

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TYRIS BERNARD GLOVER,

APPELLANT

APPELLATE CASE NO. 2012-211983

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RECORD ON APPEAL

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 3 )  
 4 STATE OF SOUTH CAROLINA, )  
 5 ) TRANSCRIPT  
 6 -V- ) OF  
 7 ) RECORD  
 8 TYRIS GLOVER, ) 2012-GS-40-854 & 0857  
 9 DEFENDANT. )

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APRIL 26 THROUGH 27, 2012  
 RICHLAND, SOUTH CAROLINA

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

HONORABLE R KNOX MACMAHON, JUDGE; AND JURY

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FOR THE PLAINTIFF:

BRITTON ALL, ESQ.

DOLLY JUSTICE GARFILED, ESQ.

FOR THE DEFENDANT:

JEREMY MACNEALY, ESQ.

JAMES COOPER, ESQ.

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1 what about the cigarettes?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 than likely as well.

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

10 THE COURT: All right, solicitor.

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

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

17 MS. ALL: It should be very brief.

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

19 THE CLERK: Raise your right hand.

20 THEREUPON,

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

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

25 THE WITNESS: Kevin Schmidt.

## 1 DIRECT EXAMINATION

2 BY MS. ALL:

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

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

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

7 A Almost two and a half years now.

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

10 A Ma'am?

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

14 A Probably about a year and a half.

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

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

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

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

10   A    Clearly.

11   Q    Could you see his face?

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

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

16   A    Yes.

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

19   A    Ten, 15 minutes.

20   Q    Where did you make contact with him?

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

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

25   A    I'm to sure to be honest.

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

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

5 Q Okay. And what was he wearing?

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

7 Q What kind of hat was it?

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

9 Q Did you recognize him from the video?

10 A Yes.

11 Q And can you tell us how?

12 A The clothing description and also his walk.

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

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

17 Q Was he pushing a bicycle?

18 A Yes.

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

20 A Ma'am?

21 Q Did he have a book bag with him?

22 A Yes.

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

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

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

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

9 A Yes, ma'am.

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

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

14 Q What did he say back?

15 A Okay, go ahead.

16 Q And did he give you the bag?

17 A Ma'am.

18 Q Did he hand you the bag?

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

20 Q And what happened next?

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

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

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

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

5 A Yes.

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

7 A Yes, ma'am.

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

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

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

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

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

18 A That incident day.

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

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

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

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

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

2 BY MS. ALL:

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

5 THE COURT: Thank you, solicitor.

6 Mr. Macnealy.

7 CROSS-EXAMINATION

8 BY MR. MACNEALY:

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

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

13 Q You told him or did you ask you?

14 A I asked him to come near me.

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

16 A Well, I asked him to.

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

19 A Yes.

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

24 A Yes.

25 Q You do?

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

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

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

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

10 A No, I do not.

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

17 A Yes.

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

21 A No.

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

24 A He gave me consent to search the bag.

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

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

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

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

3 A Yes.

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

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

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

10 THE COURT: Redirect?

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

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

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

16 MS. ALL: No, Your Honor.

17 THE COURT: All right. Mr. Macnealy, you have any  
18

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

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

11 THE COURT: All right, solicitor.

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

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

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

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

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

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

12 All right. Other motions, Mr. Macnealy?

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

14 THE COURT: Any from the state?

15 MS. ALL: No, Your Honor.

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

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

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

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

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

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

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

1 THE COURT: Thank you. Thank you, Mr. Cooper.  
2 Solicitor, you may call your first witness.

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

6 THE COURT: All right.

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

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

10 THEREUPON,

11 RON HUBBARD,

12 after having been duly sworn, testified as follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Ron Hubbard.

15 DIRECT EXAMINATION

16 BY MS. ALL:

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

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

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

22 A Yes, ma'am.

23 Q What is your current position with them?

24 A I am the general manager.

25 Q How long have you been the general manager?

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

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

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

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

11 A It was a Monday morning I believe.

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

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

23 Q And where is that located?

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

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

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

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

9 Q Okay. Who would we be?

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

12 Q Okay.

13 A And sometimes the owner Scott.

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

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

20 Q So what do you mean by bar?

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

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

3 A Yes, ma'am.

4 Q And that being because the doors open?

5 A Inward and outward.

6 Q Okay.

7 A Two sets inward and two sets outward.

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

9 A You can't open it.

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

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

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

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

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

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

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

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

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

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

17 BY MS. ALL:

18 Q Do you recognize these?

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

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

22 BY MS. ALL:

23 Q Not quite yet.

24 A With the french doors.

25 Q Okay.

1 A As well --

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

3 A Yes, ma'am.

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

6 A Yes, ma'am.

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

9 MR. MACNEALY: No objection.

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

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

14 BY MS. ALL:

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

17 A The --

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

20 THE COURT: Yes, ma'am.

21 BY MS. ALL:

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

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

6 Q Okay. And the other photograph?

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

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

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

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

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

10 A Yes, ma'am.

11 Q Have you seen them before?

12 A Yes, ma'am.

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

15 A Yes, ma'am.

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

18 MR. MACNEALY: Without objection, your Honor.

19 MS. ALL: With permission --

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

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

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

1 THE COURT: Yes, ma'am.

2 MS. ALL: Thank you, Your Honor.

3 BY MS. ALL:

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

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

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

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

14 Q When you --

15 A Or --

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

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

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

20 A Yes, ma'am.

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

23 A Yes, ma'am.

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

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

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

4 A Okay.

5 Q Do you recognize them?

6 A Yes, ma'am.

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

9 A Yes, ma'am.

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

12 MR. MACNEALY: Without objection, Your Honor.

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

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

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

18 THE COURT: Yes, ma'am.

19 BY MS. ALL:

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

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

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

- 1 saw what had appeared --
- 2 Q So, these pictures show what it looked like when you  
3 got there that morning?
- 4 A Yes, ma'am.
- 5 Q Okay.
- 6 A And then in this picture (indicating) it is a picture  
7 of the cigarette machine that we have located. Here's  
8 a little bit view on that one. And there's Newports,  
9 Campbells, Marlboros three, three, and three and it  
10 goes down.. It's a row of five each. So, and they were  
11 all missing.
- 12 And then this was the scene of the cash register  
13 (indicating) that we have located in the back where the  
14 mounted piece had been ripped off or removed.
- 15 Q And you are -- you testified earlier that all cash is  
16 closed in a lockbox prior to leaving, right?
- 17 A Yes, ma'am.
- 18 Q Did you check to see whether the cash was in the office  
19 when you got there?
- 20 A Yes, ma'am, we did.
- 21 Q So, all of the cash was accounted for?
- 22 A Yes, ma'am.
- 23 Q Is that because none of it was in the cash register  
24 that night?
- 25 A Yes, ma'am. Because it was already removed before

- 1 everyone left the building and locked up.
- 2 Q Okay. Is that how the cash register looks normally?
- 3 A No, ma'am.
- 4 Q What happened to it?
- 5 A It appears that in an attempt to -- someone attempted
- 6 to pull out the draw because you have the key to
- 7 manually unlock it so that when it is turned on that's
- 8 the only way it opens. There's no way to open it if it
- 9 is turned off. It's a prevention in robbery and it is
- 10 the bottom part so it appears someone put their hands
- 11 up under the draw that they could get their fingers
- 12 under and pulled it out and --
- 13 Q With --
- 14 A And pulled it with such force it broke the bottom part.
- 15 Q Would there have been any money inside?
- 16 A No, ma'am.
- 17 Q Would they have known that before they ripped it apart?
- 18 A No, ma'am.
- 19 Q Okay, go ahead.
- 20 A And that's it. And in this picture (indicating) the --
- 21 as you can see they -- this is the entire bottom
- 22 portion of it where the little lock switch right there
- 23 would have kept anything that was in there locked away.
- 24 Q Okay. So upon discovering your business in this
- 25 condition what did do you next?

