

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

William Jeffrey Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEREMY SMITH,

APPELLANT

APPELLATE CASE NO. 2014-000146

RECORD ON APPEAL

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State of South Carolina

County of Sumter

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Jeremy Smith,

Defendant.

2010-GS-43-0118

January 15, 2014

Transcript of Record

B E F O R E:

The Honorable W. Jeffrey Young, Judge

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

Michael McMullen, Esquire
Assistant Solicitor for 10th Judicial Circuit
Attorney for the State

Stephen Story, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

1 for the Court before the trial starts. The first motion
2 I would like to make is a motion for a continuance in
3 this case. Ever since our office began representing Mr.
4 Jeremy Smith, ever since we received the discovery, we
5 were told that there was a videotape taken from Young's
6 Market at 230 Manning Avenue. Our decision about what to
7 do rested with this videotape. If I saw it and it
8 exonerated my client, we would push the case. If it
9 showed my client, we would discuss that.

10 I was told two days ago that there was no videotape.
11 Two days ago, there was no videotape. So for this
12 reason, I would ask for a continuance mainly for the
13 opportunity to find some more alibi witnesses or just
14 alibi witnesses in general.

15 THE COURT: Did you plead alibi in the initial
16 case in your defense? Did you give the State ---

17 MR. STORY: I have not given the Solicitor
18 notice of an alibi witness because I don't have an actual
19 alibi witness.

20 THE COURT: Okay.

21 MR. STORY: I've interviewed one potential
22 witness. But I think two days is not enough time given
23 the fact that I was assuming I would see the videotape.
24 I also went to the Solicitor's office Friday to watch a
25 videotape. I saw a videotape from Young's Market. We

1 watched it for quite some time. And then I was told
2 Monday that there wasn't a videotape. So for this
3 reason, I would like to ask for a continuance on this
4 case.

5 THE COURT: All right.

6 Mr. McMullen?

7 MR. MCMULLEN: May it please the Court. The
8 Public Defender's office was kind enough to provide a
9 list of people they represented who wanted jury trials
10 this week, and Mr. Smith put himself on that list. It
11 was then that I added him to the trial roster that we met
12 about Friday. And I know this was low on the list
13 Friday, but it was on that. There was nothing mentioned
14 then about that. And I learned Friday afternoon late
15 after watching a lot of uneventful video that what I had
16 just didn't show -- it was from a different Young's store
17 altogether. And as soon as I was aware of it, I made Mr.
18 Story aware of that. So I would say this is actually in
19 his favor. So I just don't think that we should continue
20 the case.

21 THE COURT: I mean, is it correct that you had
22 asked to be put on the docket for this week?

23 MR. STORY: No, Your Honor, that isn't correct.
24 The Assistant Solicitor, I think, mis-remembers what was
25 on that list that we sent. I do not recall putting

1 Jeremy Smith, ---

2 THE COURT: All right. Well, this case has
3 been on the docket for two weeks, so you've been on
4 notice. I'm going to deny your motion for a continuance.

5 MR. STORY: Thank you, Your Honor.

6 THE COURT: Do you have any other motions?

7 MR. STORY: Yes, Your Honor. The second motion
8 I would like to make is -- I would like to make a motion
9 to suppress any witnesses stating anything about what
10 they saw on this videotape.

11 I have two grounds for this motion. The first is
12 under Brady versus Maryland. Brady versus Maryland, a
13 1963 Supreme Court case, said defendants have a right to
14 request and obtain from the prosecution evidence material
15 to the guilt of the defendant or relevant to the
16 punishment to be imposed. We were told there was a
17 videotape ever since our office has received discovery,
18 as I stated earlier. And now we're told there is no
19 videotape. We were waiting to watch this videotape so we
20 would know what to do going forward. We believe this is
21 a denial -- I believe a denial of due process under
22 Brady.

23 The second grounds is under Arizona versus
24 Youngblood, a 1988 Supreme Court case. In that case the
25 United States Supreme Court made it a two-prong test for

1 denial of due process. The first is that we have to show
2 bad faith on the part of the police in order for the
3 destruction of the ---

4 THE COURT: And that's your burden to show?

5 MR. STORY: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. STORY: That's our burden to show. And the
8 second prong is we have to show that there was
9 exculpatory evidence on that tape. My South Carolina
10 authority is State versus Jackson, a 1990 South Carolina
11 Supreme Court case. In that case, the South Carolina
12 Supreme Court threw out a conviction for a DUI because a
13 -- there was a tape taken ---

14 THE COURT: That was a DUI case, wasn't it?

15 MR. STORY: Yes, Your Honor, it was a DUI case.
16 It was material evidence that was destroyed. And that
17 was -- I believe that was a result of normal police
18 practice because the case was ---

19 THE COURT: Well, in that case it was dropped,
20 and then the Court felt that maybe they had dropped it as
21 a ruse so they could go ahead and destroy the tape and
22 then bring it back up. So there was bad faith there and
23 the fact that that was the majority of the State's case.

24 MR. STORY: Yes, Your Honor. Our position is
25 it was bad faith because the police knew there was

1 material evidence on the videotape. It is also our
2 position that it was not my client on the videotape, and
3 therefore, it was exculpatory.

4 THE COURT: You don't think that your remedy
5 would be to cross-examine the witnesses who saw the
6 videotape and to question their reliability?

7 MR. STORY: I will certainly do that.

8 THE COURT: I mean, we're not going to be
9 saying nothing -- but you've got actual witnesses in this
10 case, which I understand, who have seen the videotape and
11 will testify otherwise. Isn't your remedy to cross-
12 examine them?

13 MR. STORY: Well, Your Honor, I would ask for a
14 suppression based on State versus Jackson under Arizona
15 v. Youngblood. Because in that they overturned a
16 conviction. And so I believe the remedy is to suppress
17 any ---

18 THE COURT: All right. Mr. McMullen?

19 MR. MCMULLEN: May it please the Court. The
20 State versus Moses addresses an issue much like this.
21 And citing Arizona versus Youngblood, they said while
22 recognizing the State does not possess an absolute duty
23 to preserve potentially useful evidence, our State
24 Supreme Court has held a defendant must demonstrate the
25 State destroyed the evidence in bad faith or the State

1 destroyed evidence that possessed an exculpatory value.

2 And that must be apparent before the evidence was

3 destroyed. And I just don't think we have that here. If

4 anything, it was inculpatory.

5 THE COURT: Also, this is different from

6 Jackson. In Jackson the actions of the person on a DUI

7 as to whether his capabilities to drive have been

8 impaired is one thing. Is the only purpose of this

9 videotape for identity purposes?

10 MR. MCMULLEN: Yes.

11 THE COURT: Okay. So therefore, this would not

12 be the main evidence in this case; this would just be one

13 portion of the evidence. Is that correct?

14 MR. MCMULLEN: Yes, sir.

15 THE COURT: Okay.

16 MR. STORY: Your Honor, if I may, I would like

17 to put the custodian of the videotape and question them

18 to find out why ---

19 THE COURT: Okay. You may call your first

20 witness then.

21 MR. STORY: The first witness I would like to

22 call is Investigator James Atkinson.

23 THE COURT: All right. Mr. Atkinson, come

24 forward.

25 (WHEREUPON, the witness was duly sworn.)

1 MR. STORY: Yes, Your Honor. Thank you.

2 JAMES ATKINSON,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 IN-CAMERA EXAMINATION

5 BY MR. STORY:

6 Q. Investigator Atkinson ...

7 A. Yes, sir.

8 Q. ... isn't it true that you work for the Sumter
9 County Sheriff's Department?

10 A. Yes, sir. The crime scene -- I'm the evidence
11 custodian.

12 Q. Okay. And about how long have you been at that job?

13 A. September 2010 is when I got there.

14 Q. Okay. Do you recall being in possession of a VHS
15 tape associated with a burglary of a Young's Market on
16 September 13th, 2009?

