 THE COURT: I don't understand the foundation
15 objection, so I'm going to overrule it. Sustain it
16 as to hearsay on the room. She knocked on the door;
17 it's already in.

18 MR. KIRKLAND: Well, Your Honor, I do have an
19 issue with that. If we may approach for half a
20 second?

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

24 BY MS. RANKIN:

25 Q Was Curt Davis the sole occupant of the room?

1 **A** Yes, ma'am.

2 (State's Exhibit Number 17, photograph,
3 marked for identification.)

4 **Q** I'm handing you what's been marked for ID as
5 State's 17.

6 **MR. KIRKLAND:** No objection to that, Your
7 Honor.

8 **THE COURT:** 17's admitted without objection.

9 (State's Exhibit Number 17, photograph,
10 admitted into evidence.)

11 BY MS. RANKIN:

12 **Q** Is that Curt Davis on the day of the incident?

13 **A** Yes, ma'am.

14 **Q** That's the way that Curt Davis looked that day?

15 **A** Yes, ma'am.

16 **Q** That you arrested him?

17 **A** Yes, ma'am.

18 **Q** That's the same Curt Davis that's in here?

19 **A** Yes, ma'am.

20 **Q** When you approached him at the room, did you
21 notice anything else?

22 **A** I observed that he was wearing the black shoes
23 with the lime green shoe laces that I also observed
24 in the video.

25 **Q** I'm handing you what's been marked as State's

1 8. Did you collect those shoes?

2 **A** I did.

3 **Q** And are those the same shoes that you
4 collected?

5 **A** Yes, they are.

6 **Q** And they're similar to the ones that are in the
7 surveillance video?

8 **A** Yes, ma'am.

9 **MS. RANKIN:** Your Honor, at this time, the
10 State would move State's 8 into evidence.

11 **MR. KIRKLAND:** No objection.

12 **THE COURT:** No objection to 8.

13 **MR. KIRKLAND:** Oh, subject -- subject to my
14 pretrial motions.

15 **THE COURT:** Sure, subject to that.

16 **MR. KIRKLAND:** So I just want to make
17 contemporaneous --

18 **THE COURT:** Subject to your objection, they're
19 admitted subject to that.

20 **MR. KIRKLAND:** Thank you.

21 **THE COURT:** We made the record yesterday.

22 (State's Exhibit Number 8, shoes, admitted
23 into evidence.)

24 BY MS. RANKIN:

25 **Q** Officer Voravudhi, will you remove those shoes?

1 **A** (Witness complies.)

2 **Q** And these are the shoes that are similar to
3 these in the video?

4 **A** Yes, ma'am.

5 **Q** And they were on his feet?

6 **A** Yes, ma'am.

7 **Q** Did you collect other items that were similar
8 to what you observed in the video?

9 **A** We did. We collected the orange shirt as well.

10 **Q** Handing you State's 7. Is that the shirt you
11 collected?

12 **A** Yes, ma'am.

13 **MS. RANKIN:** Your Honor, at this time, the
14 State would move State's 7 into evidence.

15 **MR. KIRKLAND:** No objection.

16 **THE COURT:** Is that subject to your objection
17 you made yesterday?

18 **MR. KIRKLAND:** Of course, subject to the
19 objection. Thank you, Your Honor.

20 **THE COURT:** Very well. They're admitted
21 subject to the objection.

22 (State's Exhibit Number 7, shirt, admitted
23 into evidence.)

24 **BY MS. RANKIN:**

25 **Q** Ms. Voravudhi, can you come down and hold that

1 up for me?

2 A (Witness leaves the witness stand.)

3 Q That's the shirt you collected that's similar
4 to the shirt in the surveillance?

5 A Yes, ma'am.

6 Q Is there anything else in the surveillance that
7 is similar?

8 A Yes, the pen. You can see the pen on the
9 shirt, and it was on the shirt when we collected it
10 as well.

11 Q And where was that shirt located?

12 A It was in the hotel room.

13 Q The hotel room with the defendant?

14 A Yes, ma'am.

15 Q And he was the only one in that room?

16 A Yes, ma'am.

17 Q Thank you. You can have a seat.

18 A (Witness resumes the witness stand.)

19 Q I'm handing you State's 9 and 10. Do you
20 recognize those items?

21 A I do.

22 Q And what are those items?

23 A One is a Grease Monkey card and the other is a
24 set of keys.

25 Q And did you collect those from the hotel room

1 as well?

2 **A** I did.

3 **MS. RANKIN:** Your Honor, at this time, the
4 State would move State's 9 and 10.

5 **MR. KIRKLAND:** Subject to my objection
6 yesterday.

7 **THE COURT:** Subject to your objection, they're
8 admitted.

9 (State's Exhibit Number 9, keys, and State's
10 Exhibit Number 10, Grease Monkey card, admitted into
11 evidence.)

12 BY MS. RANKIN:

13 **Q** Does that card say Curt Davis?

14 **A** It does not.

15 **Q** But it does say Grease Monkey?

16 **A** Yes, ma'am.

17 **MS. RANKIN:** Beg the Court's indulgence.

18 (Pause.)

19 **MS. RANKIN:** Thank you, Officer. I don't have
20 anything further.

21 **MR. KIRKLAND:** If I may have one moment, Your
22 Honor.

23 **THE COURT:** Sure.

24 (Pause.)

25

1 CROSS-EXAMINATION

2 BY MR. KIRKLAND:

3 Q Officer, I have, I think, only two questions,
4 but it's concerning your report. And I'll hand you
5 a copy of it so you can refresh your recollection.

6 A Okay.

7 MR. KIRKLAND: May I approach, Your Honor?

8 THE COURT: Sure.

9 BY MR. KIRKLAND:

10 Q I'm going to stand beside you, if you don't
11 mind.

12 A Yeah.

13 Q Okay. So we can look at it together.

14 A Sure.

15 Q And I can point it out to you.

16 You mentioned in the report that \$150 were
17 missing?

18 A I remember that being in there, yes.

19 Q You remember that being in there?

20 A Uh-huh.

21 Q And where did that information come from?

22 A It came from the complainant.

23 Q Now, you also have in your report the height
24 and weight of Curt Davis. The height, what do you
25 list the height as?

1 **A** Five nine.

2 **Q** And what is the weight?

3 **A** 250.

4 **Q** Now, where did you get that information?

5 **A** Probably off his ID.

6 **Q** Probably off his ID, but you don't recall?

7 **A** No, sir, I don't recall.

8 **Q** You didn't get that information from the
9 witnesses?

10 **MS. RANKIN:** Objection, Your Honor. May we
11 approach?

12 **THE COURT:** Sure.

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

16 **MR. KIRKLAND:** That's all the questions that I
17 have for this witness, Your Honor.

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

19 Do we need a break? We've been going a little
20 more than an hour. Y'all step in the jury room,
21 have you back in here shortly. You can't discuss
22 the case quite yet.

23 (The jury retires to the jury room.)

24 **THE COURT:** Ms. Rankin, are you going to put up
25 the other officer too? It was a good time for a

1 break. How much more you got? Are you going to do
2 the other police officer or not?

3 **MS. RANKIN:** He should be fairly quick.

4 **MR. KIRKLAND:** We're about to be done, Your
5 Honor.

6 **THE COURT:** Jacob's got the charge done because
7 he's just putting in burglary second.

8 **LAW CLERK:** No lesser included?

9 **MR. KIRKLAND:** There's no way I can argue
10 lesser included once she puts the two aggravating
11 factors in.

12 **MS. RANKIN:** Your Honor, I did want -- because
13 it falls under two different aggravating factors, I
14 think we're free to argue either one or both --

15 **MR. KIRKLAND:** I have no basis for arguing,
16 unfortunately.

17 **THE COURT:** I agree with you.

18 **MS. RANKIN:** I would just like the Court to
19 take judicial note of the sunrise time of Lexington
20 on March 21st at 7:28 A.M.

21 **MR. KIRKLAND:** And we consent to that.

22 **THE COURT:** All right. Let's take a couple
23 minutes.

24 (Brief recess.)

25 (State's Exhibit Numbers 18 and 19, sentence

1 sheets, marked for identification.)

2 (The jury returns to the courtroom.)

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

4 **MS. RANKIN:** State calls Mark Miramontes.

5 MARK MIRAMONTES,

6 having been duly sworn, testified as follows:

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

9 **THE WITNESS:** Name is Mark Miramontes. Last
10 name's spelled M-i-r-a-m-o-n-t-e-s.