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

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

9 A Around 9:30.

10 Q Okay. What did do you next?

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

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

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

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

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

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

5 Q Can you fast forward?

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

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

11 A Yes, ma'am.

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

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

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

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

23 Q Okay.

24 A And we do it then.

25 Q Are the cameras on all the time?

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

2 Q Are they in color, black and white?

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

5 Q Okay. Is that video usually time stamped?

6 A Yes, ma'am.

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

9 A Yes, ma'am.

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

12 A Yes, ma'am.

13 Q What is it?

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

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

18 BY MS. ALL:

19 Q Have you seen it before?

20 A Yes, ma'am.

21 Q Have you seen the footage that on it?

22 A Yes.

23 Q Has it changed in anyway?

24 A Not that I'm aware of.

25 Q Is it a fair and accurate representation of he

1 surveillance footage as you viewed it on that day?

2 A Yes, it is.

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

5 MR. MACNEALY: Without objection, Your Honor.

6 THE COURT: That's number 30?

7 MS. ALL: 30.

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

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

11 BY MS. ALL:

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

14 A Yes, ma'am.

15 Q And who watched it with you?

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

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

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

25 Fortunately the lights were turned off and so when the

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

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

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

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

19 Q Okay. Being about 12 hours, correct?

20 A Yes, ma'am.

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

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

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

2 A No, ma'am.

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

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

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

8 A No, ma'am.

9 Q Okay. Did you recognize the individual?

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

11 Q Do you see him in the courtroom today?

12 A Yes.

13 Q Could you point him out please?

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

15 MS. ALL: Let the record reflect that the victim,

16 Mr. Hubbard, is pointing at the defendant Mr. Tyris Glover.

17 BY MS. ALL:

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

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

22 Q Okay.

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

25 Q Okay. Prior to looking at the surveillance footage

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

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

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

10 A Yes, ma'am.

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

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

17 Q Okay.

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

19 BY MS. ALL:

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

23 A Yes, ma'am.

24 Q Have you seen them before?

25 A Yes, ma'am.

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

3 A Yes, ma'am.

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

6 MR. MACNEALY: Without objection, Your Honor.

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

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

10 THE COURT: Yes, ma'am.

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

13 BY MS. ALL:

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

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

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

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

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

2 A Columbia.

3 Q And the county?

4 A Richland County.

5 Q Okay.

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

7 THE COURT: Yes, ma'am.

8 BY MS. ALL:

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

11 A Yes, ma'am.

12 Q Thank you.

13 THE COURT: Thank you.

14 Mr. Macnealy.

15 CROSS-EXAMINATION

16 BY MR. MACNEALY:

17 Q Mr. Hubbard --

18 A Yes, sir.

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

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

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

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

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

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

22 A Yes, sir.

23 Q Would you say it's pretty accurate?

24 A Yes, sir.

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

1 that would give you kind of a spread sheet?

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

10 Q Okay.

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

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

18 A No, I do not.

19 Q What did he look like?

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

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

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

1 Q All right.

2 A But like I said this was --

3 Q A while back?

4 A Yes, sir.

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

6 A I don't remember speaking with him per se. My owner  
7 pretty showed up at this point and was handling all of  
8 it. I contacted the one officer and told him that I  
9 needed him to come down because we had a break in also  
10 and then from there -- that point on we pretty much  
11 just went and looked at what all was going on in the  
12 bar.

13 Q Did the -- did you ever receive a copy of the police  
14 report that was written?

15 A I did not personally. I -- we have a lot of files like  
16 incident reports that come over. It is possible that  
17 they did brought it up at one point and put it in there  
18 or gave it to the owner.

19 Q Prior to trial had you seen the incident report drafted  
20 by Officer White?

21 A No, sir.

22 Q Okay. How -- what, what, amount of inventory did you  
23 report to Office White or whatever was first on scene  
24 that was missing how much inventory?

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

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

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

8 A 45.

9 Q 45?

10 A (The witness nodded head.)

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

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

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

20 A Yes, sir.

21 Q Okay. Were those items ever returned?

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

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

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

5 A No, sir.

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

10 A Yes, sir.

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

13 A No.

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

17 A Yes, sir.

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

20 A (The witness nodded head.)

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

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

1 towards the camera.

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

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

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

8 THE COURT: Yes, sir. Certainly.

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

10 THE COURT: All right. Thank you.

11 Redirect?

12 MS. ALL: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. ALL:

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

18 A Yes, ma'am.

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

21 A Before he walked in?

22 Q At anytime?

23 A The -- just the cleaning crew.

24 Q Okay.

25 A And myself.

1 Q Are there cameras recording every entry point?

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

4 Q Okay.

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

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

10 A (The witness nodded head.)

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

13 A No, ma'am.

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

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

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

3 A Yes, ma'am.

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

6 A No, ma'am.

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

8 THE COURT: Yes, ma'am.

9 BY MS. ALL:

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

11 THE COURT: Recross?

12 MR. MACNEALY: Just briefly, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. MACNEALY:

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

19 A Yes.

20 Q Okay.

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

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

23 Mr. Hubbard, you may step down.

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

1 THEREUPON,

2 KEVIN SCHMIDT,

3 after having been duly sworn, testified as follows:

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

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

8 DIRECT EXAMINATION

9 BY MS. ALL:

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

12 A Columbia Police Department.

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

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

17 Q What is your previous law enforcement experience?

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

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

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

23 Q Okay. Were you on patrol?

24 A Yes, ma'am.

25 Q What are your present duties?

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

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

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

7 Q And what did you see upon your arrival?

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

13 Q Uh-huh.

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

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

20 A No, I not do.

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

24 A Yes.

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

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

3 A I did not observe that.

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

7 A No, I did not.

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

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

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

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

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

16 A I don't know.

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

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

22 A The date of the incident.

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

24 A Yes, ma'am.

25 Q Okay.

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

4 THE COURT: Sure.

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

7 BY MS. ALL:

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

12 A Yes.

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

14 A Yes, ma'am.

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

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

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

21 A No, I could not tell.

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

25 A 7:08 a.m.

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

- 1 A It appears he pushed open the french doors and he's now  
2 walking inside the store after they were closed.
- 3 Q Did you notice anything particular about his walk when  
4 you first watched this video?
- 5 A I noticed he had a distinguished walk all through  
6 training I told by other officers that if you learn  
7 someone's walk because everyone has a different walk,  
8 if you learn someone's walk you can identify them  
9 walking away from you and I noticed he had a  
10 distinguished limp when he was walking.
- 11 Q Would this be behind the bar?
- 12 A Yes.
- 13 Q Officer Schmidt, while we wait, obviously it's dark  
14 inside the bar. Does this appear consistent with night  
15 vision mode?
- 16 A Yes.
- 17 Q That would explain why it was this color?
- 18 A Uh-huh.
- 19 Q Are you able to discern what's on his hat?
- 20 A Not exactly.
- 21 Q I think this part it gets closer. Tell me if you're  
22 able to at this point.
- 23 A It looks like a New York, a Y inside of an N.
- 24 Q Can you see what he's carrying there, officer, right  
25 here?

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

1 would be able to see him?

2 A Yes.

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

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

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

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

9 Q And the timestamp reflects?

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

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

13 A Yes.

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

15 A Yes.

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

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

19 Q What's he appear to be doing?

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

21 Q Can you describe the prospective --

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

24 MS. ALL: I'm sorry.

25 THE COURT: All right. You can rephrase the

1 question.

2 BY MS. ALL:

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

5 A Taking items possibly liquor.

6 Q Okay.

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

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

12 A Ma'am?

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

15 A Right about here (indicating).

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

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

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

21 A I'm not too sure.

22 Q What is he spreading out?

23 A Looks likes a towel.

24 Q And what is he doing now?

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

1 something.

2 Q Is he now walking towards the exit?

3 A Yes.

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

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

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

10 BY MS. ALL:

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

13 A Ducking under the wall.

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

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

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

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

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

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

24 Q So that street is?

25 A Harden.

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

3 A Yes.

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

5 A The suspect appears to be hiding from something.

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

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

9 Q And here?

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

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

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

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

17 A Yes.

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

20 A Looks like a bucket and the rag.

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

22 (End of video.)