17 A. No, sir. I never seen the tape myself. It was
18 there before I got there, so I've never seen it.

19 MR. STORY: No further questions for this
20 witness.

21 THE COURT: Thank you. You may step down.

22 Do you have anything?

23 MR. MCMULLEN: No, sir.

24 MR. STORY: The second witness I would like to
25 call is Investigator Melissa Addison.

1 THE COURT: All right.

2 Ms. Addison, come forward.

3 **MELISSA ADDISON,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. STORY:

7 Q. Good morning, Investigator Addison.

8 A. Good morning.

9 Q. What's your position with the Sumter County
10 Sheriff's Department?

11 A. I'm a sergeant in the investigations division.

12 Q. Okay. And what all does your job entail, briefly?

13 A. It entails processing crime scenes, gathering
14 evidence, photographing, interviewing witnesses,
15 defendants. Also, obtaining arrest warrants when
16 appropriate, making arrests.

17 Q. Were you the lead investigator involving a burglary
18 at Young's Market at 230 Old Manning Road on September
19 13, 2009?

20 A. Yes, I was.

21 Q. Okay. Did you gather a VHS tape from the Young's
22 Market as part of your investigation?

23 A. I didn't gather any of the surveillance tape at the
24 time. The officer that responded to the scene actually
25 did that.

1 Q. Okay. As part of the officer's job, would he have
2 taken the videotape to an evidence locker or seized it?

3 A. Yes, he would have or she would have.

4 Q. Okay. Do you recall a tape being put in the
5 evidence locker?

6 A. According to the evidence receipt, it was a video or
7 DVD that was placed into evidence.

8 Q. Okay. Did you ever see a tape?

9 A. There was a tape I did view actually in the store
10 and also some attempt to view some of it on the DVD, but
11 we were unable to.

12 Q. On the DVD you were unable to?

13 A. Correct.

14 Q. So you viewed a tape in the store?

15 A. Correct.

16 Q. About when was that?

17 A. It was a day or so after the incident occurred.

18 Q. So the officer who'd actually responded on the
19 evening did not collect a tape from the Young's Market?

20 A. She did.

21 Q. But she didn't place it in the evidence locker?

22 A. It was placed into evidence.

23 Q. Was it the same tape that you viewed?

24 A. It was the same tape.

25 Q. Well, my question is, if it was taken to the

1 Sheriff's department and put in the evidence locker when
2 she responded to the scene, how could you have viewed it
3 at Young's Market a day or two later?

4 A. We actually viewed on the system, I believe. Not
5 tape. I remember -- recall viewing it there and then
6 having to transfer it over at that point. And then
7 that's where some of the technical issues then came in.
8 But I remember viewing it with the store clerk.

9 Q. Okay. So there was more than one tape, correct?

10 A. As far as I know, it was one video. There was
11 several at the time.. I think that's where some means of
12 discrepancy came up maybe. There was several videos at
13 several of the stores that were broke into as well, and
14 we were also viewing those. So maybe that's where some
15 of the discrepancies and confusion may have came in at.

16 Q. Okay. Well, if there was -- I mean, my question is,
17 if there was only one video of the Young's Market that
18 was supposed to be taken to the evidence locker, placed
19 in evidence with an evidence custodian, how could you
20 have viewed it at the Young's Market?

21 A. Like I stated, I viewed it at the Young's Market.
22 The investigator or responding officer, she indicated on
23 her report that she placed the video, of course, in
24 evidence. I viewed it there at the store.

25 Q. But you never saw a video in evidence?

1 A. I didn't view the actual DVD itself. We were having
2 some complications pulling it up. So I didn't have an
3 opportunity to see.

4 Q. Okay. Why don't we have the video here today, to
5 the best of your knowledge?

6 A. To the best of my knowledge, it's because it was
7 some type of difficulty having to pull up for viewing.
8 We made attempts to do that and were unable to.

9 Q. Okay. Thank you.

10 MR. STORY: No further questions.

11 THE COURT: All right.

12 Mr. McMullen, any questions?

13 MR. MCMULLEN: No, sir.

14 THE COURT: All right. You may step down.

15 Any further witnesses, Mr. Story?

16 MR. STORY: No further witnesses.

17 THE COURT: Does the State have any witnesses?

18 MR. MCMULLEN: Yes, please. May it please the
19 Court?

20 THE COURT: Yes, sir.

21 MR. MCMULLEN: We would call Jennifer
22 Vandegrift, please.

23 **JENNIFER VANDEGRIFT,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 IN-CAMERA EXAMINATION

1 BY MR. MCMULLEN:

2 Q. Good morning, Ms. Vandegrift. How were you
3 employed on September 13th, 2009?

4 A. I was the assistant manager for Young's Number 604.

5 Q. Was that store burglarized?

6 A. Yes, sir.

7 Q. Did you watch a videotape of the incident?

8 A. Yes, sir.

9 Q. And how did you do that?

10 A. At all Young's Markets, there is a recording system
11 back in the manager's area. And that is a DVD system
12 that is activated at night when a motion sensor is
13 triggered in the store. It automatically turns the
14 cameras on. Now, with those cameras, you can go back up
15 to thirty days before it wipes the memory. Within those
16 thirty days, you can view it. You can also burn it to a
17 DVD. The problem at that time with the DVD system is
18 that it was a newer system. And somehow the lenses, when
19 you burn it in the system, you may miss one or two frames
20 of camera. Because when you look at the camera, you have
21 ten different screens. When you record, it will not
22 record all screens at one time. You have to tell it what
23 frame to record, from what time to what time.

24 Q. So there were no VHS tapes at all?

25 A. No, sir. It was a DVD.

1 Q. And did you endeavor to make a copy on DVD?

2 A. Yes, sir, we did.

3 Q. And your best efforts failed?

4 A. Yes, sir.

5 Q. All right.

6 MR. MCMULLEN: No further questions.

7 THE COURT: Did you have an opportunity to view
8 the DVD?

9 THE WITNESS: Yes, sir. And it was myself that
10 reviewed the camera with Ms. Atkinson.

11 THE COURT: Okay. And was the Defendant on the
12 DVD?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Thank you.

15 And do you want to follow up with any of my
16 questions, or any redirect?

17 MR. STORY: Briefly.

18 IN-CAMERA EXAMINATION

19 BY MR. STORY:

20 Q. So there was no VHS tape at the Young's Market
21 system, correct?

22 A. No, sir, they did not use VHS.

23 Q. Okay. And when did you view the videotape?

24 A. I viewed the videotape at approximately three
25 o'clock that morning when I responded to the alarm call.

1 Q. So this would have been -- the burglary is alleged
2 to have taken place on the 13th. So you would have
3 viewed it at three a.m. on the 14th?

4 A. No. It would have been -- if the burglary took
5 place on the 13th -- it was after midnight when I
6 received the alarm call, so it still would have been the
7 13th. It would have been very early.

8 Q. Okay. Did you attempt to make a copy of the DVD?

9 A. Yes, sir.

10 Q. Okay. Did you, in fact, make a copy?

11 A. Yes, sir, we believed that we had. There could have
12 been an issue when it recorded with the lasers.

13 Q. Okay. Did you turn that copy over to the police?

14 A. Yes, sir.

15 Q. Thank you.

16 MR. STORY: No further questions.

17 THE COURT: All right.

18 Anything further?

19 MR. MCMULLEN: No, sir.

20 THE COURT: Thank you, ma'am. You may step
21 down.

22 MR. MCMULLEN: Your Honor, if the Court wishes,
23 I could call another witness. But I do believe this
24 testimony got us past the bad-faith prong of the required
25 showing.

1 THE COURT: Mr. Story?

2 MR. STORY: Your Honor, she testified that she
3 made a copy to police and handed it over to police. And
4 now that tape -- no one can explain where that DVD went.

5 THE COURT: Right. Thank you.

6 All right. I find that the loss of the photographic
7 array does not violate the Defendant's due process
8 rights. In light of the totality of the evidence, the
9 photograph array does not amount to any type of material
10 or exculpatory evidence to which the Defendant is
11 constitutionally guaranteed access. Moreover, the
12 Defendant failed to present any real credible evidence of
13 bad faith on the part of the police. And that is
14 required by South Carolina law in the showing of a due
15 process violation. So the witnesses will be able to
16 explain what they saw on the videotape. So your motion
17 is respectfully denied.

18 MR. STORY: Thank you, Your Honor.

19 THE COURT: Any other?

20 MR. STORY: One final motion, Your Honor.

21 That's to sequester all the witnesses.

22 THE COURT: Any objection to that?

23 MR. MCMULLEN: No sir.

24 THE COURT: All right. Thank you. The
25 witnesses will be sequestered during the testimony. The

1 wander, but give strict attention to the testimony in
2 this case. So at the end of all the testimony, after the
3 argument of counsel and the charge on the law by me, you
4 will then be in a position to determine what the true
5 facts are and to apply those facts to the law, and thus
6 render a true and just verdict.