11 DIRECT EXAMINATION

12 BY MS. RANKIN:

13 **Q** You work at Lexington Police Department?

14 **A** Yes, ma'am.

15 **Q** And what is your rank?

16 **A** I'm an investigator.

17 **Q** How long have you been in law enforcement?

18 **A** Fifteen years.

19 **Q** All of them in Lexington?

20 **A** Yes, ma'am.

21 **Q** Were you the investigating officer on this
22 case?

23 **A** I was.

24 **Q** How did you become involved?

25 **A** I was the investigator on call, so I was called

1 by the supervisor on duty, which was Rick
2 Hazewinkel. He was a sergeant. He called me and
3 said that he had a burglary and I needed to come out
4 and process.

5 Q Do you remember what address you responded to?

6 A It was the Grease Monkey on Sunset Boulevard.
7 I'm trying to remember the numerics. I'm sorry.

8 Q Is that in Lexington County?

9 A Yes, within the town of Lexington, that's
10 located in Lexington County.

11 Q And when you got to the Grease Monkey, what did
12 you do?

13 A Officer Voravudhi had already started taking
14 pictures of the place. And when I arrived, I went
15 ahead and started processing to see if I could get
16 some fingerprints or anything off the register or
17 the key pad, anything that would have --, or the
18 door, anything that anybody would have touched.

19 Q And were you able to lift any prints?

20 A I did not.

21 Q Did you watch the surveillance video in this
22 case?

23 A I did. It took a little while for them to pull
24 it up. The employee didn't know how to get it
25 working. So he got on the phone and got with the

1 company, I believe, and they walked him through. He
2 was able to pull up the video. And then I realized
3 why I wasn't able to get any fingerprints.

4 Q And why was that?

5 A The individual that had came into the business
6 earlier that morning was -- had pulled his sleeves
7 over his hands and he was using that not to leave
8 any fingerprints or anything.

9 Q And was there an identification made?

10 A Yes. As soon as he walked into the business,
11 they said that that was one of their ex-employees
12 that used to work there, Curt Davis.

13 Q And when you say they, who do you mean?

14 A It was Mr. Rice and Mr. Brantley.

15 Q And based on your investigation, did you take
16 out an arrest warrant?

17 A I did right after we finished processing and I
18 went back to the office and I printed out a warrant.
19 I met with Judge Jeffcoat and explained the whole
20 case to him and he went ahead and signed the
21 warrant.

22 Q Rewinding to the surveillance video quickly,
23 the time stamp on the surveillance video, was that
24 accurate?

25 A No. It was an hour difference. I think it's

1 because of the time change, the fall back and spring
2 forward kind of thing. It was an hour difference.
3 And the video shows four -- 4:00 A.M., but it was
4 actually 5:00 A.M.

5 Q And do you happen to recall what time sunrise
6 was that day?

7 A It was at 7:28 A.M.

8 Q Do you remember what date that was?

9 A That was on the 21st of March 2015.

10 Q Handing you what's been marked for ID as
11 State's 18 and 19. Do you recognize those?

12 A Yes, ma'am.

13 Q And what do you have?

14 A It is two charges, prior charges, that
15 Mr. Davis, Curt Davis, had. One was in Florence and
16 the other one's in Richland County. They're two
17 burglary charges.

18 Q And how do you know that that was Curt Davis?

19 A With the name and date of birth, pretty much
20 everything matches on him.

21 MS. RANKIN: Your Honor, at this time, the
22 State would introduce State's 18 and 19.

23 MR. KIRKLAND: And, Your Honor, I did make a
24 motion yesterday. So subject to my motion, I
25 object, but you handled it.

1 **THE COURT:** All your bases are protected on the
2 record as to what was put on the record yesterday.
3 And these, 17 and 18, are admitted subject to that
4 pretrial ruling -- 18, 19. I'm sorry.

5 **MR. KIRKLAND:** Thank you, Your Honor..

6 (State's Exhibit Numbers 18 and 19, sentence
7 sheets, admitted into evidence.)

8 BY MS. RANKIN:

9 **Q** These were convictions for Curt Davis. Can you
10 tell me what the conviction is for?

11 **A** They were burglary.

12 **Q** Can you tell me the date on the burglary?

13 **A** One was in 2004 and the other one's 2012.

14 **Q** Is this another conviction?

15 **A** That is correct..

16 **Q** And what was that conviction for?

17 **A** That was burglary also. That's the one in
18 Richland County.

19 **MS. RANKIN:** Thank you, Investigator. I don't
20 have anything further.

21 **MR. KIRKLAND:** I don't have any questions, Your
22 Honor.

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

24 **MS. RANKIN:** Your Honor, at this time, the
25 State rests.

1 **THE COURT:** All right. I've got a couple
2 things I need to put on the record, so y'all step
3 back in the jury room. I'll have y'all right back
4 in here, all right?

5 (The jury retires to the jury room.)

6 **THE COURT:** All right. Mr. Kirkland, what you
7 got?

8 **MR. KIRKLAND:** Your Honor, we don't plan to put
9 up a defense, unless my client would like to
10 testify. I've discussed testifying with him. I've
11 told him the potential pros and cons of doing that,
12 particularly in a case like this. However, I would
13 like you to make certain that his decision is made
14 freely and voluntarily.

15 **THE COURT:** All right. Do we want to go ahead
16 and consider any directed verdict motion at this
17 time to protect the record?

18 **MR. KIRKLAND:** And, of course, I need to do
19 that. We would move for a directed verdict
20 primarily based on, in large part, the suppression
21 motions that I made before, but I would also argue
22 that evidence hasn't been presented that is -- would
23 be sufficient for a jury to reach a verdict in this
24 case and, therefore, it should not be sent to the
25 jury.

1 **THE COURT:** Respectfully, there's plenty of
2 facts out there to, if believed, the jury's got a
3 factual question to believe a burglary's been
4 convicted, the evidence, some of which has not been
5 controverted, but it is a factual question, and I'm
6 going to deny that motion. And your suppression
7 pretrial is protected on the search, the plain view,
8 as well as the knock and talk issues you raised
9 during pretrial. Those are all protected likewise.

10 **MR. KIRKLAND:** Thank you, Your Honor. I
11 appreciate that.

12 **THE COURT:** All right. Mr. Davis, you
13 understand you can testify, if you like. It's your
14 decision. You get advice from Mr. Kirkland. I feel
15 confident you and he discussed whether you should
16 testify or not sometime before today, like maybe
17 yesterday, the day before; is that right?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Now --

20 **MR. KIRKLAND:** Just to make certain that this
21 is on the record, we met up for trial three to four
22 times and we've talked about it each time. So
23 there's been three conversations at least.

24 **THE COURT:** All right. Well, I'm in close
25 proximity; you talked about it yesterday.

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** Because, I mean, after we did the
3 pretrial, we basically heard the State's case in the
4 pretrial, four witnesses, 30 minutes, of the search.
5 That was, in essence, to me, in large part, the sum
6 of the case the State has. They put a little more
7 detail in today. But you got a preview during
8 pretrial of what the State intended to present, so
9 certainly y'all discussed whether you should testify
10 and present a defense or not. And y'all did that
11 yesterday?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** And, again, this morning?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Are you comfortable in having
16 enough time in making that decision as to whether
17 you should testify or not?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** And you do understand, because I'm
20 confident Mr. Kirkland explained to you, that if you
21 choose to exercise your right to remain silent, I am
22 going to instruct the jury that they are not allowed
23 to discuss that fact at all during their
24 deliberations. So you understand they can't talk
25 about your choosing to exercise your right to remain

1 silent at all?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** All right. Now, have you had
4 enough time to make a decision as to whether you
5 want to testify or not?

6 **DEFENDANT:** I have.

7 **THE COURT:** And are you making that decision of
8 your own based -- but also in large part with some
9 advice from a good lawyer?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** All right. And what's your
12 decision?

13 **DEFENDANT:** I do not choose to take the stand.

14 **THE COURT:** Fair enough.

15 Now, Mr. Kirkland, that being the case, you're
16 not going to call anybody?

17 **MR. KIRKLAND:** That is correct, Your Honor.

18 And so do I need to just officially rest on the
19 record? I rest.

20 **THE COURT:** That's fine.