23 BY MS. ALL:

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

1 A Yes.

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

6 A Yes.

7 Q And what was that?

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

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

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

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

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

16 Q Okay. And what did you do next?

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

19 Q Okay. Were you in your patrol car?

20 A Yes.

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

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

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

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

15 A Maybe a half a mile.

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

18 A Fifteen minutes tops.

19 Q Why did you pull over?

20 A The individual matched the description to a T.

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

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

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

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

3 A Yes I, do.

4 Q Have you seen them before?

5 A Yes.

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

8 A Yes.

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

11 THE DEFENDANT: Without objection, Your Honor.

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

13 MS. ALL: Yes, Your Honor.

14 THE COURT: In evidence without objection.

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

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

19 THE COURT: Yes, ma'am.

20 BY MS. ALL:

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

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

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

1 down the street?

2 A Yes.

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

5 A To the best of my knowledge.

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

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

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

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

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

18 A The cigarettes.

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

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

23 Q And the brands.

24 A Looks like Campbells and Newport.

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

1 A I do not know.

2 Q Okay.

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

4 BY MS. ALL:

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

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

12 Q Were you by yourself in the car?

13 A Yes, I was.

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

15 A He was able six feet away.

16 Q As he approached you what did you see?

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

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

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

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

25 A Yes.

1 Q Have you seen it before?

2 A Yes.

3 Q When did you see it last?

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

6 Q Has it changed in anyway?

7 A No, ma'am.

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

10 MR. MACNEALY: Without objection.

11 THE COURT: 26 in evidence without objection.

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

14 BY MS. ALL:

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

17 A Yes.

18 Q Have you seen them before?

19 A Yes.

20 Q Can you describe what they are?

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

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

24 A Yes.

25 Q Have they changed in anyway?

1 A No, they have not.

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

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

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

8 MR. MACNEALY: Thank you, Your Honor.

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

11 BY MS. ALL:

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

13 A Yes.

14 Q Have you seen it before?

15 A Yes, I have.

16 Q When was the last time you saw it?

17 A When I was out with the defendant.

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

20 A Yes, it was.

21 Q Has it change in anyway?

22 A No, ma'am.

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

25 MR. MACNEALY: Without objection, Your Honor.

1 THE COURT: 29 is in evidence without objection.

2 (State's Exhibit 29 admitted  
3 into evidence.)

4 BY MS. ALL:

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

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

12 Q And what happened next?

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

15 Q Okay.

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

17 THE COURT: Yes, ma'am.

18 BY MS. ALL:

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

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

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

25 A Yes.

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

3 A Yes.

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

5 BY MS. ALL:

6 Q Please answer any questions the defense has.

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

8 Mr. Macnealy.

9 MR. MACNEALY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MACNEALY:

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

15 A Officer Jackson and Officer White.

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

18 A No, I did not.

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

21 A It did.

22 Q Like what refreshed your memory?

23 A The whole incident together.

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

25 A No, I did not.

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

3 A No.

4 Q You never seen the incident report?

5 A No, I have not.

6 Q Okay. You know what drafted incident report?

7 A No, I do not.

8 Q Did Officer White draft the incident report?

9 A I do not know.

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

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

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

16 THE COURT: Mr. Macnealy.

17 BY MR. MACNEALY:

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

19 A Yes.

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

22 A At Sharky's, yes.

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

25 A To be booked I do not know.

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

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

3    A    Yes.

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

6    A    I do not know.

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

8    A    Yes.

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

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

12   Q    Where was the patrol car at that time?

13   A    Parked on the side of the road.

14   Q    How far from Mr. Glover.

15   A    About 6 foot.

16   Q    Thank you. Was there blue lights activated?

17   A    I do not recall.

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

20   A    Yes.

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

23   A    Yes.

24   Q    Had you approached Mr. Glover?

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

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

1 the scope and irrelevant.

2 THE COURT: Sustained.

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

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

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

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

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

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

17 BY MR. MACNEALY:

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

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

1 of cigarettes at Sharky's.

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

4 A No, I did not.

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

8 A Yes.

9 Q There were no more than that?

10 A Not to my knowledge.

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

12 A Yes.

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

14 A Yes.

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

17 A Yes.

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

22 A Yes.

23 Q Do you carry around receipts for everything?

24 A No.

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

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

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

5 A No.

6 Q But you reported that to Officer White?

7 A Yes.

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

9 A No, I did not.

10 Q Did you ever find six bottles of liquor?

11 A No.

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

13 THE COURT: Yes, sir. Certainly.

14 BY MR. MACNEALY:

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

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

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

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

23 Q About 15 minutes after you arrived?

24 A After watching the video.

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

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

3 A About ten minutes.

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

6 A Yes.

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

9 A I cannot recall.

10 Q Do you have a proximation?

11 A No.

12 Q Would five minutes be accurate?

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

14 He's already asked and answered.

15 THE COURT: Overruled.

16 BY MR. MACNEALY:

17 Q Would five minutes be accurate?

18 A I don't know.

19 Q Would an hour be closer?

20 A I don't know.

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

23 A Yeah. I did not check my watch.

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

1 A No, I do not.

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

3 THE COURT: Certainly. Yes, sir.

4 BY MR. MACNEALY:

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

9 A Yes.

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

11 THE COURT: All right. Thank you.

12 Redirect, solicitor.

13 REDIRECT EXAMINATION

14 BY MS. ALL:

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

17 A Yes.

18 Q How long ago was this incident?

19 A About a year.

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

22 A No way of telling.

23 Q Can you begin to count?

24 A No, ma'am.

25 Q Did you take notes on this incident?

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

1 A 6:30.

2 Q No further questions.

3 MR. MACNEALY: Very briefly, Your Honor.

4 THE COURT: Certainly.

5 RECROSS-EXAMINATION

6 BY MR. MACNEALY:

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

9 A I don't know.

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

12 A No, I do not.

13 Q Let me ask you --

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

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

17 A Yes.

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

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

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

23 A No, I did not.

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

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

2 Q Officer White did?

3 A I believe so.

4 Q Okay.

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

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

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

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

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

14 THEREUPON,

15 KERMIT SCOTT,

16 after having been duly sworn, testified as follows:

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

19 THE WITNESS: Kermit Scott.

20 DIRECT EXAMINATION

21 BY MS. GARFIELD:

22 Q Investigator Scott, where are you employed?

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

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

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

1 Q You also collect evidence for DNA purposes?

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

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

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

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

6 fingerprint analysis and ridgeology basic ridgeology

7 and also advantage ridgeology which also goes into palm

8 identification and also foot identification.

9 Q Foot identification?

10 A Yes, ma'am.

11 Q And approximately how many fingerprints would you say

12 you prepared in your career?

13 A Thousands.

14 Q Can there --

15 A Tens of thousands.

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

17 have you ever testify in court before?

18 A Yes, I have. Several times.

19 Q Approximately how many times?

20 A Probably ten or 11 times on burglary cases.

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

22 print comparisons?

23 A Yes, I have, ma'am.

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

25 like to introduce Investigator Scott as an expert in latent

1 print examination.

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

4 MR. MACNEALY: No, Your Honor.

5 THE COURT: All right. Thank you.

6 Just a moment, solicitor.

7 MS. GARFIELD: I'm sorry.

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

9 MS. GARFIELD: Oh, certainly.

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

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

25 Thank you, solicitor. You may proceed.

1 MS. GARFIELD: Thank you, Your Honor.

2 BY MS. GARFIELD:

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

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

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

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

23 A Yes, ma'am, I did.

24 Q And after you photographed the scene.

25 A Yes, ma'am.

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

6 A Yes, ma'am, it was.

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

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

10 Q Do you mind standing up --

11 A Yes, ma'am.

12 Q So all the members of the jury --

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

24 Q And did you try to dust for fingerprints?

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

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

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

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

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

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

23 A Yes, ma'am.

24 Q Do you recognize these photographs?

25 A Yes, ma'am.

1 Q And can you just go through those --

2 A Yes, I will, ma'am.

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

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

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

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

1 item.