7 Now, Mr. Foreman, in addition it will be your
8 responsibility to preside in the jury room and be the
9 jury spokesperson here in court. You will also have the
10 responsibility to write down the verdict on the verdict
11 form that I will provide to you, but I'll give you
12 further instructions on that at the appropriate time.

13 Now, in order to preserve everyone's rights, does
14 the State have any objection to anything that I've
15 stated?

16 MR. MCMULLEN: No, Your Honor.

17 THE COURT: Does the Defense have any
18 objection?

19 MR. STORY: No objection.

20 THE COURT: All right. Thank you. We will now
21 begin the trial of this case.

22 Mr. McMullen?

23 MR. MCMULLEN: May it please the Court?

24 THE COURT: Yes, sir.

25 OPENING STATEMENT

1 BY MR. MCMULLEN:

2 Mr. Foreman, ladies and gentlemen of the jury, it's
3 my honor to be here before you today representing Sumter
4 County and the State of South Carolina. This is really
5 the best system in the world, and I'm just real glad to
6 be a part of it. And I hope you feel the same way.

7 We'll try not to waste your time. But this is not,
8 as His Honor has pointed out, going to be just action-
9 packed drama, a Law-and-Order-type presentation, I'm
10 afraid. But what it will be is real life. And what it
11 is is very important and very real. It's important for
12 the Defendant; it's important for the State. And I think
13 you've been asked several times in several different
14 ways, including the oath you just took, to well and truly
15 try and true deliverance make between the State and the
16 Defendant.

17 And the Defendant, no doubt, is entitled to a fair
18 trial. But I want to emphasize, so is the State. So are
19 the citizens of Sumter County who have built this
20 beautiful courthouse for us to do this in. The system is
21 only as good as the juries we have. And as the Judge has
22 compared your service here to military service, the
23 military services for our community, it takes your time,
24 it makes you move to places you might not want to be.
25 But it also requires, like military service, courage

1 sometimes. Courage to stand up for what you believe in
2 and maybe even fight in a friendly manner for it. Lively
3 debate is a good thing.

4 But at the end of the day what we want is a verdict
5 that speaks the truth. No more and no less. No cases
6 are perfect. And we're not going to have DNA evidence
7 and fingerprints. We're not even going to have
8 videotape, and that may be a problem. The facts of this
9 case are going to be, we're going to prove, that on
10 September the 13th there's a Young's Supermarket which is
11 on Old Manning Road in Sumter County. And somewhere
12 around two thirty in the morning, the alarm went off.
13 Police responded. A manager for the Young's got a call
14 waking her up in the night, and they met at the Young's
15 store. They saw what appeared to have been a burglary,
16 which is glass broken, items missing, items out of place.

17 They reviewed videotape -- or actually it was on a
18 system that didn't produce a videotape. But they watched
19 what they could watch on the screen. They saw a person
20 they recognized, a person who was a regular customer of
21 the store. Someone who came in there and bought
22 cigarettes frequently, and they knew them by sight.

23 When that happened, shortly afterwards, the same man
24 came back to the store and bought some alcohol. And
25 you'll hear testimony that the assistant manager, the

1 same one who was called to the scene that night, took his
2 I.D., wrote his name down, gave it to the police.

3 Some six days later, this Defendant was arrested at
4 his home which is within a mile of that Young's. When
5 they watched the video, they saw a man break the glass,
6 enter the store, take some tobacco products, cigars, put
7 them in a duffle bag and leave. You'll hear evidence
8 that when the arresting officer went to his house, among
9 other things that weren't so important, they did find a
10 duffle bag consistent with the one that the burglar used.

11 Mr. Smith has a distinguishing characteristic. He
12 wore what's called commonly a grill which is gold teeth
13 across the front and bottom or top and bottom of the
14 teeth. That is going to be in evidence too.

15 Again, you know, what we are after is just a fair
16 trial. And if you cannot overlook the fact that the
17 videotape is now missing, then the State is doomed to
18 fail in this case. What we would ask you to do, like His
19 Honor asked you to do, keep an open mind. Listen to the
20 testimony and the evidence that comes from this witness
21 stand. And I'll ask you to filter this with, you know,
22 what do these witnesses have to gain by lying? Do they
23 have some grudge against anybody, or are they simply here
24 to tell the truth and do their duty?

25 I hope at the end of the trial you'll just return a

1 verdict that does speak the truth. And I thank you for
2 your attention.

3 THE COURT: Thank you, Mr. McMullen.

4 Mr. Story?

5 MR. STORY: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. STORY: Opposing counsel.

8 OPENING STATEMENT

9 BY MR. STORY:

10 Members of the jury, thank you for your service
11 today. I know the Judge told you earlier in the week
12 that with the exception of military service, this is the
13 highest calling that a citizen of our state can meet.
14 And I completely agree with that. We'll try not to waste
15 too much of your time, try not to spend time on anything
16 unnecessary. I know there are things you guys would
17 rather be doing on this beautiful day.

18 I've seen a lot of juries come in this courthouse
19 and sit where all of you are sitting and have to make
20 some very difficult decisions. Fortunately for you
21 today, at the end of this trial I believe after all the
22 evidence has been presented, after the witnesses have
23 been questioned, your job is going to be very easy. It's
24 going to be very easy. Because the burden of proof in
25 this case is that the State must prove to you that my

1 client, Jeremy Smith, burglarized a Young's Market on 230
2 Old Manning Road on September 13th, 2009. They must
3 prove that to you beyond a reasonable doubt.

4 They cannot meet this burden. I don't believe they
5 can meet this burden. The reason they cannot meet this
6 burden is because the evidence they plan on presenting to
7 you is not going to come in the form of eyewitnesses who
8 said they saw Jeremy Smith rob, break into and steal
9 things from the Young's Market. They are not going to
10 present to you anyone who saw Jeremy Smith go to or from
11 Young's Market on the night of the burglary. They're not
12 going to present to you any physical evidence linking my
13 client, Jeremy Smith, to the burglary on Young's Market
14 on September 13th, 2009. They're not going to present to
15 you any items that were stolen from the Young's Market
16 that was found in my client's possession.

17 What they're going to try -- the evidence that they
18 plan on presenting is going to be based on witnesses who
19 were not at the scene, but who watched a video, who say
20 they watched a video that they're not going to let you
21 watch, that they are not going to present here today for
22 you to determine for yourselves whether or not my client
23 is on that video.

24 Let me repeat that again. They won't present any
25 eyewitnesses. They will not present any physical

1 evidence. They will not present any items that were
2 stolen. Nothing. Not one shred of that kind of
3 evidence. And that's why, at the end of the day, they
4 cannot even come close to meeting that burden beyond a
5 reasonable doubt. I believe at the end of the day your
6 decision will be very easy and you will find my client,
7 Jeremy Smith, not guilty of the burglary. Thank you.

8 THE COURT: Thank you.

9 The State may call its first witness.

10 MR. MCMULLEN: State calls Jennifer Lynn
11 Vandegrift.

12 **JENNIFER LYNN VANDEGRIFT,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. MCMULLEN:

16 Q. Good morning, Ms. Vandegrift. How are you?

17 A. Good.

18 Q. How were you employed back on September 13th, 2009?

19 A. I was the assistant manager at Young's location
20 number 604, 230 Old Manning Road, Sumter, South Carolina.

21 Q. What were your job duties as assistant manager?

22 A. As the assistant manager, I was responsible for the
23 day-to-day running of the store which included deposits,
24 customer sales, cigarette, beer counts, inventory
25 control, inventory management, dealing with customers,

1 reviewing any security footage and locking and opening
2 the store.

3 Q. What time did you open and close the store?

4 A. The store, at that time, was not a twenty-four-hour
5 location yet. We opened at six a.m. We closed at eleven
6 p.m.

7 Q. Was there a security system, a video surveillance
8 system?

9 A. Yes, sir.

10 Q. Would you describe that?

11 A. The security system that was used by Young's Markets
12 at that time was a series of different cameras that
13 worked together called channels on your view screen. You
14 would have a flat screen monitor in the back at the
15 manager's area, and you had nine to twelve cameras that
16 you could view simultaneously. They were all motion-
17 sensor activated. So the camera only recorded when
18 something was moving in its frame.