21 Y'all want a minute or two, then we'll move on?

22 **MR. KIRKLAND:** If you don't mind, Your Honor, I
23 would like to take a few notes before we do closings
24 because a couple things were said that I hadn't
25 anticipated.

1 **THE COURT:** Okay. I'll give you a couple
2 minutes.

3 **MR. KIRKLAND:** All right. Thank you, Your
4 Honor.

5 **THE COURT:** Are you ready, Ms. Rankin? You
6 pretty well knew what you were doing. I mean, how
7 it was playing out. That was a quick witness.

8 **MS. RANKIN:** Yes.

9 (Pause.)

10 (The jury returns to the courtroom.)

11 **THE COURT:** All right. Remind me your name one
12 more time.

13 **JUROR:** Amy Rhoden.

14 **THE COURT:** You're not an alternatè. Who's the
15 alternate?

16 **BAILIFF:** The lady on the front on the end.

17 **THE COURT:** Ms. Rhoden, would you be my
18 foreperson? You've been taking notes and you're
19 sitting there kind of where the foreperson sits.
20 Would you do that? You don't get paid extra. You
21 don't get any extra candy.

22 **JUROR:** I'll do the best I can.

23 **THE COURT:** Anyway, I normally select a
24 foreperson, and you've been coming in last, like
25 Mr. Mills likes. Since you've been kind of acting

1 like the foreperson, watch this: Any objection to
2 her being the foreperson?

3 You just got unanimously elected. How about
4 that?

5 **JUROR:** Okay.

6 **THE COURT:** Only thing you've got to do is sign
7 the verdict form and preside over the deliberations
8 and kind of sort through it.

9 The lawyers have told me the State's rested.
10 They've presented all the evidence they're going to
11 present. Mr. Kirkland and Mr. Davis have told me
12 the defense intends to not present a defense, which
13 they're not required to.

14 In every criminal case, the State bears the
15 burden of proving a person guilty beyond a
16 reasonable doubt. The State's got to present
17 evidence for a jury to consider the issue of guilt
18 or non-guilt. The State has presented what it
19 believes is sufficient.

20 Mr. Davis does not have to disprove anything.
21 He's allowed to rely on what the State shows and can
22 argue what's there, and that's what they've chosen
23 to do.

24 Now, I'm going to give you more instructions.
25 He has a constitutional right to not testify, a

1 right to remain silent, you've heard that. The fact
2 that he's chosen that right is not to be considered
3 by y'all in any manner, that's just his right. He
4 chooses to exercise that. And we, as the judge and
5 the judges of the fact, are not allowed to question
6 that, that's his decision. So you don't even get to
7 discuss why he exercised that right once your
8 deliberations begin.

9 The State's got to prove its case against him.
10 He does not disprove their case against him. The
11 burden's on the State; it stays with the State all
12 the way through the trial.

13 Nevertheless, it is now time for the parties to
14 summarize what they believe has been presented and
15 what it shows.

16 Ms. Rankin.

17 **MS. RANKIN:** Thank you, Your Honor. May it
18 please the Court.

19 **THE COURT:** Yes, ma'am.

20 **MR. KIRKLAND:** And, Your Honor, I don't have a
21 specific objection to that demonstrative exhibit
22 that she just put up; however, I would like an
23 instruction to the jury that you will provide them
24 the law and this is just something that she's using
25 as a demonstration.

1 **THE COURT:** Fair enough. I give the law. The
2 lawyers can quote or talk about the law, but I give
3 instructions on the law. All right.

4 CLOSING ARGUMENT

5 **MS. RANKIN:** At the beginning of this case, I
6 told you, quote, that every once in a while, someone
7 does something so direct and obvious that it is
8 nothing more than it seems. That is this case.

9 You heard the testimony. You've seen the
10 evidence. The defendant was a former employee. He
11 had keys. He had access. He knew what time it
12 would open and what time it would close. He knew
13 how to get in. He knew the alarm codes. And that's
14 exactly what he did. It's so obvious and so direct,
15 it's nothing else. It's as simple as that. He went
16 into the Grease Monkey as a former employee with no
17 permission to be there at this time and he stole
18 money out of the till.

19 Now, in opening, Mr. Kirkland made a few
20 statements that I wanted to talk to you about, and
21 he said that you were going to hear from witnesses
22 that said that that might have been Curt Davis on
23 the surveillance. You heard from those witnesses,
24 not that it might have been, but that it is, it was.
25 That's who was on that surveillance, not that maybe

1 it is, I'm not sure, that's him.

2 Terry Rice knows that because he spent three
3 years working with this man and living with this man
4 day in and day out, said he knows his demeanor,
5 knows what he looks like and he knew that was him,
6 and he didn't have permission to be there because he
7 had terminated him earlier. He didn't gather the
8 keys from him. He didn't know if his code had been
9 turned off.

10 You heard from Anthony Brantley, worked with
11 him day in and day out for some months. He knew his
12 demeanor, the way he held himself. He said that he
13 watched that video, the surveillance video, over and
14 over again to make sure he fingered the right
15 person. Ask yourself, does that sound like a might
16 have been him?

17 Mr. Kirkland said there were no witnesses at
18 the Grease Monkey at the time of the incident. And
19 while that is true, what we do have is a
20 surveillance system, quasi witness if you will, an
21 HG surveillance system that was not in place when
22 the defendant worked there. He had no idea that
23 they had come in and switched out the spotty
24 surveillance system that he knew to exist in Grease
25 Monkey. When he went in there and shut off the

1 alarm and took money out of the till, he didn't
2 think anything was looking at him. He didn't know.
3 You guys have seen it.

4 Mr. Kirkland made a big deal of bringing the
5 defendant out here and telling you that's -- you
6 have to convict this person based on what he looks
7 like now. You've seen a photo of what he looked
8 like. You can take that photo, compare it to the
9 other photos, but that's what he looked like. He
10 wasn't clean shaved, short hair, but it's the same
11 person. We can all change our hair. We can all
12 change -- well, probably not us ladies, we can't
13 change our facial hair. But what's important is
14 what he looked like when it happened and that's what
15 he looked like.

16 Ladies and gentlemen, testimony is evidence,
17 that is absolutely something that you can consider,
18 that's why we put it up there. You don't have to
19 just look at these things and -- to make your
20 determination. It's a combination. Take what
21 they're saying with what they're presenting and what
22 we're presenting and put it all together.

23 You guys have common sense. We certainly
24 didn't ask you to check that at the door when you
25 walked in. We want you to use your common sense,

1 your life experiences and put it all together, look
2 at everything, remember the testimony. That's
3 absolutely something for you to consider.

4 Now, I want to talk to you a little bit about
5 the law. And what Mr. Kirkland said is true, the
6 Judge will instruct you on the law, and if he says
7 something different than me, then you take it from
8 him. But what Mr. Davis is charged with is burglary
9 in the second degree, if the person enters the
10 building without consent with the intent to commit a
11 crime therein.

12 The defendant entered the Grease Monkey, which
13 is a building, with the intent to take whatever was
14 in that till. Whether it be a hundred dollars or
15 \$150, it doesn't matter, his intent was to go in
16 there and take what was in it. And he did.

17 And either the burglary is committed by a
18 person with a prior record of two or more
19 convictions for burglary or housebreaking or a
20 combination. Investigator Miramontes got up on the
21 stand and we showed you two prior convictions for
22 burglary, one in 2004, one in 2012. The dates don't
23 matter. What matters is they're convictions and
24 they belong to Curt Davis. He said that he verified
25 that it was the same Curt Davis.

1 There's also another one. The "or" is
2 important because this is not an "and". This is not
3 all we have to prove. These are "or". The entering
4 occurs in the nighttime. You saw the time stamp on
5 the video and you heard that it was an hour off,
6 should have been 5:00 A.M. on March 21st. And you
7 heard that sunrise on March 21st, 2015, was at 7:28
8 A.M., putting five o'clock A.M. the time of this
9 incident during the nighttime. The State doesn't
10 have to prove both of these, just one of them.

11 Now, I want to talk to you a little bit about
12 reasonable doubt and what it is and what it isn't.
13 Proof beyond a reasonable doubt is the State's
14 burden, it's ours. Reasonable doubt, what it
15 doesn't mean is beyond all doubt.

16 I listened to a podcast serial. I don't know
17 if any of you are familiar with it. It's a criminal
18 podcast. And the narrator on there said something
19 interesting. She said, I'm having serious doubts
20 about whether or not this person committed the
21 crime, not the courtroom kind of doubt, but the
22 normal person kind of doubt.