2 Q But you did make an attempt?

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

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

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

11 A Yes, ma'am.

12 Q Is that common in your course of business?

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

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

25 A Yes, ma'am.

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

2 BY MS. GARFIELD:

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

5 A Yes, ma'am.

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

7 A Yes, ma'am.

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

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

10 Q What is --

11 A I mean, these photographs.

12 Q What are those photographs reflecting?

13 A These photographs, ma'am --

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

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

16 Q I'm sorry.

17 A These are the photographs from the inside of Sharky's

18 business, right. As you again, enter into the business

19 from the, from the, front door going toward the rear of

20 the business you will see a set of stairs that go down.

21 There's a railing like such (indicating) that goes

22 down, down the stairs like a little handrail. The, the

23 picture that -- the picture will depict a bottle that

24 is sitting on top of this, this, bandiest at the edge.

25 I was informed by the manager that morning that a --

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

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

7 A Yes, ma'am.

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

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

13 THE COURT: Mr. Cooper?

14 MR. COOPER: No objection.

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

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

18 THE COURT: Yes, ma'am.

19 BY MS. GARFIELD:

20 Q After photographing this bottle of bourbon --

21 A Yes, ma'am --

22 Q Investigator, what did you do?

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

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

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

7 A Yes, ma'am, I do.

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

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

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

15 A Yes, it is, ma'am.

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

17 A No, ma'am.

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

20 MR. COOPER: Without objection, Your Honor.

21 THE COURT: 31 is in evidence without objection.

22 MS. GARFIELD: Thank you, Your Honor.

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

25 BY MS. GARFIELD:

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

3 A I'm going to stand up again.

4 Q Please.

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

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

19 Q Were they both deemed to be legible?

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

22 Q Okay. Are there different types of fingerprints?

23 A Yes, ma'am, there are.

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

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



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

1 THE WITNESS: Officer Paul Nelson.

2 DIRECT EXAMINATION

3 BY MS. GARFIELD:

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

6 A Columbia Police Department.

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

9 A I work in the crime scene unit.

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

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

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

16 A I've been doing fingerprints since 1997.

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

19 A Yes.

20 Q And approximately how many crime scenes would you say  
21 you've investigated?

22 A Thousands.

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

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

1 Q And do you sometime not make matches?

2 A Sometimes, yes.

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

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

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

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

14 Q Have you ever testified in court before?

15 A Yes, I have.

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

17 A Yes, I have.

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

20 A I have.

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

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

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

1 Your Honor.

2 THE COURT: Thank you very much.

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

15 Thank you, solicitor, you may continue.

16 MS. GARFIELD: Thank you, Your Honor.

17 BY MS. GARFIELD:

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

21 A No, I did not.

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

24 A Yes.

25 Q And who lifted that fingerprint?

1 A My copartner Kermit Scott.

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

6 A I do.

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

10 A I did.

11 Q And exactly what's inside those folders?

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

15 Q And you made those?

16 A Yes, I did.

17 Q And what's in the other folders?

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

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

23 A Correct.

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

1 A No.

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

4 A Correct.

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

7 A Correct.

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

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

11 THE COURT: Certainly.

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

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

15 MS. GARFIELD: Yes, sir.

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

17 MS. GARFIELD: Thank you.

18 THE COURT: Without objection.

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

21 MS. GARFIELD: Thank you.

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

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

25 BY MS. GARFIELD:

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

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

6 Q And you're referring to a fingerprint?

7 A A fingerprint card.

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

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

12 BY MS. GARFIELD:

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

14 A Correct.

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

16 A Correct.

17 Q It hasn't been changed in anyway?

18 A No.

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

21 MR. COOPER: No objection.

22 THE COURT: 37 is in evidence without objection.

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

25 BY MS. GARFIELD:

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

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

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

11 A Correct.

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

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

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

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

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

25 BY MS. GARFIELD:

1 A Two to three percent --

2 Q Actually, Investigator --

3 THE COURT: Keep your voice up please.

4 BY MS. GARFIELD:

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

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

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

10 A This is a right --

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

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

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

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

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

1 A 14 points.

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

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

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

6 A Yes.

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

10 A Yes.

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

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

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

18 THE COURT: Certainly.

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

21 BY MS. GARFIELD:

22 Q Okay. Go ahead and take the stand.

23 A (The witness complies.)

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

- 1 characteristics are necessary to make a match?
- 2 A No, I don't. If I have three to go with I'm going to  
3 go with it.
- 4 Q And you're comfortable with 14?
- 5 A Yeah. Yes, yes.
- 6 Q Is 14 a good number for?
- 7 A Yes.
- 8 Q And it's your expert opinion these are matches to the  
9 defendant?
- 10 A Right. Yes, correct.
- 11 Q Thank you, Investigator Nelson. And you -- oh, I'm  
12 sorry. You didn't have anything else to do with the,  
13 with the, investigation in this case, correct?
- 14 A No, just verifying.
- 15 Q You didn't go to Sharky's? You didn't collect any  
16 evidence?
- 17 A No, I did not.
- 18 Q You didn't interview any witnesses?
- 19 A No.
- 20 Q You were just instructed to compare two prints?
- 21 A Correct.
- 22 Q And in your line of work those print comparisons when  
23 you make a match are other people in your unit subject  
24 to peer review?
- 25 A Yes.

1 THEREUPON,

2 J.P. WILLIAMS,

3 after having been duly sworn, testified as follows:

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

6 DIRECT EXAMINATION

7 BY MS. ALL:

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

9 A I work at the Columbia Police Department.

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

12 A A little over 16 years.

13 Q What's your position there now?

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

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

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

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

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

1 burglaries.

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

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

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

12 A Yes, I was.

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

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

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

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

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

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

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

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

1 time.

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

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

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

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

1 A I did.

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

4 A I do.

5 Q Have you seen it before?

6 A I have.

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

9 A Yes.

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

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

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

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

19 THE COURT: Is affirmed.

20 MR. COOPER: Yes, sir.

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

23 THE COURT: Yes, ma'am.

24 MS. ALL: Thank you.

25 BY MS. ALL:

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

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

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

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

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

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

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

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

8 MR. COOPER: Yes, sir.

9 THE COURT: You may continue.

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

11 BY MS. ALL:

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

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

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

12    A     Yes, ma'am.

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

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

23    Q     Was it the same day?

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

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

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

14 A I did.

15 Q Can you describe the contact that you made?

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

24 Thank you.

25 (Counsel handed the witness a

1 cup of water.)

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

6 Q Did you get to see the defendant walk?

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

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

17 A No, I had not.

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

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

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

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

9 THE COURT: Sure. Certainly.

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

14 BY MS. ALL:

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

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

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

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

23 BY MS. ALL:

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

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

4 MR. COOPER: I object, Your Honor.

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

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

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

13 MS. ALL: Thank you, Your Honor.

14 THE COURT: I sustain the objection.

15 BY MS. ALL:

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

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

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

4       Q     Did you arrest him at that time?

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

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

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

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

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

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

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

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

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

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

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

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

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

14 THE COURT: You looked down in there --

15 THE WITNESS: Yes, sir.

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

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 BY MS. ALL:

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

24 Q Have you seen them before?

25 A Yes.

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

3 A Not from what I can tell.

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

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

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

11 MR. COOPER: Yes, sir.

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

14 THE COURT: You may publish them.

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

17 MS. ALL: Thank you.

18 BY MS. ALL:

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

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

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

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

10                   THE COURT: Okay.

11                   MS. ALL: Not 25.

12           BY MS. ALL:

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

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

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

10 Q And from where were these items recovered?

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

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

15 A Yes.

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

19 A Yes, I do.

20 Q Where had you seen it before?

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

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

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

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

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

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

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

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

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

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

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

18          BY MS. ALL:

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

22          A       Yes.

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

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

1 Q Did he have a bucket on him?

2 A No, he did not.

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

4 A No.

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

8 A No, I did not.

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

12 A Just the fact that he had some different items on him  
13 then what was in the video there was an amount of time  
14 from the time the actual crime took place to the time  
15 it was viewed, reported and he was stopped and I  
16 arrived on the scene during that time frame from  
17 watching the video you could observe the defendant  
18 putting what I saw to be large amounts of cans and  
19 bottles and things of that nature in the bucket that's  
20 heavy. I wouldn't expect and through my experience in  
21 dealing with burglary cases things that are heavy  
22 people do not carry for very long. From my experience  
23 from all the burglary cases I've worked anytime someone  
24 has something very heavy they normally put it somewhere  
25 near the crime scene and come back and get it. That's

1           pretty much on every case that I've work unless the  
2           person has a vehicle or -- loaded it into a vehicle and  
3           taken off.