19 Q. Onto what did that camera record?

20 A. You could record it onto a DVD. And they switched
21 it later on to a USB device. But you could view any
22 camera recordings up to thirty days back before the
23 memories would wipe.

24 Q. And just to be clear, VHS is the old ---

25 A. The cassette.

1 Q. --- tape cassette just like we used on the first
2 home VCRs we got, right?

3 A. Right.

4 Q. That's not what you're talking about?

5 A. No. It's a DVD. It is a disk. It's a laser burner
6 onto the camera -- that's hooked to the camera system.

7 Q. Does that system always record onto a disk?

8 A. Yes.

9 Q. Does it always ---

10 A. You have to put a disk in it and tell it to record.
11 There's not already a disk in the machine.

12 Q. So if you wanted to review the video from a certain
13 time, would you have to have a disk in there, or would
14 you ---

15 A. Uh-uh (negative).

16 Q. Okay. Explain that, please, ma'am.

17 A. Okay. It's passcoded. So you would have to have
18 the pass code, which I had, and you could hit the date
19 and time. You could watch all cameras simultaneously or
20 you could pull up and zoom in on the one frame that you
21 wanted to look at at that time. If you wanted to record,
22 you would put the DVD into the slot, just like you would
23 a CD player or a movie at home. And you would tell it
24 the date and time and the frame that you wanted to
25 record. And it should in theory burn it to that DVD.

1 Q. And when did that store get that system?

2 A. It was there when I got there.

3 Q. And when was that?

4 A. I got there in October of 2008 or '09.

5 Q. Now, in September of '09, on September 13th, were
6 you -- what, if anything, happened at two-thirty or so in
7 the morning?

8 A. I got woke up by the alarm company.

9 Q. So you were working there in September of ---

10 A. Yes.

11 Q. Okay.

12 A. I was called by the alarm company. I was the second
13 call that they made because I was the assistant manager.
14 They have a call sheet that they go down. They call and
15 notify store manager, primary assistant, secondary
16 assistant, district manager. I was the second phone call
17 to report to the store that we'd had a motion sensor
18 alarm active. They had pulled the camera feed at the
19 security company, and we had had a break in.

20 Q. All right. Let me get you to go over some of that
21 again. There was a call you got?

22 A. Uh-huh (affirmative).

23 Q. The second call?

24 A. I was the second person that the alarm company
25 contacted. My boss, Brandi Tilghman, got the first phone

- 1 call; I received the second.
- 2 Q. And then you said the motion sensor had activated?
- 3 A. The motion sensor had been activated on the camera.
- 4 That's what triggered the alarm.
- 5 Q. All right.
- 6 A. The alarm company can access our camera feeds ...
- 7 Q. Okay.
- 8 A. ... to see if it's just a false alarm or if indeed
- 9 we need to report to the store. And they notify law
- 10 enforcement.
- 11 Q. Now, do you know whether or not the alarm company is
- 12 able to make a recording?
- 13 A. I don't.
- 14 Q. You don't know?
- 15 A. I don't know.
- 16 Q. All right. When did you arrive at the store that
- 17 night?
- 18 A. I arrived at the store early that morning at
- 19 approximately three a.m.
- 20 Q. Three a.m.?
- 21 A. Uh-huh (affirmative).
- 22 Q. Dark at three a.m.?
- 23 A. Yes.
- 24 Q. Dark at two-thirty?
- 25 A. Yes.

1 Q. And is that -- is two-thirty when the alarm was
2 activated?

3 A. I believe so.

4 Q. All right. And so you got there about a half an
5 hour later?

6 A. Uh-huh (affirmative).

7 Q. Who was there, if anybody, when you got there?

8 A. When I got there, my boss was there, Brandy, and
9 some officers.

10 Q. What's her name?

11 A. Brandy Tilghman.

12 Q. Brandy Tilghman was there?

13 A. Uh-huh (affirmative).

14 Q. And some officers were already there?

15 A. And they were already on the scene, yes, sir.

16 Q. All right. And what happened? What did you see
17 when you got there?

18 A. The front door was busted. There was a large piece
19 of asphalt, which we actually kept for a while at the
20 store.

21 Q. How large?

22 A. About that big. It was a big chunk.

23 Q. Like a baseball or a softball?

24 A. It was bigger than a baseball. Probably, maybe the
25 same size as a softball, but it was irregularly shaped.

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1 Q. All right. And what was the door made out of?

2 A. It wasn't glass glass, but it wasn't the plexiglass.

3 It was kind of like the reinforced glass.

4 Q. All right.

5 A. But it was broken, and it was all over. And when I
6 walked in, there were -- when you come into the store, we
7 had the cigarette rack here, and we have a smaller rack
8 where we keep the blunt wraps, cigar wraps, things like
9 that. And we noticed -- I noticed immediately all the
10 Newport menthol cigarettes were gone as were a good many
11 of the blunt wraps and the cigars.

12 Q. Okay. What did you do next?

13 A. We got with the officers. We got the tape pulled
14 up.

15 Q. When you say we?

16 A. Myself and Brandy Tilghman and the officer.

17 Q. All right.

18 A. Went back and reviewed the tape. Just hit rewind
19 and went back until we saw somebody standing out front of
20 the store, because the first camera picks up all the
21 walkway out of the front doors.

22 Q. I hate to interrupt. But you just said, review the
23 tape.

24 A. I'm sorry. Reviewed the surveillance system.

25 Q. Okay. And now, where are the cameras positioned

1 that you're reviewing the video from?

2 A. When we first picked up somebody on camera was
3 channel one, camera one, which is positioned right above
4 and to the side of the front doors so that you can see
5 anybody coming up the sidewalk entering into the store.

6 Q. And what did you see on that camera?

7 A. We saw a man come up the sidewalk from the side of
8 the store which is where Sawgrass is, Sawgrass Road.
9 Come up off of Sawgrass, walk across the front of the
10 store, come to the far side of the door. He had a hat
11 on. And you see him stand there and lean against the
12 wall. He's looking in and out the window. He's watching
13 traffic. And then you see him back up and throw the
14 piece of asphalt at the door to bust it.

15 Q. Did you recognize him at that point?

16 A. Not at that point. It was once he got into the
17 building. There is another camera that is situated
18 directly above where the cashier would stand so that you
19 can see any transaction and any person's face as they
20 come to the counter. It was at that point when that
21 camera picked him up that we saw his face because he
22 looked up directly at the camera.

23 Q. Is the inside of the store illuminated?

24 A. Yes.

25 Q. Even ---

Jennifer Lynn Vandegrift - Direct Examination by Mr. McMullen

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1 A. Even at night, there are emergency lights on.

2 Q. Okay. And you saw his face?

3 A. Yes.

4 Q. How clearly?

5 A. Very clearly.

6 Q. Did you recognize this person?

7 A. Yes.

8 Q. How did you know him?

9 A. He had been a regular at our store. He came in
10 once, maybe twice a day, almost every single day.

11 Q. What did he generally purchase?

12 A. Blunt wraps.

13 Q. What's that?

14 A. A blunt wrap is a cigar paper; basically, that you
15 would use to roll things in. Some people use it for
16 tobacco; some people use it for other things.

17 Q. All right. And he would come in a couple of times a
18 day on average?

19 A. At least once a day on average.

20 Q. And did you ever speak with him?

21 A. Yes.

22 Q. Okay. Did he have any qualities or anything about
23 his appearance that stood out?

24 A. What stuck out in my mind the most and what made it
25 so easy to remember his face is he had what they call a

1 grill -- it was gold -- that he wore over his teeth. And
2 I believe it had some stones in it, like fake diamonds or
3 something like that, that he always wore. That's what
4 stuck out in my mind.