23 Make no mistake, there is no difference between
24 courtroom doubt and normal people doubt. We don't
25 ask you to come in here and take a test you didn't

1 study for. We're not asking you to redefine your
2 common sense. It's not beyond all doubt, it's
3 what's reasonable. And what I presented to you is
4 that Curt Davis had no permission to be in the
5 Grease Monkey in Lexington County on March 21st,
6 2015. He wasn't an employee there anymore. He had
7 keys, he had a key code, but he wasn't supposed to
8 be there. And he went in there with the intent to
9 take money from the till.

10 An intent, intent can be inferred from actions,
11 what you do. When you're a former employee, you
12 know what time it opens, what time they close. If
13 you had legitimate business somewhere and you know
14 what time it opens and what time it closes, that's
15 when you go. But when you're a former employee, you
16 know at five o'clock in the morning, no one's going
17 to be there.

18 And you have key and you have key code. And he
19 goes in there, puts his sleeves over his hands like
20 mittens, doesn't want to leave any prints behind
21 because he doesn't think anything's looking at him.
22 He has no idea that surveillance system's catching
23 it. So he thinks if he doesn't leave any prints
24 behind, then they've got nothing, they don't know.
25 But you know because you've seen it.

1 Law enforcement, they gathered clothing at the
2 hotel room that's similar to what you see in the
3 video and what you see in the photos. You guys can
4 look at it, you can judge for yourself how similar
5 it is. Shoes with bright green laces taken off the
6 defendant's feet at the hotel room and he's the only
7 one in the room. A shirt that's so similar right
8 down to the pen in his pocket taken from the hotel
9 room where the defendant's the only one in it.
10 Sometimes a person does something so direct and so
11 obvious that it is exactly what it seems.

12 I told you that I would come back before you
13 and ask that you find the defendant guilty of
14 burglary in the second degree. I want to thank you
15 for your time. You guys have been attentive,
16 listened closely. And as you go back to the jury
17 room, you'll look at all of this stuff up close, and
18 I ask that you look at it all, remember the
19 testimony. And I ask that you find the defendant
20 guilty of burglary second degree.

21 **THE COURT:** Mr. Kirkland.

22 **MR. KIRKLAND:** Thank you, Your Honor. May it
23 please the Court.

24 **THE COURT:** Yes, sir.

25 **MR. KIRKLAND:** I realize this is a little bit

1 distracting; I'm going to refer to my notes some. I
2 usually don't do that, but criminal law is a little
3 bit different. In fact, it's a lot different than
4 civil law. In civil law, you get depositions prior
5 to a case, and so everybody that's going to be a
6 potential witness, they have to sit down with a
7 court reporter and then the opposing counsel gets to
8 ask them questions.

9 Well, we don't follow that tradition in South
10 Carolina in criminal law. In criminal law, people,
11 affectionally sometimes and not so affectionally
12 sometimes, refer to it as trial by ambush. So some
13 of these witnesses said things that I had, of
14 course, never heard before. I didn't know what they
15 were going to say. So I apologize, I'm going to be
16 referring to my notes some as I talk to you, but
17 there's a lot -- there's a few interesting things.

18 And when I was watching the assistant
19 solicitor's presentation, she talked about that I
20 made such a big deal about that they might recognize
21 him. Let me explain to you what I am talking about
22 when I say that:

23 Your opinion is going to be your opinion. Your
24 life experience is going to be your life experience.
25 I mean, what I'm doing up here is I'm making an

1 argument on behalf of my client. But a lot of this
2 argument that I'm making on behalf of my client is
3 based on my own life experience. This idea that
4 somebody can look at a video and that they can look
5 at that video and 100 percent, without any doubt in
6 their mind, identify somebody, I think is absolutely
7 absurd. And I think that most of you will agree
8 when I give you an example.

9 How many times in your lives have you -- I
10 resolved this problem by stopping doing it -- how
11 many times in your lives, and I guarantee you it's
12 happened to every one of you, have seen somebody
13 across a room in a restaurant or something like that
14 and walked up to them and began talking to them
15 because you knew exactly who they were and after you
16 talked to them for about three seconds, you went,
17 oh, my goodness, I just realize you're not the
18 person?

19 Well, these folks hadn't even seen him for two
20 or three months. And they see a video and they're
21 saying 100 percent certainty that they know exactly
22 who it was despite one of the witnesses even saying,
23 I didn't recognize the clothing. I think another
24 one of the witnesses did say he recognized the
25 shoes, but -- so that's the point that I was making.

1 The point that I was making is that you, as the
2 jury, you're getting to see the same thing they saw,
3 you're getting to see the video itself. You get to
4 see -- you got to see Curt Davis himself; he stood
5 right here in front of you. In fact, I'm going to
6 bring him back up.

7 I never claimed even for a half a second that
8 Curt Davis looked identical on that day. I don't
9 know how he looked on that day. I mean, there's a
10 picture; I presume that's how he looked on that day.

11 But walk over here again, Curt, because this is
12 the person they arrested.

13 Now, you have to understand something, as the
14 person they arrested, that only means, like the
15 Judge was telling you, they're accusing him of it.
16 At the moment that he was arrested, he is presumed
17 innocent. As he is standing right here this very
18 second, he is presumed innocent. There was no guilt
19 involved at the time that they took the picture.

20 And what I'm suggesting to you, that the person
21 on the video was not Curt Davis. And this is going
22 to be easy for all of you to determine yourself
23 because you can look at the video, you can watch
24 Curt walk back to his chair, they made such a big
25 deal about how he walks and his mannerisms,

1 watch how -- in fact, I will have Curt --

2 Walk all the way around, Curt, if you don't
3 mind, and go right back to your chair.

4 Look at the video, tell me if that's the guy.
5 Tell me if this is the guy that you saw in the
6 video. You've seen his face up close, you've seen
7 him now walk, you've seen him now sitting down, is
8 that the guy on the video?

9 Now, they felt confident about it, but like I
10 said, I feel confident that every single person on
11 this jury has made a mistake at some point in time
12 and misidentified somebody and you were certain at
13 the time that you did it. I had to resolve that
14 issue in my life by just never approaching anybody
15 ever again because I did it when I was in college
16 and after college too many times and it was
17 embarrassing, so I never did it again. But that is
18 something that definitely occurs. So that's what I
19 was referring to. Mistaken identity is not
20 something that is a foreign concept to anybody in
21 this room.

22 All right. Now, I talked about it a little bit
23 already. Everything that you need to make a
24 decision on to whether -- as to whether or not this
25 -- Curt Davis did this or not is really contained on

1 this table. And like I said, depending upon these
2 others, they're not -- they're not the judge, they
3 don't get to choose whether he did this or not. At
4 the time they made their identification and they
5 said that they felt certain that he did it, he was
6 innocent at that time. That's the way our system
7 works. He was innocent at the time that the
8 officers approached him. And so you guys have to
9 ultimately make that decision yourself. And -- and
10 I hope that you will go back there and look at the
11 video and compare the stuff that they collected to
12 the video and be certain that this is, in fact, the
13 person that did it.

14 Now, a few things that I found interesting
15 about the case: First of all, the manager was 100
16 percent adamant that he had not seen Curt Davis for
17 two months, possibly more. He did the hiring and he
18 did the firing. He specifically said that the key
19 codes had changed.

20 Now, if Curt Davis had not been around for two
21 or three months and the key codes were changed, how
22 in the world did Curt Davis turn off the alarm?
23 Because he was equally adamant, both witnesses were
24 equally adamant, that they both locked up and that
25 they both set the alarm that night. One of them

1 said, I did it, but then, I couldn't remember. And
2 -- but then the second witness, I think it was
3 Mr. Rice, said that he is 100 percent certain. How
4 in the world is Curt Davis, if they hadn't seen him
5 in two or three months, how would he have the code
6 to turn off the alarm and to get into the Grease
7 Monkey?

8 Now, obviously, we admit the keys that you're
9 going -- that he had that got -- he's got the Grease
10 Monkey key on there. We're not going to, you know,
11 I'm not going to contest that. They never took it
12 away from him; the witness said that. But how would
13 he get in the building? How would he turn off the
14 alarm? You know, getting into the building is a
15 potential possibility, but turning off the alarm,
16 based on the testimony, is absolutely impossible.
17 He would not have had a code; they were changed.