4                        I would have a -- I would have to assume that in  
5           this specific case through all of the experiences I've  
6           had that that taken place that that could have taken  
7           place in this specific instance and I know that I  
8           wouldn't be ridding on a bike with all of that weight  
9           holding on a handlebar ridding around through the  
10          neighborhood number one because it's evidence from my  
11          crime. Number two it's going to be awkward to ride a  
12          bike with a large amount of weight pulling you to one  
13          side for anyone who's ever ridden a bike before.

14    Q    After watching the video were you confident that it was  
15          the defendant?

16    A    Yes.

17    Q    So, what did you do after watching the surveillance  
18          footage at the headquarters?

19    A    At our south region when I reviewed the actual video  
20          evidence made the determination myself that that was  
21          the same person that was in the video that they had  
22          stopped on the side of the street. Again, from the  
23          totality of all the circumstances that I explained to  
24          you I went ahead and made the determination. To give  
25          you a little bit of background, in patrol when those

1 officers arrived on the scene their responsible again  
2 of taking the report, working it to a point that they  
3 have now been working it. Officers have different  
4 levels of experience and level of training based upon  
5 what position they are in and what position they hold.  
6 Parole officers wouldn't normally work a burglary case  
7 because they don't have the level of experience and  
8 training that an Investigator has to work those types  
9 of cases. It's a more serious crime so they wouldn't  
10 take a case like that. They would call an investigator  
11 to come take it.

12 With that added responsibility put on me when I  
13 arrived at the scene I want to make absolute sure what  
14 I do before I make a decision to tell someone to arrest  
15 someone else from I make absolute sure of the things I  
16 see and the things that I observe took place. So, once  
17 I observed and made the identification that this was  
18 the same person that was in the video I called back to  
19 the patrol officer on the scene or it-I believe it was  
20 the supervisor on the scene and told them to go ahead  
21 and place him under arrest at that time because I told  
22 them not to arrest him until I viewed the video.

23 And then once he was placed under arrest at that  
24 time that's when I checked with Kermit Scott asked him  
25 if he was available, was he still on the scene at

1 Sharky's? He stated, yes. The defendant and the --  
2 Kermit Scott met me at headquarters at the rear at  
3 the -- where you see in the pictures so I could get  
4 pictures of the defendant.

5 Q Why did you ask Kermit to meet you there?

6 A He was the original crime scene investigator and so I  
7 wanted to instead of getting multiple different people  
8 I wanted to keep the same person who processed the  
9 crime scene, take the pictures of the defendant.

10 Q If I can correct myself, Officer Scott, I'm sorry. Had  
11 Officer Scott been on the scene at Sharky's?

12 A Yes.

13 Q And where was he while the defendant was being detained  
14 at Millwood?

15 A To my knowledge, he was at the scene for most of the  
16 time. I'm not sure the exact time he arrived but when  
17 I called and checked that's where he was at.

18 Q Okay. Where did y'all go next?

19 A Once they arrived at headquarters and we retrieved the  
20 pictures which I thought were very prevalent to the case  
21 at that point he was transported to Richland County  
22 Detention Center.

23 Q Okay. Can you describe a little bit more what happened  
24 at headquarters?

25 A When we arrived at headquarters again, one of the

1 things I want to do is get a head-to-toe picture of the  
2 person to identify those specific characteristics that  
3 I observed in the video. And I don't recall the exact  
4 time at some point while we were at headquarters that's  
5 when Kermit Scott informed me that he had went ahead  
6 and did a print comparison and excuse me if I use the  
7 inappropriate language because I'm not a CSI person. I  
8 don't, I don't, know anything about fingerprints.

9 He informed me that this -- these fingerprints  
10 that he had were the same as the ones that the  
11 defendant had on file at that time.

12 Q Did you ever go to Sharky's?

13 A Number one, I've been to Sharky's before. I'm familiar  
14 with the layout, I know where it's at. I've been  
15 inside of. Number two, when I arrived on scene and  
16 once I observed the video I observed the defendant. It  
17 was that clear to me that that was the defendant that  
18 was on the scene. To my knowledge and after further --  
19 it become true that there were no other witnesses for  
20 me to interview. There was no other evidence for me to  
21 gather. Kermit Scott had already gathered all the  
22 evidence at the scene. There was really nothing else  
23 for me to do on this case. I had the evidence I had.  
24 I had the fingerprints already been admitted into  
25 evidence.

1 Q Yes, sir.

2 A I have the fingerprint off of a bottle that was stored  
3 in an employee area that no one has access to but  
4 employees.

5 I had the person on the video which I thought was  
6 the defendant moving local bottles to different  
7 locations in the video. Where those bottles were moved  
8 in the video was where that bottle was when the Kermit  
9 Scott actually took the print off of it. A print on  
10 the bottle is located in the employee area that normal  
11 people don't have access to a bottle that I observe a  
12 person on the video which I thought to be the  
13 defendant, Mr. Glover, moving from one location to  
14 another--

15 MR. COOPER: Your Honor, I object, this is  
16 nonresponsive.

17 BY MS. ALL:

18 Q Well, just, I'm going to hand you what's been entered  
19 into evidence as State's Exhibits 13 and 18. Could you  
20 describe what's in those pictures and their importance  
21 to you in observing the video?

22 A Are we done with the evidence?

23 Q Yes.

24 A Okay. The -- what you probable recognize and what I  
25 always remember in the video and if you can see it.

1 I'm sorry it's so small. This wall (indicating) and  
2 this box (indicating) if you remember from the video  
3 there was a book on the floor from behind the little  
4 half way which is where the person in the video kept  
5 walking to and putting items in the box. This is the  
6 actual box and it was right below this wall. And if  
7 you remember the person in the video kept going and  
8 getting items from behind the bar and placing them in  
9 various locations right where that box was at and right  
10 where the half wall is at. That the items I was  
11 referring to and that's the bottle I was referring to  
12 that the print came off of and --

13 Q What did you observe happened to that bottle in the  
14 video?

15 A I -- in the video as all of you saw you can't read a  
16 label on the video. What I base my determination on is  
17 where multiple bottles were being taken from the  
18 employee area to this location being placed in this box  
19 being placed at the bucket that you saw on the video.  
20 These items were not there before the person in the  
21 video moved them to this location. They were there  
22 once that person moved them and they were there once  
23 this person left. They were there once Kermit Scott  
24 got to the scene and once the manager got to the scene  
25 it was the same stuff you observed in the video being

1 moved by the person in the video.

2 Q And where were the prints recovered from?

3 A The prints were recovered from the actual bottle that  
4 was sitting there.

5 Q And in your through analysis of the video did you see  
6 anybody else touch that bottle?

7 A No.

8 Q I'm going to hand you what's been entered into evidence  
9 as State's Exhibit 7 seven, if you could describe to  
10 the jury what this shows?

11 A This is a picture that you've already seen before.

12 This is the cigarette area that the cigarettes were  
13 taken out from. This was behind the bar (indicating),  
14 if you remember the video which I was referring to  
15 earlier that was bright, the camera that was sitting  
16 right here (indicating) and if you he was right  
17 down that partially that Red Bull sign, you saw the  
18 person in the video kept walking back and forth.