5 Q. All right. Would you recognize him even without
6 that?

7 A. Yes.

8 Q. Do you see him here in the courtroom today?

9 A. Yes.

10 Q. Would you point him out to the jury, please?

11 A. Right there.

12 MR. MCMULLEN: Your Honor, may the record
13 reflect that she pointed at the Defendant?

14 THE COURT: The record will reflect that the
15 witness pointed to the Defendant in her identification.

16 MR. MCMULLEN: Thank you.

17 Q. And how long had he been coming in there before this
18 incident?

19 A. A good while. Probably at least three weeks, a
20 month.

21 Q. Did he come in there, to your knowledge, after
22 September 13th?

23 A. Yes, he did.

24 Q. When?

25 A. I don't remember the exact date because when we

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1 viewed the camera, we recognized his face instantly.
2 Unfortunately, at that time we did not have a name. So
3 we waited for him to come back to the store because we
4 knew that he would. And it just so happens that he came
5 in on my shift and wanted to buy a blunt wrap. So I
6 carded him and remembered his name.

7 Q. What does carded mean?

8 A. It means I had him show me his I.D. to make his
9 purchase.

10 Q. Yes, ma'am?

11 A. So I remembered the name that was on it and also the
12 address on his I.D. I wrote it on my hand. And as soon
13 as he left, I contacted law enforcement officials and
14 gave them the information.

15 Q. Do you still remember the name?

16 A. Jeremy Jones.

17 Q. Jeremy Jones?

18 A. Uh-huh (affirmative).

19 Q. Could it be Smith?

20 A. It could be Smith. It's something very common.

21 Q. All right. But you wrote down what it was on ---

22 A. I wrote down what it was.

23 Q. Did you write his date of birth down, too?

24 A. No, I did not write his date of birth down, but I
25 wrote his address down.

1 Q. And what is the I.D. you looked at?

2 A. It was him.

3 Q. That was him?

4 A. That's part of the I.D. process is you make sure
5 that the picture and the person match.

6 Q. Well, on the video itself that you were watching,
7 you saw Mr. Smith, Jeremy, at least, you saw him taking
8 these blunt wraps and cigarettes?

9 A. Yes.

10 Q. What did he do with them?

11 A. He put them into a black -- he had brought a bag
12 with him, and he put them inside the bag.

13 Q. Is the video black and white or color?

14 A. It's color.

15 Q. All right. I'm going to show you what's been marked
16 as State's Exhibit 1. Do you recognize this?

17 A. It looks similar to a bag, to the bag that he had
18 that night.

19 Q. All right. And you can't say for sure that this is
20 the one?

21 A. I can't say exactly for sure that that's the exact
22 same bag, but it looks similar.

23 Q. All right. And I'm going to show you what's been
24 marked as State's Exhibit 2. I'm going to show you like
25 this, if I may. Do you recognize that?

1 A. Yes.

2 Q. What does that -- what do you recognize this as
3 being?

4 A. That looks like the grill that he always wore.

5 Q. All right.

6 MR. MCMULLEN: Your Honor, I'd like to
7 introduce State's Exhibit 2 at this time.

8 THE COURT: Any objection, Mr. Story?

9 MR. STORY: No object.

10 THE COURT: All right. State's Exhibit Number
11 2 is admitted into evidence.

12 (WHEREUPON, State's Exhibit Number 2 was admitted
13 into evidence.)

14 MR. MCMULLEN: May I publish this?

15 THE COURT: You may.

16 MR. MCMULLEN: I'll just, if I may, like this.
17 (WHEREUPON, State's Exhibit Number 2 was published
18 to the jury.)

19 Q. Are you still employed there?

20 A. With Young's?

21 Q. Yes.

22 A. No, sir. I quit.

23 Q. Where do you work now?

24 A. Dollar General.

25 Q. Okay. Do you have anything against Jeffery

1 Smith/Jones?

2 MR. MCMULLEN: Wait a minute ...

3 THE COURT: I certainly hope not.

4 (Laughter)

5 Q. Do you have anything against Jeremy Smith?

6 A. No, sir.

7 Q. He never offended you in any way when he came in?

8 A. No. We used to idle chit-chat when he came in.

9 Q. Okay. Do you have any reason to come in and tell
10 this jury anything but the truth?

11 A. No.

12 Q. You take your oath seriously?

13 A. Yes, sir.

14 Q. All right.

15 MR. MCMULLEN: I beg your indulgence, sir.

16 Q. How long would you say you observed this Defendant
17 on that video?

18 A. Maybe six, seven minutes.

19 Q. That's how long he was in the store?

20 A. Uh-huh (affirmative). That's how long from the time
21 that he was on camera, when he first comes on camera,
22 until he leaves. Approximately seven minutes.

23 Q. Did you ever -- while you were watching it with the
24 others, did you ever freeze the frame and look?

25 A. Yes, sir.

1 Q. All three of you?

2 A. Yes, sir. We freezed (phonic) it and we enlarged it
3 at the point that he was looking directly at the camera
4 to be able to see his face very clearly.

5 Q. All right. Now what, if any, efforts did you make
6 to save what you were watching onto a DVD?

7 A. We followed the process that we had been told, which
8 was -- we were told to burn the DVD from the recorded
9 memory of the security system onto an external device.
10 We followed that procedure, burned the disk, and turned
11 it over to the officer.

12 Q. You were supposed to take it from the hard drive ---

13 A. Yes.

14 Q. --- and put it on an external device?

15 A. Yes.

16 Q. What would that be?

17 A. A DVD-R.

18 Q. A disk?

19 A. Uh-huh (affirmative).

20 Q. Okay. So not like a memory card?

21 A. No, it wasn't a memory stick and it wasn't a VHS
22 cassette. It was a DVD.

23 Q. So just burned it directly from the hard drive onto
24 the DVD?

25 A. Uh-huh (affirmative).

1 Q. And you made efforts to do that?

2 A. We did. But we were unsure whether or not the
3 efforts would be successful because we had had issues
4 with the laser on that machine that burns it.

5 Q. Once you burned what you burned, did you review it
6 to make sure ---

7 A. Uh-uh (negative).

8 Q. You did not?

9 A. No, I did not.

10 Q. All right. Is there any reason you couldn't go
11 back, let's say, yesterday and get that same recording?

12 A. Yes, sir. The hard drive wipes itself automatically
13 after thirty days.

14 Q. Thank you very much. Please answer Mr. -- his
15 questions.

16 THE COURT: Mr. Story?

17 CROSS-EXAMINATION

18 BY MR. STORY:

19 Q. Good morning, Ms. Vandegrift.

20 A. Yes.

21 Q. You just testified that you burned a DVD from your
22 recorded memory and handed it to the officers, correct?

23 A. Yes.

24 Q. Okay. You said you remembered my client, Jeremy
25 Smith, because he always wore a grill, correct?

- 1 A. Uh-huh (affirmative).
- 2 Q. And you remember there being diamonds on that grill?
- 3 A. I remember there being stones in the grill.
- 4 Q. Okay. And you said that he would come in several
- 5 times a day and buy blunt wraps?
- 6 A. He would get blunt wraps. He would come in. We
- 7 would chat.
- 8 Q. Would he buy other things?
- 9 A. Sometimes.
- 10 Q. Now, you just testified also that when he came in
- 11 the store subsequent to the break-in ---
- 12 A. Uh-huh (affirmative).
- 13 Q. --- that you took his address?
- 14 A. Uh-huh (affirmative).
- 15 Q. Correct?
- 16 A. I took his name down and his address off of his I.D.
- 17 Q. But you did not take his date of birth, correct?
- 18 A. I typed his date of birth into the computer. That's
- 19 why I did not record it.
- 20 Q. Okay. Now, you just testified that the videotape
- 21 was in color, correct?
- 22 A. The recording on the surveillance system is
- 23 colorized, yes.
- 24 Q. Okay. Excuse me. The recording. And you observed
- 25 the perpetrator with a hat and a black duffle bag,

1 correct?

2 A. He had on a hat, and he had a duffle bag.

3 Q. Okay. But you just said he had a black duffle bag.

4 A. I said he had a black hat and a bag.

5 Q. Do you remember giving a statement in this case?

6 A. I remember giving a statement to the police. I
7 don't remember what all was said then exactly verbatim.

8 It's been many years ago.

9 Q. I understand. But you do remember giving a sworn
10 statement?

11 A. We had to give a statement to the police that night.

12 Q. Okay.

13 MR. STORY: May I approach the witness?

14 THE COURT: You may.

15 Q. Okay. Ms. Vandegrift, does this look like your
16 statement?

17 A. Excuse me. I don't have my glasses. That's my
18 handwriting, and it's the Young's -- is that Sumter
19 County? That's the Sumter County form.