18 Now, it was also curious to me that the store
19 manager was adamant today, Mr. Rice I believe, that
20 there was \$150 in that till and that the total
21 amount of the money in the till -- excuse me -- was
22 \$100, that's what he said today. He was absolutely
23 adamant that \$100 was in that till, including the
24 coins, the cash, everything, just adamant about it.
25 However, he had told the police that there was \$150

1 in the till.

2 See, things like that, that's curious. That
3 raises some doubt about these people and their
4 memories, these people and any potential motivations
5 they may have. I don't know. I don't know why
6 somebody would tell the police there's \$150 and then
7 tell a jury under oath that it was a hundred
8 dollars. It's just an interesting -- that's just
9 something that's extremely bizarre to me.

10 What's also really bizarre to me was the
11 officer testified that this shirt was found in his
12 room. Now, the only thing that she testified was,
13 is that this was recovered from the room. She
14 didn't mention whether it was in this particular
15 format or not. She didn't say anything about that
16 at all.

17 Now, your recollection is your recollection,
18 but when I was watching her testify, I was wondering
19 to myself, well, this is pretty odd that they come
20 to the jury and they show them this shirt put
21 together with a pen in it. That's very strange to
22 me that everything is put together exactly as they
23 want you to see it, exactly as close to matching it
24 on the video as they possibly could. And she didn't
25 explain how that occurred or why that was the case.

1 She just simply said, This is the shirt that I
2 recovered and it was similar, and nothing else.

3 So there's some curious things going on during
4 the -- in the investigation. And there are some
5 curious things going on concerning the reporting of
6 the crime. And, in particular, the key pad thing is
7 absolutely the most strange.

8 So, folks, here's what I'm asking: I'm asking
9 you to go back there in that jury room and I'm
10 asking you to consider that there are a lot of
11 inconsistencies in this case. It is not nearly as
12 clearcut as the assistant solicitor would have you
13 believe. These are things that, as a jury, that you
14 took an oath that you would hold them to their
15 burden.

16 Let me talk about what holding them to their
17 burden means. Holding them to their burden is not
18 just sitting here passively and just watching the
19 evidence get presented because, as the Judge told
20 you, the defense has absolutely no obligation
21 whatsoever to put up a defense. I could have
22 literally sat at that table -- and I actually know
23 what the word literally means despite how what
24 people -- how they use it today. I could have
25 literally sat at that table and taken a nap

1 throughout the whole entire trial and you guys, your
2 role wouldn't have changed in this life. Your role
3 as a juror is to hold the State to their burden, to
4 their burden of proof, which is beyond a reasonable
5 doubt, and that's the highest burden that there is
6 under the law.

7 Now, what that means for you in actuality is
8 that you play an active role in this, you are a
9 judge. Every moment that everyone was talking
10 throughout this entire trial, every moment, it was
11 your job, and I'm sure you did and if you haven't,
12 then I'll ask you to do that in the jury room, to be
13 skeptical because you're holding them to a burden.
14 You're looking at their evidence and you're saying,
15 does this, you know, does this convince me; does
16 this not convince me; are there issues that I am
17 concerned about; are there credibility issues with
18 the witnesses; or there's some strange things going
19 on, is there anything that gives me doubt? You have
20 to attack it that way. That is what a responsible
21 juror does.

22 This is the reason why the American system is
23 the single greatest system in the world is because
24 we allow citizens to be judges, and, two, the
25 citizens, not only do they act as judges, they

1 almost act as defense attorneys. Because, like I
2 said, I could have slept there the whole time and
3 you would have still been required to hold each of
4 those witnesses and the State to the burden of proof
5 of beyond a reasonable doubt. You would have had to
6 look at everything that they say skeptically and be
7 absolutely certain in your mind that you have no
8 reasonable doubt.

9 Now, if you do have a reasonable doubt, there's
10 12 people on the jury and the verdict must be
11 unanimous and the Judge is going to give you
12 instructions on that. And one of the things that I
13 often tell juries is -- or tell jury, I guess it is
14 singular. One of the things that I always tell them
15 is if you walk in there with an opinion already, and
16 some of you I'm sure have started to form some
17 opinions and the -- we've appointed a foreperson,
18 and the foreperson is going to direct any
19 discussions. And what I would encourage all of you
20 to do, and you do it any way you want, is to sit
21 down, go through the evidence first, do your role as
22 a juror, talk about anything that may present a
23 problem, and then, at some point in time, you'll see
24 if everybody can come to an agreement.

25 However, on the other hand, if even one of you,

1 even one of you, has a reasonable doubt and that
2 reasonable doubt is dear to your heart, it's
3 meaningful, that you do not allow others to pressure
4 you or coerce you. You can't do that as a juror.
5 It's not American. It's not the America I want to
6 live in.

7 Each one of you individually needs to decide on
8 your own, and you certainly can, as a group, discuss
9 everything, the Judge will give you all the
10 instructions, all of the evidence that you've seen,
11 but hold on to your beliefs, use your common sense,
12 don't allow anyone to bully you in there, don't
13 allow anyone to pressure you in there.

14 Before you make a decision, one of the things
15 that juries often do is they go, all right, we'll
16 see where we are, let's just take an initial vote.
17 Personally, it's up to you how you do it, I think
18 that's a terrible way to do it.

19 I think the best way to do it is to go through
20 the evidence and have some discussion. And I would
21 encourage you to do that, to look at it and make
22 sure that you're certain and not just depend on the
23 fact that anybody said anything in this courtroom
24 because -- I'm beating a dead horse here -- you have
25 everything that they looked at. They didn't see the

1 crime either. You didn't see the crime; they didn't
2 see the crime.

3 So all I'm asking you to do is to look at
4 everything. And I think once you look at it, that
5 at least somebody, hopefully all of you, will agree
6 that there are some reasonable doubts in this case,
7 and I ask that you return a verdict of not guilty.
8 Thank you.

9 CHARGE OF THE COURT

10 **THE COURT:** I'm going to go ahead and give my
11 instructions to you and then we'll take a break and
12 y'all can begin your deliberations after that.

13 Ms. Rhoden and other members of the jury, the
14 State of South Carolina has charged Mr. Davis with
15 the crime of burglary in the second degree, the
16 violent provision. Bear in mind that he has pled
17 not guilty and by entering that plea, has denied and
18 required the State to prove their case beyond a
19 reasonable doubt.

20 He's presumed innocent and that presumption
21 stays with him unless and until it's dispelled by
22 you -- I mean, by them to you, the jury, as a
23 collective group of 12, and they prove each and
24 every element beyond a reasonable doubt. And the
25 same constitution which makes me the instructor of

1 law, makes you the finders of fact.

2 Now, as I told you in the preliminary
3 instructions, if you have a belief or an
4 understanding as to what the law is or you heard
5 something different about what the law is that
6 contradicts or is different from what I am
7 instructing you currently, you are required to
8 disregard that understanding and accept the law as
9 I'm giving it to you currently today. It is my
10 responsibility, as the instructor, to keep up with
11 it and instruct you as currently as I possibly can.

12 So if I make a mistake in the instructions I'm
13 giving you, there's another time and another place
14 where that instruction can be considered and, if
15 necessary, corrected. But for our purpose today, my
16 instructions on what the law is are the law as you
17 must accept it.

18 As I've told you, the State has the burden of
19 proof. The constitution says that the prosecution
20 must prove their case to the standard of proof
21 called beyond a reasonable doubt before a finding of
22 guilt may occur.

23 Now, you 12, and currently the alternate also,
24 are the sole fact finders, meaning y'all have got to
25 make the determination of what facts are true versus

1 not true. I'm not allowed to suggest what opinion I
2 have on facts, that's not my job, that's your job.
3 And so if anything I've done during the trial
4 indicates that I have an opinion, disregard that
5 also as that's your job as the group of 12 to make
6 decisions on what facts to believe.

7 Now, finding facts makes you more or less
8 judges of credibility of the evidence and testimony
9 which has been presented. Credibility means
10 believability. Y'all can use anything in your
11 collective judgment and common sense you wish to to
12 evaluate a person or a witness' credibility or
13 believability.

14 You can also consider other things, which I
15 would suggest are probably already in your
16 collective common sense, but you can consider the
17 manner and appearance of any witness who testified;
18 how did they appear on the witness stand; was the
19 witness straightforward in answering the questions
20 or were they hesitant in answering questions; how
21 did a witness come to know the facts to which he or
22 she testified to; what was the witness' ability to
23 recollect these facts; did any witness give
24 testimony which would help or hurt one side or the
25 other; in other words, were any of the witnesses

1 biased or prejudiced toward one side or the other?