19 Walking toward the video -- walking toward the camera  
20 and walking away from the camera, taking items from  
21 down here (indicating) walking out and then going to  
22 that half way and placing items there. This location  
23 is where all the liquor bottles are stored (indicating)  
24 which is what was taken to this location and further  
25 down to -- these were the items where they were removed

1 and taken to the half wall which you observed in the  
2 video.

3 Q Did you observe the defendant -- or could you describe  
4 where the camera would be in prospective of that  
5 picture and where you saw the defendant --

6 MR. COOPER: Objection reference to the defendant.

7 BY MS. ALL:

8 Q Could you describe where the suspect in the video was  
9 standing and where the camera would be just so we all  
10 have prospective.

11 A Yeah. The camera would actually be here (indicating)  
12 looking down in between the bar and the cabinetry where  
13 the alcohol and things like that were stored. So,  
14 where a person walks behind the bar that would be  
15 angles. So, the camera would have been sitting here  
16 (indicating) looking down the bar. If you remember it  
17 was obscured just a little bit when he walked out down  
18 here (indicating) it was because you could see that red  
19 bull or what I know to be a red bull I think you see  
20 the D and then the bull on the video camera from  
21 looking at an angle like this. And you could see the  
22 person in the video walk by the camera, kind of look  
23 up. Walk by this red bull. Walking back with the head  
24 down you can see just right below the eyes and down  
25 that was the camera angle that they're referring to in

1 this actual picture.

2 Q Did the suspect in the video carry cigarette away from  
3 that area?

4 A Yes.

5 Q Can you do the same with what's been entered into  
6 evidence as State's Exhibit 9 please, showing the till?

7 A This is further down that same bar area again. As I  
8 was referring to in this picture (indicating) these  
9 don't marry up because they're not side-by-side. The  
10 camera is here. This is where the person in the video  
11 was closest to the camera (indicating). This is the  
12 location that the person in the video was walking in  
13 between the bar that you couldn't see quite as well  
14 when they were walking away from the camera when they  
15 were removing things from the cash register from the  
16 till as the solicitor said and removing different  
17 various items liquor bottles, things of that nature  
18 from this area. You couldn't see it really clear on  
19 the video because this was partially blocked by this  
20 (indicating) red bull container right here (indicating)  
21 but you can see once that person in the video would  
22 walk by when they came by you could see the hat very  
23 clearly and see the face right below the eyes very  
24 clearly.

25 Q Okay. Sergeant Williams, did you ever watch the video

1 after you had watched it at south region?

2 A Yes, I did.

3 Q When did you watch it again?

4 A I actually called Mr. Shealy who is one of the people  
5 that's responsible for the video cameras down in Five  
6 Points. I'm sure everybody has heard about him on the  
7 news and all that type stuff. I give him a phone call  
8 and asked for a direct copy of the video from him so  
9 there would be no discrepancy as to where the video  
10 came from. I called him. He had his daughter who is  
11 also his employee deliver a copy personally to me at  
12 headquarters that very day. I observed the video that  
13 very day on my computer --

14 Q Well --

15 A Through his software like y'all did.

16 Q Okay. Why did you watch it again? Why did you review  
17 it again?

18 A Because at the time I didn't want to detain Mr. Glover  
19 any more than possible if he was not the person that we  
20 were going to arrest for the crime. So, I reviewed the  
21 video enough for me to identify the person or who I  
22 felt was the defendant at the time. Then when I got  
23 back to headquarters I wanted to review frame-by-frame  
24 picking out very small discrepancies I explained to you  
25 before with the high cheekbones. There's only a couple

1 of frames if you go through that you could see the  
2 color of the bike. Different points as the light hits  
3 it as the bike is moving across you can go  
4 frame-by-frame on that video. It's fairly extensive  
5 time and very-time consuming to do that type of stuff  
6 so I sat there and did that in my office later just to  
7 verify the evidence that we had and look at the actual  
8 still frames just to reconfirm what I already knew.

9 Q Were you left with any doubt that the burglar in the  
10 video was Tyris Glover?

11 A No, I was not.

12 Q I'm sure the jury can notice that you're doing this  
13 without any notes. Did you generate any notes when you  
14 investigated this?

15 A No, I did not.

16 Q Why is that?

17 A As I explained to you earlier, when there's --  
18 different people have different roles within the police  
19 department. Parole officers are paroling. The parole  
20 officers' role is to go to the scene of the crime,  
21 report the crime, put the information in that report.  
22 And then once that crime has been documented by a  
23 reporting officer or patrolman at that point an  
24 investigator gets assigned to it for follow up. In  
25 this case specific case in my opinion it was very --

1           there was an overwhelming amount of evidence and there  
2           was nothing else to follow up on and for me to take  
3           case notes on. Everything that was done was collected  
4           by Kermit Scott or it was obtained on the video. There  
5           was no other evidence for me to obtain. There was no  
6           one else for me to speak to so everything had been  
7           done. In my opinion it was kind of an open and shut  
8           case. Once I made my determination of all of these  
9           facts there's really nothing else for me to  
10          investigate.

11                 Sometimes when you're called to the scene as an  
12          investigator you may have a person who the patrolman  
13          suspects or a person of interest to the Investigator.  
14          At that point that person would have been released. I  
15          would follow up. I would pull the person in for an  
16          interview. I would, you know, try to in those  
17          circumstances obtain different witnesses that saw him.  
18          All of those type things comes into play and I would do  
19          case notes on it. I wouldn't do a report but I would  
20          do case notes on it. In this specific case pretty much  
21          it was kind of handed to me with all of the evidence  
22          all right in tact and what was there was there and  
23          there was nothing else for me to do.

24          Q     Do you recognize Tyris Glover in the courtroom today?

25          A     I do.

1 Q Could you please point him out?

2 A The defendant in the white shirt sitting to my left  
3 (indicating).

4 Q Thank you.

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

6 THE COURT: Yes, ma'am.

7 MS. ALL: Your Honor, let the record reflect that  
8 Sergeant Williams did point out the defendant seated at the  
9 table with his defense counsel.

10 BY MS. ALL:

11 Q Please answer any questions that Mr. Cooper has for  
12 you.

13 THE COURT: Thank you, solicitor.

14 Mr. Cooper.

15 MR. COOPER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. COOPER:

18 Q You just told Ms. All that you considered this to be a  
19 open and shut case, right?

20 A Yes. Just general terminology, yes.

21 Q Well, that's -- those were the words that you used,  
22 right?

23 A Yes, sir. That's what I'm saying that was general  
24 terminology.

25 Q You said open and shut?

1 THE COURT: All right. Madame Clerk, if you would  
2 publish our verdict please.

3 THE CLERK: Thank you, Your Honor.

4 County of Richland County, State of South Carolina  
5 versus Tyris Bernard Glover on Indictment Number  
6 2012-GS-40-0857, as to larceny we the jury unanimously find  
7 the defendant guilty.

8 On Indictment Number 2012-GS-40-0854 as to  
9 burglary second degree, we the jury unanimously find the  
10 defendant guilty signed by the foreperson dated 4/27/12.

11 Madame Forelady, is this your verdict and the  
12 verdict of the entire jury?

13 MADAME FORELADY: It is.

14 THE COURT: Thank you.

15 Thank you. Anything further for the jury from the  
16 state?

17 MS. ALL: Nothing, Your Honor.

18 THE COURT: From the defense.

19 MR. MACNEALY: Your Honor, we would like the  
20 polling the jury.

21 THE COURT: All right. Clerk would you explain  
22 that procedure to the jury and then poll the jury?

23 THE CLERK: Yes, Your Honor.

24 Madame Forelady, ladies and gentleman of the jury,  
25 I'm going to call each of your numbers. I'm going to ask

1 any motions?