20 Q. Yes, ma'am. Where it says at the top the date and
21 time of the statement, do you see that?

22 A. No. You'll have to point it out. I'm sorry. I
23 don't have my glasses.

24 Q. If I may. It says right here, date and time of
25 interview. Would you read that?

Jennifer Lynn Vandegrift - Cross-examination by Mr. Story

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1 A. That's the date and time of the interview. It is
2 three p.m. on 9/14/09.

3 Q. Three p.m. on 9/14/09?

4 A. Uh-huh (affirmative).

5 Q. Okay. Okay. Thank you. If I may. Do you -- can
6 you read to the jury about halfway down on your statement
7 starting with, he entered the store again?

8 A. He entered the store again on Monday, 9/14/09, and I
9 carded him for an alcohol purchase and verified his name,
10 got his address and date of birth.

11 Q. Thank you. And you recall saying that you viewed
12 the surveillance tape about three a.m. on September 13th,
13 2009, correct?

14 A. Uh-huh (affirmative).

15 Q. Thank you. And you also recall having previous
16 dealings with my client, correct?

17 A. Yes.

18 Q. Okay.

19 MR. STORY: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 Q. Ms. Vandegrift, it is your testimony that the
22 Defendant had on a black hat and a duffle bag?

23 A. Uh-huh (affirmative).

24 Q. When you watched the video, the color video?

25 A. Yes.

1 Q. But you do not recall what color the duffle bag was?

2 A. No.

3 Q. Okay. So it is your testimony that you watched the
4 video on September 13th, early in the morning, and the
5 Defendant came -- that you recognized the Defendant when
6 you watched the video, correct?

7 A. Uh-huh (affirmative).

8 Q. The surveillance tape. And he came in the next day,
9 the next Monday, September 14th, and bought something at
10 your store, correct?

11 A. Uh-huh (affirmative).

12 Q. Thank you.

13 MR. STORY: No further questions.

14 THE COURT: Thank you.

15 Any redirect?

16 MR. MCMULLEN: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. MCMULLEN:

19 Q. You gave this statement three p.m. on September
20 14th, 2009?

21 A. Yes. That's when they had me to write it out, yeah.

22 Q. All right. And so if the burglary occurred on
23 September 13th at three a.m., this was less than thirty-
24 six hours. This was some -- what -- well, right at
25 thirty-six hours afterwards, isn't it?

Brandy Leigh Tilghman - Direct Examination by Mr. McMullen

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1 A. Uh-huh (affirmative).

2 Q. Less than two days later?

3 A. Right. And the ---

4 Q. It says here you carded him for alcohol purchase and
5 verified his name, got his address and date of birth?

6 A. Yes, sir.

7 Q. All right. Thank you very much.

8 THE COURT: Any recross, Mr. Story?

9 MR. STORY: No, Your Honor.

10 THE COURT: None.

11 Thank you. You may step down.

12 Any objection to this witness being excused for the
13 balance of the trial?

14 MR. MCMULLEN: None from the State, sir.

15 MR. STORY: None from the Defense.

16 THE COURT: All right. Thank you, Ms.

17 Vandegrift.

18 Mr. McMullen, which witness is this?

19 MR. MCMULLEN: I'm sorry. This is Brandy Leigh
20 Tilghman.

21 THE COURT: All right. Ms. Tilghman, place
22 your left hand on the Bible and raise your right hand.

23 **BRANDY LEIGH TILGHMAN,**

24 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

25 **DIRECT EXAMINATION**

1 BY MR. MCMULLEN:

2 Q. Good afternoon, Ms. Tilghman. Thank you for being
3 here.

4 A. Yes, sir.

5 Q. Do you live here in Sumter?

6 A. Yes, sir.

7 Q. Are you married and have children?

8 A. Yes, sir. Actually, I'm married to a sheriff's
9 deputy, and we have two daughters.

10 Q. All right. And what do you do for a living?

11 A. Actually right now, I'm a stay-at-home mom.

12 Q. All right. Toughest job.

13 A. I would say that's enough.

14 Q. What did you do, if anything, back on September
15 13th, 2009?

16 A. I was a store manager of Young's Convenience Store.

17 Q. Which one?

18 A. The one on Old Manning Road.

19 Q. What, if anything, happened at about two-thirty a.m.
20 on September 13th, '09?

21 A. I was listed as the primary contact with the alarm
22 company, so I was the first one they contacted. And the
23 second one was my assistant manager, Jennifer.

24 Q. The alarm company for?

25 A. For the Young's convenience store.

Brandy Leigh Tilghman - Direct Examination by Mr. McMullen

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- 1 Q. All right. So you got a call from them?
- 2 A. Yes, sir. They woke me up early in the morning.
- 3 Q. Was a person on the phone?
- 4 A. Yes. It was a female operator.
- 5 Q. And what did she say?
- 6 A. She said that the sensors had gone off and that
- 7 there had been a break-in and that the police had been
- 8 dispatched and encouraged me to be there with the police
- 9 to assess the situation.
- 10 Q. And what did you do next?
- 11 A. Actually, I woke up my husband, but he said go ahead
- 12 and go ahead. There will be other sheriff's there. So I
- 13 went ahead there, and there was a sheriff waiting for me
- 14 when I got there.
- 15 Q. All right. How many sheriff's deputies were there?
- 16 A. Two.
- 17 Q. Okay. And what did you see when you got there?
- 18 A. I saw that the front left door had been shattered.
- 19 It had glass. And he told me that they hadn't gone in
- 20 yet. They wanted me to tell them what was missing. So
- 21 we went in, assessed the situation, and I saw that all of
- 22 our cigarettes -- Newports. Not all of our cigarettes.
- 23 Just all the Newports and the cartons were gone. And
- 24 several cigars.
- 25 Q. So just tobacco products?

1 A. Right.

2 Q. And obviously the store was closed at that time?

3 A. Yes. We were not a twenty-four-hour location. We
4 always closed at ten o'clock at night.

5 Q. What time did you open?

6 A. I always went to the store at five thirty, and we
7 opened at six.

8 Q. All right. And so when you got there, you saw that
9 the door had been broken?

10 A. Yeah. There had been a rock thrown through it. And
11 as a matter of fact, we had a display of beer right there
12 at the front door. The rock had actually hit one of the
13 suitcases of beer. So we actually had a spill. And the
14 glass was all over the floor, and the rock was still
15 there.

16 Q. Okay. Do you remember anything special about the
17 rock?

18 A. It looked like a broken -- maybe like a piece of
19 asphalt, something like that. You know, it was a pretty
20 big rock.

21 Q. How big?

22 A. Probably about that big. I don't know. It was
23 about ---

24 Q. Bigger than a softball?

25 A. Yes, definitely.

)

1 Q. All right. Did y'all keep it there for a while?

2 A. Yes. As a matter a fact, because we had a lot of
3 regular customers, and we knew they'd ask questions, so
4 we actually would show them the rock.

5 Q. Okay.

6 A. That's what broke our door.

7 Q. And was it the kind of, like shatterproof glass or
8 anything special about the glass?

9 A. Not initially, which is actually what upset me the
10 worst because when I was hired, I was told that it was
11 shatterproof glass. And obviously it was not. It broke
12 immediately from the rock. So the district manager
13 explained to me that that's what he was told. So when
14 they replaced it, they did put shatterproof glass the
15 next time.

16 Q. Okay. Did your store have any kind of video
17 surveillance system?

18 A. Yes. We had a live video feed that went through a
19 DVD player, and it held all surveillance for thirty days.
20 We had several different cameras. And so when you look
21 at the monitor, there was probably about ten different
22 screens you could see from every different angle.

23 Q. What activates the monitors?

24 A. It's motion sensed because we weren't a twenty-
25 hour store. That way at night it could conserve energy

1 and tape. So it only activated with motion.

2 Q. Did you watch what the video cameras preserved?

3 A. Yes. As a matter of fact, when I first arrived at
4 the scene, the sheriff asked me if I could rewind the
5 tape, and I did. So we watched it together the first
6 time.