2 You can consider whether the testimony provided
3 was strengthened or weakened by other testimony or
4 other evidence. You can believe as much of a
5 witness' testimony as you choose. You can believe
6 several witnesses against one; one against several.
7 You can believe part of a witness' testimony and
8 disbelieve the rest.

9 Now, the fact that testimony is not
10 controverted makes no difference. You must make
11 determinations as to what testimony you, as a group,
12 found believable. And so I tell you that as sole
13 fact finders, you -- I have observed y'all listening
14 closely to the evidence. Weighing evidence is
15 entirely a mental process and you must weigh this
16 evidence as you find it using your good judgment and
17 common sense.

18 There are two types of evidence generally
19 presented in trials, direct evidence and
20 circumstantial evidence. Direct evidence is
21 testimony of a person who asserts or claims to have
22 actual knowledge of a particular fact, what they
23 saw, what they smelled, that type of thing.
24 Circumstantial evidence is slightly different. It's
25 proof of a chain of facts and circumstances

1 indicating the existence of another fact.

2 Our law makes no distinction between the weight
3 or value to be given to either direct testimony --
4 direct evidence or circumstantial evidence. My
5 instruction is that you weigh all the evidence
6 presented to you. And to the extent the State
7 relies upon circumstantial evidence, I tell you that
8 all of the circumstances must be consistent with one
9 another, and when taken together, point conclusively
10 to the guilt of Mr. Davis beyond a reasonable doubt.
11 If they merely portray his behavior as suspicious,
12 then the State's proof has failed.

13 Thus, after weighing and considering all the
14 evidence which you find, if you're not convinced of
15 the guilt beyond a reasonable doubt, you must find
16 Mr. Davis not guilty.

17 What is a reasonable doubt? A reasonable doubt
18 is the kind of doubt which would cause a reasonable
19 person to hesitate to act.

20 Reasonable doubt may arise from evidence which
21 is in the case or from a lack of evidence in the
22 case. Proof beyond a reasonable doubt leaves you
23 firmly convinced of the defendant's guilt. It is a
24 doubt to which one can assign a reason if the
25 assignment can be done reasonably and convincingly.

1 I charge you further that Mr. Davis is entitled
2 to every reasonable doubt which may arise in this
3 case. And what that means is if you had any doubt
4 about anything, you're required to resolve it in his
5 favor.

6 The very fact that you'll have a full and free
7 discussion of the guilt or innocence of Mr. Davis
8 does not automatically create a reasonable doubt,
9 that is part of your processing the evidence.

10 Now, identification has been an issue in this
11 case as to who committed the crime. The State has
12 the burden of proving the identity beyond a
13 reasonable doubt. You must be satisfied beyond a
14 reasonable doubt of the accuracy of the
15 identification of Mr. Davis before you may convict
16 him.

17 Identification testimony is an expression of
18 belief or impression by a witness. You must
19 determine the accuracy of that identification of
20 him. You must consider the believability of each
21 identification witness in the same way as the other
22 witnesses. You can consider whether the testimony
23 or the witness had an adequate opportunity to
24 observe the offender at the time of the offense.
25 And this will be affected by things like how long or

1 short a time was available, how far or close was the
2 witness, the lighting conditions, whether the
3 witness had a chance to see or know the person in
4 the past.

5 So the burden is upon the State to prove each
6 element and one of the elements is the
7 identification of the defendant. So if you find the
8 State's failed to prove identification beyond a
9 reasonable doubt, then you find the defendant not
10 guilty.

11 I also tell you that criminal intent is a
12 necessary element of the crime charged in this case,
13 and the State must prove intent beyond a reasonable
14 doubt. Intent is determined by the jury under the
15 circumstances surrounding the situation.

16 There's no way to prove intent to a
17 mathematical certainty. Medical science does not
18 allow anyone to examine a person's brain to
19 determine what he or she had in mind. So our law
20 states that criminal intent may be inferred from the
21 circumstances shown to have existed before and after
22 the fact. That's how you make a determination of
23 whether or not intent is present.

24 Criminal intent is a state of mind that
25 operates jointly with an act or an omission in the

1 commission of a crime. Criminal intent is a
2 conscious state of wrongdoing. It's up to you to
3 determine what the defendant intended to do based
4 upon the circumstances the State shown to have
5 existed to your satisfaction.

6 Now, I tell you the specifics of a burglary
7 second degree charge are: The State must prove
8 beyond a reasonable doubt that Mr. Davis entered a
9 building without consent with the intent to commit a
10 crime therein. Additionally, it must prove
11 aggravating factors which I'll discuss later. A
12 building is defined as a structure, aircraft or a
13 place where a person lodges or lives or where people
14 assemble for the purpose of conducting business,
15 government, education or entertainment.

16 Second, the State must prove beyond a
17 reasonable doubt that one of the -- I'm sorry -- as
18 to the aggravating factors, the State must prove
19 beyond a reasonable doubt that one of two possible
20 aggravating factors existed at the time of the
21 burglary:

22 The first of the two aggravating factors is the
23 State must prove that the defendant had a prior
24 record of two or more convictions for burglary or
25 housebreaking. The second potential aggravating

1 factor is that the defendant entered or remained in
2 the building, entered without consent during the
3 nighttime. Nighttime is defined as the period
4 between sunset and sunrise during which there is not
5 enough daylight to recognize a person's face except
6 by artificial light.

7 Now, if you find the State has proven beyond a
8 reasonable doubt the defendant has a prior record or
9 that the defendant entered the building at
10 nighttime, then the State has met its burden
11 regarding the aggravating factors.

12 Now, evidence of the prior burglaries committed
13 by the defendant are not offered to prove that he
14 had a bad character or to prove that he committed
15 the burglary on this occasion. The prior
16 convictions are only to be considered by you for the
17 purpose of determining whether or not it satisfies
18 the element of the offense which makes it a second
19 degree burglary.

20 Now, before you consider the evidence of his
21 prior burglaries, you must first find that the State
22 proved beyond a reasonable doubt that a burglary was
23 committed by the defendant in this case. And if you
24 find beyond a reasonable doubt that the burglary was
25 committed, then you may consider the evidence of the

1 prior conviction as evidence of one of the
2 circumstances satisfying the aggravating factors
3 required under burglary second degree.

4 Now, the last element the State must prove
5 beyond a reasonable doubt is that the defendant
6 intended to commit a crime while in the building.
7 The State must prove that element also beyond a
8 reasonable doubt. I instruct you that a larceny or
9 a taking of goods that do not belong to one is
10 potentially a crime.

11 Now, I instruct and emphasize to you, this is
12 very important, that Mr. Davis chose to exercise his
13 right to remain silent. That decision by him is not
14 a factor to be considered by you as a group of
15 jurors in any way. You're not to consider it during
16 your deliberations in any fact. The fact that he's
17 chosen to exercise that right is not to be discussed
18 by you during your deliberations. A person has that
19 constitutional right, and a person's assertion of
20 that right must not be considered and held against
21 him in any way.

22 So you're to draw no conclusion whatsoever from
23 the fact that he chose to not testify. The very
24 fact that he didn't testify is not to be discussed
25 at all. The burden is upon the State to prove

1 beyond a reasonable doubt the elements of the
2 offense, burglary second degree.

3 Now, some of you took notes, some of you
4 didn't. Notes are not required, but I do allow
5 them. I give you a cautionary instruction regarding
6 the use of those notes:

7 You all 13, including the alternate, listened
8 closely to the evidence. Some took notes, some did
9 not. Once you begin your deliberations and y'all
10 discuss this or that and a person who has notes has
11 notes written to this effect and a person who did
12 not take notes remembers it otherwise or slightly
13 different, a person who takes notes does not trump
14 the one who just listened. The one who just
15 listened does not trump the one who took notes.
16 You've got to resolve and be unanimous in your
17 decision, so one does not outweigh the other. You
18 all 13 listened closely. Whether you took notes or
19 not, you still must have a unanimous verdict.

20 Now, Ms. Rhoden and other members of the jury,
21 as y'all retire to the jury room to begin your
22 deliberation, I remind you that this is an important
23 case, even though it's brief, a very important case
24 because this is the only opportunity Mr. Davis has
25 to come to court to have his matter heard, this is

1 the only opportunity the State gets to present its
2 case to you. Y'all did listen closely, but remember
3 that your verdict must be unanimous and it must be
4 confined to the evidence presented, nothing from
5 outside the courtroom, and you're not to discuss his
6 exercising his right to remain silent. I'm
7 confident you will do just that.