2 MR. MACNEALY: Yeah, Your Honor, just one.

3 Defense makes a motion for a new trial, that argument, that  
4 basis for that in our opinion the suppression motion that we  
5 made pretrial and the admittance of the cigarettes in  
6 particular we feel like our stance is still that probable  
7 cause was not present at that point when the officer stopped  
8 Mr. Glover. We think that, in our opinion, that most they  
9 had was reasonable suspicion and for officer safety and in  
10 plain view of contraband.

11 And addition to that, Your Honor, the pictures and  
12 even though part of your ruling limited to one picture, Your  
13 Honor, you know, that was put forth and as evidence and we  
14 feel like that was a given that he was detained at that time  
15 at the police headquarters that was a prejudicial photo.

16 And finally, Your Honor, just the speedy  
17 deliberations I think about 35 minutes, 39 minutes, maybe,  
18 and the argument would be, perhaps, not a full examination  
19 of the evidence, Your Honor. That the basis for the new  
20 trial. Thank you.

21 THE COURT: All right. You refer to plain view  
22 contraband, what were you referring to Mr. Macnealy?

23 MR. MACNEALY: I'm sorry. Yeah, the -- in the  
24 case law again in the pretrial the -- what allows for under  
25 the Terry Frisk is if there's contraband in plain view,

1 known contraband. At that point all we -- all the officer  
2 saw was four packs of cigarettes and that was the first  
3 testimony there was a match and then he clarified that it  
4 wasn't the same brand. So, we're talking about four packs  
5 that could have been any packs from any variety of places  
6 and throughout his testimony we never heard when the 45  
7 packs went. I would argue all those four packs are, Your  
8 Honor, are four packs of cigarettes and they don't qualify  
9 as contraband within the case law under the plain view  
10 doctrine. The Terry Frisk would allow him assuming, Your  
11 Honor, again I'm working under the assumption that this was  
12 a -- the officer was operating under reasonable suspicion at  
13 that point at the most based off of the video that he and  
14 the manager had seen minutes earlier that showed a  
15 gentleman, you know, wearing a white shirt with a ball cap  
16 and riding a bicycle. So, it's reasonable suspicion at that  
17 point that that same person was Tyris Glover. I would  
18 argue, Your Honor, that that allowed under the suspicion  
19 doctrine Terry Frisk Doctrine just for a, you know, a Terry  
20 Frisk and plain view of contraband allowed -- did not give  
21 the officer permission to seize those items at that time  
22 because the defense's argument that probable cause was not  
23 present, Your Honor. Thank you.

24 THE COURT: Would you hand me the photograph  
25 please that you're referring to?

1 MR. MACNEALY: Yeah. I think it was State's  
2 Exhibit 25 I believe, Your Honor.

3 THE COURT: Thank you. All right. I would  
4 reaffirm my trial rulings in that regard. Further,  
5 although, I haven't studied this case I only looked at it on  
6 the outline. Since your previous arguments under Minnesota  
7 versus Dickerson, Arizona versus Hicks.

8 There is a case Colorado versus Bannister 449 U.S.  
9 1 (1980) where an officer stopped a automobile for speeding.  
10 The officer had heard a radio dispatch of a theft of auto  
11 parts and saw chrome lug nuts in an opened glove department  
12 and two lug nut wrenches on the floor in plain view. The  
13 driver and the companion met the description of suspect.  
14 There was an arrest of the occupants and the seizure of the  
15 lug nuts and wrenches was proper. That was also cited in --  
16 that and Texas versus White in 1975 -- case.

17 I think the testimony from Officer Kevin Schmidt  
18 was such that he did have reasonable suspicion. He had a  
19 suspect within the general area within a short, reasonably  
20 short, time frame matching the description of the individual  
21 that he had observed on the video dressed up similarly  
22 movements, similarly. There's no question that he had  
23 reasonable suspicion. Further testimony was that the  
24 officer indicated he asked consent to search the backpack  
25 and within that backpack found four packs of cigarette. The

1 ultimate testimony was two unopened. There were two that  
2 were opened and those matched the brand of cigarettes that  
3 were stolen from Sharky's. I say I reaffirm my rulings. I  
4 think the use and known use of the word matched goes to the  
5 weight or value that the jury gives to, to, that testimony.

6 As to Photograph Number 25, it appears to be it is  
7 a photograph of the defendant in the clothes that had be  
8 previously described and can be observed on the video,  
9 State's Exhibit Number 30 both the hat and the shirt and  
10 blue jeans. I do not see any prejudicial effect in this  
11 regard, in fact, I can conceive of cases in which this  
12 photograph would be exculpatory because the individual  
13 pictured in here might not match the individual that was  
14 shown on the, on the, video.

15 As to deliberations. The time a jury deliberates  
16 is within the province of the jury. There was no indicating  
17 of any improper conduct by the jury. I would say the case  
18 is gone on for more than a day. Every time I noticed the  
19 jury they were paying attention to both the attorneys and  
20 witnesses and paid very close attention to the evidence and  
21 testimony as it was presented. So, I would respectfully  
22 deny your motion for a new trial.

23 MR. MACNEALY: Thank you, Your Honor.

24 THE COURT: Anything further?

25 MR. MACNEALY: I don't think so. Thank you.

1 THE COURT: My reason why sentence should not be  
2 imposed at this time, Mr. Macnealy?

3 MR. MACNEALY: No, Your Honor.

4 THE COURT: All right. You can have Mr. Glover  
5 come around.

6 THE BAILIFF: Come around.

7 THE COURT: Solicitor, anything further?

8 MS. ALL: Only his record, Your Honor.

9 THE COURT: All right.

10 MS. ALL: Your Honor, you're head all of the facts  
11 of the case. The defendant did cause \$600 of damage to the  
12 cash register, stole 45 packs of cigarettes that they sell  
13 at \$8 a piece and what they estimated to be at \$90 worth of  
14 liquor. Obviously you heard there was no damage in forcing  
15 entry.

16 The state would also like to point out that he was  
17 extremely belligerent during the contact with officers. You  
18 heard the testimony about his language toward the offices  
19 but he also made threats to urinate in the police car.  
20 Officer did everything they could to being, being, aware of  
21 the heat everything they could to help him. They give him  
22 bottled watter and everything but he was extremely  
23 disrespectful and rude and uncooperative to a painful  
24 degree. He also insisted on lighting up one of his  
25 cigarettes in the parole car after they removed his

1 handcuffs to the front.

2 His record goes back to '84, petty larceny and  
3 trespassing; '86, burglary second and grand larceny for  
4 which he received a YOA sentence; '88, burglary third; '89,  
5 burglary second for which he reserved ten years, auto  
6 breaking for which he received four years and three counts  
7 of grand larceny for which he received ten years suspended on  
8 six years and five years probation with restitution. He got  
9 13 years in '95 for a burg second nonviolent; 2004 an auto  
10 breaking; 2006, receiving stolen goods; 2008, auto breaking  
11 one year and six months probation, property crimes third  
12 threes and burglary third first three years. And obviously  
13 in 2011 as we discussed in chambers in the consideration for  
14 the procedure that we discussed in chambers he had been  
15 charged with auto breaking and property count -- property  
16 crimes third, the state agreed to reduce it to petty larceny  
17 and auto breaking and recommend time served. That was in  
18 May of 2011 and this incident occurred in June of 2011 about  
19 a month later. He's also got a 2004 conviction in North  
20 Carolina from a trial and a guilty verdict.

21 THE COURT: All right. Thank you. Anything  
22 further, solicitor?

23 MS. ALL: No, Your Honor.

24 THE COURT: You have the sentencing sheets?

25 MS. ALL: I'm getting there, Your Honor, it's

1 coming.

2 THE COURT: All right. And when you say what we  
3 discussed in chambers that we would be yourself, Assistant  
4 Solicitor Garfield, Mr. Macnealy and Mr. Cooper, is this  
5 correct?

6 MS. ALL: And yourself, Your Honor. Yes, Your  
7 Honor that's correct.

8 THE COURT: Okay. Thank you.

9 All right anything, Mr. Macnealy?

10 MR. MACNEALY: Your Honor, he's --  
11 Britton, may we approach real quick?

12 MS. ALL: Sure.

13 THE COURT: Certainly.

14 (Whereupon, a bench conference  
15 was held off the record.)