7 Q. Now, when we say tape, we're just ---

8 A. Oh, I'm sorry. The live feed.

9 Q. Okay. And did you watch it with the officer?

10 A. With the sheriff deputy that was on the scene, yes.

11 Q. Did you watch it also with Ms. Vandegrift?

12 A. Yes. She came shortly after I did, and we all three
13 watched it together.

14 Q. All right. Would you tell us -- please tell the
15 jury what you saw on that video?

16 A. You could see a black male approach the front door.
17 He looked around for a minute. He threw the rock through
18 the left door. There were two doors. Threw it through
19 the left door and immediately went in. Looked like he
20 had a black backpack with him. He went straight for the
21 cigarettes, almost like he knew exactly what he wanted.
22 Went straight to the cigarettes, loaded up with the
23 Newports. Didn't touch any other cigarettes. Loaded up
24 those, several cartons and some cigars and then went
25 right back out.

1 Q. Where were the cigars and the Newport cigarettes
2 kept?

3 A. Behind the register. And we had no door to the
4 register area. So it was just a walkway. You just went
5 straight behind the register.

6 Q. Where would the camera have been that captured that?

7 A. There's one above the cigarette display that faced
8 anyone coming into the register area. There actually
9 were two back there.

10 Q. I'm sorry?

11 A. There were actually two cameras behind the register
12 area. There was one that faced towards the register and
13 one that faced towards the walkway so both angles were
14 covered.

15 Q. So when you're watching this replay, is it a split
16 screen?

17 A. Yeah, it's a split screen.

18 Q. So you could see more than one angle of this?

19 A. Yes. Many different angles throughout the store.
20 But yeah, behind on the register, there were two.

21 Q. And then you said many different angles. But then
22 when the motion activates certain cameras, is it reduced
23 from ten to two or ---

24 A. Well, actually, each camera will pick up at the same
25 time.

1 Q. Okay.

2 A. Because when you're looking at the monitor in the
3 manager area, it has all ten screens. So whichever
4 monitor picks up, that screen will pick up simultaneously
5 if it -- if two cameras pick it up at the same time,
6 they'd both start recording at the same time.

7 Q. Did you get a good look at the person who broke in
8 to the store?

9 A. Yes.

10 Q. Did you recognize that person?

11 A. Yes, I did recognize him. However, I didn't know
12 his name. I just knew he had been in our store a few
13 times..

14 Q. Do you see him here today?

15 A. Yes.

16 Q. Where is he?

17 A. Right over there.

18 MR. MCMULLEN: Your Honor, may the record
19 reflect the Defendant was identified?

20 THE COURT: The record will so reflect.

21 MR. MCMULLEN: Thank you.

22 Q. Did you subsequently get his name?

23 A. Actually, my assistant, Jennifer, recognized him.
24 She was from that area, but she was the one later that
25 let me know the name.

- 1 Q. Did you recognize him for any certain reason?
- 2 A. Not in particular. We had a lot of regular
- 3 customers. But when I saw the tape, I recognized him
- 4 from frequenting our store before.
- 5 Q. How often would you say he came to your store and
- 6 shopped?
- 7 A. Fairly often.
- 8 Q. Would he buy any certain thing?
- 9 A. Yes. Usually tobacco products, things like that.
- 10 Q. Would he buy cigarettes?
- 11 A. Yes.
- 12 Q. Do you remember what brand?
- 13 A. Newport.
- 14 Q. How long would you say you had a chance to observe
- 15 him on the video?
- 16 A. He was in the store not very long. Probably about
- 17 two minutes you could see him on the camera. Because of
- 18 the two angles -- well, really we got him in three angles
- 19 because you can see him at the front door. That camera
- 20 picked him up as well. So when he was throwing the rock,
- 21 that was actually the better view of his face.
- 22 Q. Did you see a closeup view of his face?
- 23 A. Yes. It was a closeup view of the front door.
- 24 Q. Is there anything notable about his appearance?
- 25 A. Well, actually what caught our attention at the

1 front door was he had a grill in his mouth, and that made
2 him stick out pretty much, especially when he frequented
3 our store. It's not very often you see someone with a
4 grill.

5 Q. Let me show you what's already been marked State's
6 Exhibit 2. Do you recognize this?

7 A. Yes. It's the same color, gold grill.

8 Q. It's consistent with ---

9 A. Yes.

10 Q. And you can't say for sure this is the one, can you?

11 A. I can't say it's the one, but it looks the exact
12 same color, the same kind that fit over your teeth.

13 Q. And then did you see what he put the cigars and
14 cigarettes into?

15 A. It looked like a black backpack.

16 Q. Let me show you what's been marked State's Exhibit
17 1. Is that consistent or inconsistent with what you saw?

18 A. That looks like it.

19 MR. MCMULLEN: At this time, I'd move Exhibit 1
20 into evidence.

21 THE COURT: Any objection?

22 MR. STORY: No objection.

23 THE COURT: Without objection, State's Exhibit
24 1 is admitted.

25 (WHEREUPON, State's Exhibit Number 1 was admitted

1 into evidence.)

2 Q. Did you say your assistant subsequently waited on
3 him again as he was a customer there?

4 A. Yeah. She let me know she saw him come in the
5 store, and she carded him for his tobacco products. And
6 that's when she got his name and date of birth, I believe
7 it was.

8 Q. All right. When somebody buys something that you
9 have to be of age for ---

10 A. Right. Anyone under the age of thirty-five, the law
11 requires us to card them to verify their age.

12 Q. Did anybody ever make an effort to go retrieve his
13 date of birth?

14 A. Well, actually, Jennifer got his information when
15 she carded him off his I.D.

16 Q. Did she give it to police?

17 A. Yes.

18 Q. Did she get his address?

19 A. I believe she did.

20 Q. Okay. What efforts did you make to preserve this
21 video evidence?

22 A. Well, basically it's a DVD system. So what you do
23 is put a DVD, a blank DVD into the system and you tell it
24 which cameras to record, what time and dates. And it's
25 supposed to automatically download onto the disk. We did

1 have an investigator come to get a copy, and we did
2 download it onto a disk.

3 Q. Did you ever watch that disk to make sure there was
4 a recording made?

5 A. I didn't watch it. Unfortunately, our system would
6 not play the DVD back to us. It would just only let us
7 download it. And so we just took -- saved that. It did
8 it. It said it did it. It was completed, and so we gave
9 it over to them.

10 Q. Would we be able to go back today and watch that on
11 the system?

12 A. I don't think so unless anything's changed. I left
13 in 2011. So unless something's changed, when I was there
14 you couldn't play it back in the system.

15 Q. Did it write over or just ---

16 A. It wouldn't write over a disk. It had to be a blank
17 one. It had to be a brand new disk.

18 Q. All right. Anything preventing us from going and
19 watching it on the hard drive?

20 A. No. It was a live system. It held it for thirty
21 days. You could go back at any time and watch it before
22 the thirty days expired.

23 Q. After thirty days?

24 A. After thirty days, it starts filling up memory with
25 the next thirty days.

Brandy Leigh Tilghman - Cross-examination by Mr. Story

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1 Q. Do you have anything against this Defendant?

2 A. No, sir.

3 Q. Was he ever rude to you or ...

4 A. No, he was never rude to me.

5 Q. Nothing against him?

6 A. No, sir.

7 Q. And the fact that your husband is employed by the
8 Sheriff's department, does that have anything -- any
9 bearing on your testimony?

10 A. No, sir.

11 Q. All right. Thank you very much.

12 THE COURT: Mr. Story?

13 CROSS-EXAMINATION

14 BY MR. STORY:

15 Q. Good afternoon, Ms. Tilghman.

16 A. Hello.

17 Q. So you were the first store employee to respond to
18 an alarm system on the night or on the early morning of
19 September 13th, correct?

20 A. Yes, sir.

21 Q. And when you arrived there, there were two officers
22 already at the scene, correct?

23 A. Yes, sir.

24 Q. So what -- you, along with the officers, viewed the
25 tape one time, correct?

1 A. Right. Just once.

2 Q. Okay. Now, you just testified that you recognized
3 that gold grill on the perpetrator on the tape, correct?

4 A. Right.

5 Q. So I assume that the videotape was in color?

6 A. Yes, it is color.

7 Q. Okay. And you also just testified that you saw a
8 black backpack with the perpetrator, correct?

9 A. Well, it was dark, but it did look like a bag.

10 Q. Okay. Do you recall any other distinguishing
11 features of the perpetrator on the videotape?

12 A. No. Like I said, the gold grill was the most flashy
13 part. He was wearing dark clothes, so nothing else
14 really stuck out.