8 It's my job to make certain that the law is
9 applied fairly and equitably in every case. It is
10 your job to make certain your verdict is fair and
11 just and consistent with my instructions.
12 Everyone's entitled to justice here, both the State
13 and the defense. You've got no enemies to punish,
14 no friends to reward. It's just you must reach a
15 unanimous verdict regarding whether or not the State
16 has proved its case beyond a reasonable doubt.

17 Now, I tell you I'm going to send you to the
18 jury room and tell you that you can't begin your
19 discussions or deliberations until you receive the
20 evidence and the indictment. Once you get that,
21 then you can begin your discussions.

22 I tell you also that the lawyers get an
23 opportunity to make comments about my instructions
24 and whether they were full and complete or whether I
25 omitted or skipped over, glossed over a portion of

1 the law. I'm going to ask them that as soon as
2 y'all leave. And if my instructions were
3 sufficient, then the evidence will come to you and
4 y'all can begin your deliberations.

5 Now, once y'all begin deliberations, you're on
6 your own time. If you need a break, take a break.
7 But once you break, if somebody steps in the
8 bathroom or steps outside for fresh air or
9 otherwise, you don't deliberate any further. All 12
10 have to be there, all right? And that's kind of
11 your job, Ms. Rhoden.

12 Now, my alternate, I want you to go to the jury
13 room with them, and once deliberations begin, then
14 I'll retrieve you and then you'll be free to go, all
15 right? So y'all step into the jury room.

16 I'm sorry, Ms. Rhoden, I forgot one thing. If
17 you have questions about something, about my
18 instructions or anything, write it down on your
19 notepad, provide me a note. If you want to hear
20 further instructions because I read them too fast or
21 anything like that, let me know and I'll do that.

22 The video can be provided to you in a computer
23 where y'all can look at it in the jury room. Many
24 times I send Jacob back there to cue it up, but,
25 generally, I have somebody that's computer savvy

1 that can run the thing, it's not that hard. And
2 once some person's shown, then we'll leave it to
3 y'all. We won't interfere with y'all's workings,
4 okay? So now step in the jury room.

5 (The jury retires to the jury room.)

6 **THE COURT:** All right. Any objections to the
7 instruction by the Court from the State or defense?

8 **MS. RANKIN:** None from the State.

9 **MR. KIRKLAND:** None from the defense.

10 **THE COURT:** All right. Y'all inventory your
11 evidence. I'm going to send the indictment back.

12 **MS. RANKIN:** Judge, I would only say, if they
13 request to watch the surveillance, I'm not going to
14 lie, this thing is testy to pull up. It's about
15 five hours long. It's pretty testy to pull up to
16 the right point. So if they want to come back in
17 and watch it, I'll cue it to the right place.

18 **THE COURT:** Okay. Well, you can cue it and
19 then we'll send it back there with Jacob and let
20 them watch it, that way they can -- and we'll tell
21 them that, that if they stop and try to rewind, that
22 may create an issue and they've got to have some
23 help, we'll get them help back there to them. I'm
24 going to volunteer Jacob against his wishes to go
25 help with it, if there needs to be.

1 **MR. KIRKLAND:** Here's what I'd like to do, Your
2 Honor, if you don't mind, because I don't know
3 what's on that computer --

4 **MS. RANKIN:** It's a clean computer that we use
5 specifically for court.

6 **THE COURT:** Yeah. I've been over that myself
7 because I had the same concern, and that's the
8 computer that I've used in the last six trials. In
9 four of the six, the computer goes back there. One
10 of those four, Jacob had to stay back there with
11 them.

12 **MR. KIRKLAND:** That is perfectly fine with me
13 then, Your Honor.

14 **THE COURT:** What I'm going to tell them is they
15 can deliberate. And if they want to take a break
16 and go eat lunch, they can go on their own, it'll be
17 up to them, if they want to deliberate for however
18 long. But I'll let them go eat lunch separately or
19 together, but not to discuss the case until they
20 come back to the jury room. That's what I'm going
21 to tell them.

22 (Pause.)

23 **MR. KIRKLAND:** All right. That's it.

24 **THE COURT:** All right. Let's get it to them.

25 (The alternate enters the courtroom.)

1 **THE COURT:** You can stay or go.

2 **JUROR:** I'll stay.

3 **THE COURT:** Okay. Make yourself comfortable.

4 (The alternate was excused.)

5 (The jury commences its deliberations at

6 11:55 A.M.)

7 (A recess transpired.)

8 (Court's Exhibit Number 1, jury note, marked
9 for identification.)

10 **THE COURT:** Mr. Kirkland, Ms. Rankin, the video
11 is going back. They just asked for it.

12 (A recess transpired.)

13 **THE COURT:** Bailiff says we have a verdict, so
14 we'll bring the jury in.

15 (The jury returns to open court to report
16 its verdict at 12:49 P.M.)

17 **THE COURT:** All right. Ms. Rhoden, have y'all
18 reached a verdict?

19 **FORELADY:** Yes, sir.

20 **THE COURT:** Was it unanimous?

21 **FORELADY:** Yes, sir.

22 **THE COURT:** All right. Hand it to Mr. Mills.

23 (The clerk hands the verdict to the Judge.)

24 **THE COURT:** Ms. Frick, you may publish the
25 verdict.

1 VERDICT OF THE JURY

2 **THE CLERK:** Indictment 2016-GS-32-1403, the
3 State versus Curt A. Davis, indicted for burglary
4 second degree, section B, violent. Verdict is
5 guilty as charged and is so signed by the Forelady,
6 Amy Rhoden, January 24th of 2017.

7 Madame Forelady, ladies and gentlemen of the
8 jury, if this is your verdict, please indicate each
9 of you by raising your right hand.

10 All hands are raised, Your Honor.

11 **THE COURT:** All right. Any further issue for
12 the jury, Mr. Kirkland?

13 **MR. KIRKLAND:** Your Honor, I would ask that
14 Madame Clerk poll the jury, please.

15 **THE COURT:** We'll do that by number.

16 **THE CLERK:** As I call out your juror number, if
17 you'll hold your hand up where I can recognize you,
18 I will ask you, As to the verdict, was this your
19 verdict and is it still your verdict? At that time,
20 give me your response, please.

21 Number 103, as to the verdict, was this your
22 verdict and is it still your verdict?

23 **JUROR:** Yes, it is.

24 **THE CLERK:** 187, as to the verdict, was this
25 your verdict and is it still your verdict?

1 **JUROR:** Yes.

2 **THE CLERK:** 177, as to the verdict, was this
3 your verdict; is it still your verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** 63, as to the verdict, was this
6 your verdict; is it still your verdict?

7 **JUROR:** Yes, ma'am.

8 **THE CLERK:** 166, as to the verdict, was this
9 your verdict; is it still your verdict?

10 **JUROR:** Yes, ma'am.

11 **THE CLERK:** 155, as to the verdict, was this
12 your verdict and is it still your verdict?

13 **JUROR:** Yes.

14 **THE CLERK:** 97, as to the verdict, was this
15 your verdict; is it still your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** 143, as to the verdict, was this
18 your verdict; is it still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** 17, as to the verdict, was this
21 your verdict; is it still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** 191, as to the verdict, was this
24 your verdict; is it still your verdict?

25 **JUROR:** Yes to both.

1 **THE CLERK:** 152, as to the verdict, was this
2 your verdict; is it still your verdict?

3 **JUROR:** Yes, it is.

4 **THE CLERK:** 169, as to the verdict, was this
5 your verdict; is it still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** All jurors polled, Your Honor.

8 **THE COURT:** Very well.

9 Ms. Rankin, are y'all ready to go forward with
10 sentencing?

11 **MS. RANKIN:** Yes, sir, Your Honor.

12 **THE COURT:** All right. Mr. Kirkland.

13 **MR. KIRKLAND:** I have two quick motions, Your
14 Honor, unless you want to do them -- you want me to
15 go ahead and do the two quick motions right now?

16 **THE COURT:** Yeah, go ahead and do them because
17 it's not a jury issue now, they can see what you're
18 doing.

19 **MR. KIRKLAND:** Right. It's already done.