16 MR. MACNEALY: Sorry, Your Honor.

17 THE COURT: All right. That's quite all right.

18 I'll be glad to hear from you.

19 MR. MACNEALY: Thank you. Your Honor, I think the  
20 most important thing I can say right now is that prior to me  
21 meeting Mr. Glover it's my understanding that he,  
22 Mr. Glover, had provided some assistance to the state -- his  
23 testimony that state my client feels new puts his life in  
24 jeopardy. Your Honor, this is a matter, of course, the  
25 solicitor as myself, my cocounsel we spoke about in

1 chambers, if there's anything that Your Honor could do in  
2 terms of sentencing to make the department of corrections  
3 aware and, of course, myself and cocounsel will be giving a  
4 call to the department of corrections to see if there's any  
5 additional measures we can do in terms of transferring out  
6 of state. But if there's anything, Your Honor, can do in  
7 terms of providing a cautionary statement, perhaps, to keep  
8 Mr. Glover and Samey Adams separate during that period at  
9 that facility I would appreciate that.

10 And, Your Honor, I would ask that you consider the  
11 fact that Mr. Glover did provide some assistance to the  
12 state putting his life potentially at risk considering that  
13 when you fashion a sentence, Your Honor. And, Your Honor,  
14 we ask for a reasonable sentence. Thank you.

15 THE COURT: Thank you. Thank you very much,  
16 Mr. Macnealy.

17 Anything you would like to say, Mr. Glover?

18 THE DEFENDANT: No, sir.

19 MS. ALL: Your Honor if I may pay for purpose for  
20 sentences that this is a property crimes third carrying up  
21 to ten years. These are the certified convictions for the  
22 prior property crimes.

23 THE COURT: All right.

24 MS. ALL: And just to point out for the  
25 defendant's benefits so that he'd be advised that burglary

1 second violent is a violent crime and carries up to 15  
2 years.

3 THE COURT: Do you, do you, have the sentencing  
4 sheets?

5 MS. ALL: Yes, Your Honor.

6 THE CLERK: He's signing now, Judge.

7 THE COURT: All right. Based on the evidence and  
8 testimony presented, the jury having found the defendant  
9 guilty of burglary second violent --

10 MS. ALL: Violent, Your Honor.

11 THE COURT: The sentencing sheet has typed in  
12 nonviolent.

13 MS. ALL: Let's see 0086 and 0080, Your Honor and  
14 2367.

15 THE COURT: The sentencing sheet as a CVR Code of  
16 0086 and then it has, it has, he pleads to this. This,  
17 isn't correct --

18 MS. ALL: Your Honor, if I my approach I will be  
19 glad to amend it itself.

20 THE COURT: How about just get me a correct one  
21 and let me know when it's corrected.

22 MS. ALL: Yes, Your Honor. I'm sorry.

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

25 THE COURT: All right. 2012-GS-40-854, burglary

1 second violent and 2012-GS-40-0857 property offense third or  
2 subsequent and you have no question Mr. Macnealy that it is  
3 third or subsequent?

4 MR. MACNEALY: I do not, Your Honor.

5 THE COURT: And that it is two prior convictions  
6 on the burglary. Taking into the considerations the facts  
7 and circumstances of the case that's presented and the  
8 defendant's substantial prior record which includes a total  
9 it appears five previous burglary convictions.  
10 Additionally, auto breaking three times, grand larceny,  
11 receiving stolen goods; the defendant on the burglary is  
12 committed to the State Department of Corrections for a  
13 determinate term of 12 years.

14 On the property offense enhancement the defendant  
15 is committed to the State Department of Corrections  
16 determinate term of ten years. Those are to run concurrent,  
17 credit for all time served. I have indicated on both  
18 sentencing sheets the court requests and recommends that the  
19 defendant not be housed with Samey Adams. I will follow up,  
20 if you have no objections I will call Mr. Taske the general  
21 counsel of the Department of Corrections, as I say, I don't  
22 have any authority --

23 MR. MACNEALY: Sure.

24 THE COURT: To order that but I will also call and  
25 speak with Mr. Taske in that regard.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: Anything further?

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

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

5 Good luck to you --

6 THE DEFENDANT: Thank you.

7 THE COURT: Mr. Glover.

8 Thank you. Thank you, solicitor.

9 MS. ALL: Thank you, your Honor.

10 END OF PROCEEDINGS

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WITNESSES

(S) JP WILLIAMS - Columbia Police Department

ARREST WARRANT NUMBER

K689032

ACTION OF GRAND JURY

TRUE BILL

Margaret A. Dickerson  
Foreperson of Grand Jury  
Date FEB 09 2012

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2012-GS-40-00854

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

159

THE STATE

vs.

Tyris Bernard Glover

Indictment for  
BURGLARY 2ND DEGREE (VIOLENT)

SC Code: 16-11-0312(B)

CDR Code: 0086

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

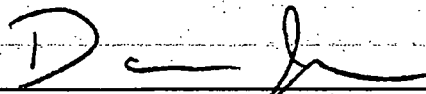
INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 8, 2012, the Grand Jurors of Richland County present upon their oath:

**BURGLARY, SECOND DEGREE**  
**(VIOLENT)**

That Tyris Bernard Glover did in Richland County on or about June 28, 2011, enter without consent and with the intent to commit a crime therein, a building located at STREET, and the defendant, Tyris Bernard Glover, did have a prior record of two or more convictions for burglary or housebreaking or a combination of both, in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
DAN JOHNSON, SOLICITOR

**WITNESSES**

(S) - Columbia Police Department- JP  
**WILLIAMS**

**ARREST WARRANT NUMBER**

**K689033**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Margaret H. Dickerson*  
Foreperson of Grand Jury  
Date: **FEB 09 2012**

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2012-GS-40-00857**

**The State of South Carolina**

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**FEBRUARY 1 TERM 2012**

159

**THE STATE  
vs.**

**Tyris Bernrd Glover**

**Indictment for  
PROPERTY CRIME -3RD & SUBSEQ.**

SC Code: **16-01-0057**  
CDR Code: **2367**

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

**INDICTMENT**

At a Court of General Sessions, convened on <sup>FEBRUARY 8</sup>, 2012, the

Grand Jurors of Richland County present upon their oath:

**PROPERTY CRIME**  
**(THIRD OR SUBSEQUENT OFFENSE)**

That Tyris Bernard Glover did in Richland County on or about June 28, 2011, take possession of, carry away, transfer to another, or cause to be carried away or transferred, property of SHARKY'S, to wit: CIGARETTES, LIQUORS, AND/OR OTHER MERCHANDISE, in violation of Section 16-13-0030, S. C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

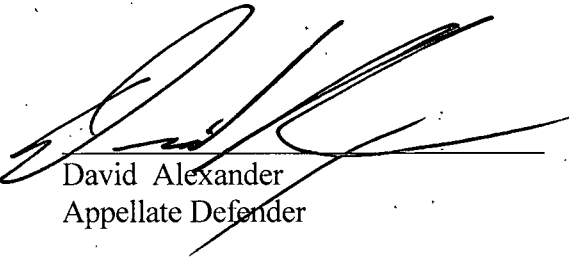


DAN JOHNSON, SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

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

July 22nd, 2013



David Alexander  
Appellate Defender

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

ATTORNEY FOR APPELLANT

**RECEIVED**

JUL 22 2013

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Richland County

R. Knox McMahon, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

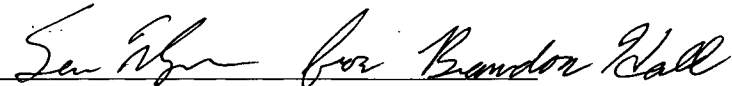
TYRIS BERNARD GLOVER,

APPELLANT


APPELLATE CASE NO. 2012-211983  
\_\_\_\_\_

CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Julie Kate Keeney, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 22nd day of July, 2013.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 22nd day of July, 2013.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013.