20 I would move for a judgment notwithstanding the
21 verdict and move for a new trial based on all of the
22 motions and all of the objections that I made
23 throughout the trial.

24 **THE COURT:** Motion for a new trial
25 notwithstanding the verdict and your motion for a

1 new trial based upon your pretrial --

2 **MR. KIRKLAND:** Yeah, the motion -- and it may
3 be I'm getting mixed up in federal and state court
4 because I do 50 percent, but I'm asking for a
5 verdict of not guilty notwithstanding the verdict of
6 the jury and a motion for a new trial based on all
7 of the motions and all of the objections that I made
8 throughout the trial.

9 **THE COURT:** That's what I was rewording. And
10 as to both of those motions, respectfully, there
11 were ample facts presented by the State for the jury
12 to consider and the jury has resolved those
13 questions of fact unanimously and the Court will not
14 step in as 13th juror and set aside the verdict
15 reached unanimously by this -- during this trial.
16 So, respectfully, I'm going to deny your motions.

17 **MR. KIRKLAND:** Thank you, Your Honor.

18 Would you like us to stand at the podium or
19 stand right here?

20 **THE COURT:** Stand right there.

21 All right. Ms. Rankin, let me hear, the two
22 convictions, what were they for? I know they're
23 burglary, but which were they?

24 **MS. RANKIN:** Your Honor, they were for -- and
25 he actually has out of Florence, Your Honor, three

1 burglaries. We presented one out of Florence, but
2 he also has two additional ones. Those were for
3 burglary nonviolent.

4 The one out of Richland County, Your Honor, was
5 a burglary second nonviolent as well pled down from
6 a burglary first. He also has a companion grand
7 larceny that went along with that over 10,000. Your
8 Honor, he got five years suspended to two years
9 probation on that charge.

10 Your Honor, he has a -- his record starts in
11 1995 with a fraud check. He has several municipal
12 charges that we don't have a disposition on. 2004,
13 he has an unlawful carrying of a weapon. He's got
14 several DUS charges, disorderly conduct. There is a
15 possession of a stolen vehicle which there is no
16 disposition. He has a forgery charge out of
17 Richland County as well. He has a driving under
18 suspension in Georgia, as well as a DUI and
19 possession of marijuana.

20 Your Honor, the State's contention is that he's
21 never really spent substantial amount of time in
22 jail. This is not his second burglary, it's not his
23 third burglary, it's his fifth burglary. The State
24 would ask for a substantial amount of time on the
25 sentence. He's had his shot. He's had a probation

1 sentence several different times as recently as
2 2012. I think, at this point, the jig is up; he
3 needs some sort of time.

4 **THE COURT:** All right. Mr. Kirkland, let me
5 hear what you've got in mitigation.

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

7 I haven't looked at his rap sheet in -- well,
8 in some time, and so I -- he tells me this is his
9 third. I'm just going to bring that to the Court's
10 attention, that's what he tells me. I haven't
11 looked at his rap sheet.

12 He's 42 years old. He's had -- you heard a
13 witness during pretrial, the pretrial hearings, he
14 was an alcoholic. He's had nothing but trouble.

15 He has a wife that I personally know, very
16 sweet woman. I know her because she was formerly
17 married to Tommy Bellinger. I don't know if you
18 know Tommy Bellinger right down the street here, an
19 attorney. He was married to her. Things were going
20 pretty well, but he had some -- he had some mental
21 health issues, depression, things like that that
22 wouldn't affect his ability to understand the
23 charges against him or anything.

24 At one point in time several years ago, he
25 attempted suicide and made a pretty darn good

1 attempt at it, jumped off the -- Gervais Street
2 Bridge?

3 **DEFENDANT:** The River Street Bridge -- Drive.

4 **MR. KIRKLAND:** Oh, the River Street -- River
5 Drive Bridge down in the rocks and just got smashed
6 to absolute bits. He's just -- he's had a rough
7 time. He's one of those guys that has had a hard
8 time his whole life keeping it pulled together.

9 He worked at Grease Monkey for I think -- even
10 though they said eight or nine months, he tells me
11 it was probably closer to a year and a half, and
12 things were going pretty well. He ends up getting
13 arrested for something, it was minor, I don't
14 remember what it was.

15 He had just -- you heard this during the
16 pretrial hearings. He had actually gotten out of
17 jail the day before this happened. So he was as
18 down on his luck as he could possibly be down on his
19 luck. And he made a, you know, he maintains his
20 innocence, but I'm arguing, because the jury's
21 verdict is guilty, so therefore I'm saying if that
22 is the case, and he maintains he's innocent, this
23 was just an unfortunate series of events that led to
24 a really bad decision.

25 And I don't think that somebody -- I don't

1 think a lot of people really -- I don't think at the
2 time, if he were the person that did this, would
3 have thought still having the keys, a hundred
4 dollars, \$150, I don't think that he would have
5 thought that this sort of 15-potential-year sentence
6 would have been something that he's facing. It was
7 just -- it was a terrible decision, if he was, in
8 fact, the person that did it; although, we maintain
9 he is not. And I would ask you to show whatever
10 leniency you can, Your Honor.

11 And I don't think he wishes to address the
12 Court.

13 **THE COURT:** He's been in custody since the day
14 of arrest, March 21st of '15?

15 **MR. KIRKLAND:** Yeah, and I have the count right
16 here.

17 **THE COURT:** I always put on the sentencing
18 sheet since that date. So I'll let the department
19 of corrections count it.

20 **MR. KIRKLAND:** That's fine.

21 **MS. RANKIN:** Your Honor, I do have certified
22 convictions for his prior four burglaries, if you
23 would like to see those.

24 **THE COURT:** That's not going to have a huge
25 impact. I understand it's always --

1 **MR. KIRKLAND:** I didn't think it was, which is
2 why I didn't even look.

3 **THE COURT:** So, Mr. Davis, do you want to say
4 anything?

5 **DEFENDANT:** (Defendant shook head.)

6 SENTENCE OF THE COURT

7 **THE COURT:** All right. Sentence of the Court,
8 Mr. Davis be committed to the department of
9 corrections for 12 years, gets days earned since
10 March 21st of '15. I'm going to ask that he get a
11 referral to the Addictions Treatment Unit while he's
12 at the department of corrections. Good luck.

13 **MS. RANKIN:** Thank you, Your Honor.

14 **MR. KIRKLAND:** Thank you, Your Honor. I
15 appreciate it.

16 **THE COURT:** All right. I'd like to talk to
17 y'all in the jury room real quick and y'all will be
18 free to go till in the morning. 9:30 is what we're
19 putting on the recording, so y'all just know it; you
20 won't have to call in. So come on back.

21 (The jury was excused.)

22

23 END OF PROCEEDINGS

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 23rd - 24th of January, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 30, 2017

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

WITNESSES

Lexington Police Department

C D Sherban

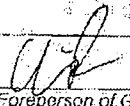
Law Enforcement Case #: 15001217

CNR

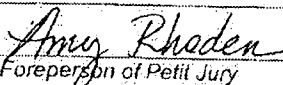
ARREST WARRANT NUMBER

2015A3220500576

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date: 5-16-16

VERDICT

Guilty as charged
Foreperson of Petit Jury
Date: 01-24-17

DOCKET NO. 2016GS3201403

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2016

THE STATE
vs.

Curt A Davis

CDR #: 0086

Indictment for

Burglary 2nd Degree - Violent

§ 16-11-0312(B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

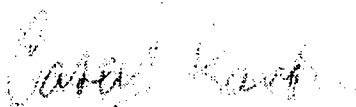
INDICTMENT FOR
 Burglary 2nd Degree - Violent

§ 16-11-312(B)

At a Court of General Sessions, convened on May 16, 2016 the Grand Jurors of Lexington County present upon their oath:

That Curt A Davis did Lexington County, South Carolina on or about March 21, 2015 knowingly and willfully enter a building, specifically The Grease Monkey, at 5537 Sunset Blvd., Lexington, SC 29072 without consent and with the intent to commit a crime therein, to wit, and the defendant has two or more convictions for burglary or housebreaking or a combination of both, and/or the entering or remaining occurred in the nighttime, in violation of § 16-11-312 (B) of the Code of Laws of South Carolina 1976, as amended.

Against the peace and dignity of the State; and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D. Gilliam
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 30th day of October, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Taylor D. Gilliam
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ATTORNEY FOR APPELLANT

This 30th day of October, 2017.

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