15 Q. He was wearing dark clothes?

16 A. Right.

17 Q. Was he wearing a red hat?

18 A. I don't recall a red hat.

19 Q. Okay. Do you recall any kind of hat?

20 A. I don't remember a hat.

21 Q. Okay. Thank you. Do you recall being interviewed
22 by authorities on September 16th, 2009?

23 A. Yes.

24 Q. Okay. And you had -- but you gave a statement on
25 September 16th, 2009, correct?

1 A. I believe so.

2 Q. Okay. And by that time, your store employees had
3 already taken the information when Jeremy Smith came in
4 the store, correct?

5 A. I can't remember the exact days, but it's possible.

6 Q. Okay.

7 MR. STORY: Your Honor, may I approach?

8 THE COURT: You may.

9 Q. You just testified that you recall giving a
10 statement on September 16th, correct?

11 A. Right.

12 Q. Okay. Does this look like your statement?

13 A. Yes.

14 Q. Okay. Thank you. Would you read the first sentence
15 of the second paragraph to me?

16 A. The first sentence of the second paragraph?

17 Q. Yes, ma'am.

18 A. On 9/15/09 a black male named Jeremy Smith entered
19 our store. My assistant Jennifer McAbee carded him for
20 age-restricted products to get his information because
21 she and I are sure this is the man who broke into our
22 location on the morning of 9/13/09.

23 Q. Okay. Thank you, Ms. Tilghman.

24 MR. STORY: No further questions for this
25 witness.

1 (WHEREUPON, court stood at recess for a short
2 break.)

3 THE COURT: Is the jury ready?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Let's bring them in.

6 (WHEREUPON, the jury entered the open court at
7 approximately 12:45 p.m.)

8 THE BAILIFF: Your Honor, all the jurors are
9 present in the courtroom.

10 THE COURT: All right. Thank you.

11 All right. The State may call its next witness.

12 MR. MCMULLEN: Your Honor, we'd call Sergeant
13 Investigator Melissa Addison.

14 **MELISSA ADDISON,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. MCMULLEN:

18 Q. I called you Sergeant Investigator. I'm not sure
19 that's accurate. But what is -- how are you employed,
20 ma'am?

21 A. I'm employed with the Sumter County Sheriff's
22 Office, criminal investigations division.

23 Q. Are you a sergeant in that division?

24 A. I am.

25 Q. How long have you worked there?

1 A. Since 1999.

2 Q. And so then you were working in 2009 on September
3 the 13th?

4 A. Yes, I was.

5 Q. What, if any, case did you work on involving the
6 Young's?

7 A. Actually, I was assigned to this case the following
8 day which was the 14th.

9 Q. Did you review with the witnesses who testified
10 earlier the video that they had?

11 A. Yes, sir, I did.

12 Q. And you did not know this Defendant before that
13 date, did you?

14 A. No, sir. I was unfamiliar with him.

15 Q. But you did watch the video?

16 A. Yes, sir, I did.

17 Q. And do you see the person who was on that video in
18 the courtroom?

19 A. Yes, sir.

20 Q. Who is it?

21 A. It's the Defendant, Jeremy Smith.

22 Q. All right.

23 THE COURT: And the record will reflect that
24 the witness pointed out the Defendant, Jeremy Smith.

25 MR. MCMULLEN: Thank you.

1 Q. Any question in your mind about that?

2 A. No, sir, not based upon my investigation and the
3 viewing of the video. Very similar to the person seated
4 here on the video as well.

5 Q. Now, are you the person who took this Defendant into
6 custody?

7 A. Yes, sir, I did.

8 Q. And when you -- you went to the scene of this
9 burglary the day after?

10 A. Yes, sir. I was not the on-call investigator, so I
11 did go the next day.

12 Q. Was there still -- what did the scene appear to be?
13 How did it appear when you got there?

14 A. I don't recall. I believe the glass already had
15 been cleaned up because I went sometime midday, I believe
16 it was.

17 Q. Do you remember if the door was somehow fixed?

18 A. I don't remember if the door was fixed or not. It's
19 been some time.

20 Q. All right. Did you eventually arrest this
21 Defendant?

22 A. Yes, I did.

23 Q. Now, in the process, did you -- do you recognize
24 State's Exhibit 1?

25 A. Yes, sir. I took that photograph.

1 Q. And what it is a photograph of?

2 A. The photograph of a duffle bag.

3 Q. Now, when you watched the video, did you see a
4 duffle bag consistent with this?

5 A. I did.

6 Q. Is that why you took this photograph?

7 A. Yes, that's why I took the photograph.

8 MR. MCMULLEN: May I publish this to the jury,
9 Your Honor?

10 THE COURT: You may.

11 (WHEREUPON, State's Exhibit Number 1 was published
12 to the jury.)

13 Q. You see the Defendant in the courtroom. Did you see
14 exhibit 2 as well?

15 A. Yes, sir.

16 Q. The grill?

17 A. Right. Yes, sir.

18 Q. Did you obtain this from the Defendant?

19 A. I did.

20 Q. Well, where was that?

21 A. When he actually was arrested, he had it in his
22 mouth. And I asked for it. He gave consent for it, and
23 I took it and placed it into evidence.

24 Q. Do you remember the location where you arrested the
25 Defendant?

1 A. I actually arrested the Defendant at his residence,
2 which I believe is [REDACTED], which is pretty
3 close proximity to the Young's Market actually.

4 Q. Well, where is -- what county is that Young's in?

5 A. It's in Sumter County.

6 Q. I want to show you what's already been marked
7 State's Exhibit 3 for identification purposes. Do you
8 recognize what this is?

9 A. It looks like some kind of map of some of the area,
10 Sumter County area, to include the incident location.

11 Q. What was the address of the Defendant?

12 A. His address was [REDACTED].

13 Q. All right. Is that on this map?

14 A. I can't see that far. Yes, sir.

15 Q. And then is the Young's on here?

16 A. Yes, sir. Yes, sir. Yes, sir. I see it.

17 MR. MCMULLEN: At this time I'd like to
18 introduce Exhibit ---

19 THE COURT: Any objection, Mr. Story?

20 MR. STORY: No, objection.

21 THE COURT: Without objection, State's Number 3

22 ...

23 MR. MCMULLEN: Yes, sir.

24 THE COURT: ... is admitted.

25 (WHEREUPON, State's Exhibit Number 3 was admitted

1 into evidence.)

2 Q. Now, if you will, would you -- with the Court's
3 permission...

4 THE COURT: Yes, sir.

5 Q. ... would you show the jury -- would you come
6 around, please, and show the jury where these are?

7 (WHEREUPON, the witness stepped down from the
8 witness stand.)

9 THE COURT: You don't have a microphone down
10 there, so please speak loudly so we can hear you.

11 A. This area right here is where the Young's Market is
12 located, which is 230 Old Manning Road. And right across
13 here is where the Defendant was located at his mother's
14 residence which is [REDACTED], I believe, [REDACTED].

15 Q. What does the legend at the bottom of this map say?

16 A. It says one inch equals one hundred feet.

17 Q. Would you estimate in inches the distance between
18 these two?

19 A. I can't estimate the distance between those two. I
20 can't do that. There's just some numbers on there.

21 Q. Okay. And I guess the jury can do it as well as you
22 can. But one inch equals one hundred feet?

23 A. Right.

24 Q. So if that's thirty-six inches, it's thirty-six
25 hundred feet?

1 A. Right.

2 Q. All right.

3 A. Okay.

4 Q. Thank you.

5 A. All right.

6 (WHEREUPON, the witness resumed the witness stand.)

7 Q. And that's a fair and accurate representation of an
8 aerial view of Sumter, that part of Sumter County?

9 A. Yes.

10 Q. All right. After you watched the video, did you
11 receive a copy of -- or did you receive a disk from the
12 personnel at Young's?

13 A. I did not receive the disk. The responding officer
14 actually obtained that disk and placed it into evidence.

15 Q. So did you ever look at that, whatever the
16 responding officer had?

17 A. I attempted to view it. It was nothing on it.

18 Q. So to your knowledge -- you did not know that until
19 when?

20 A. I don't know. It was several days after some
21 attempts were made to see was it formatted correctly. Of
22 course time passed.

23 Q. All right. Was it too late by then to go back to
24 Young's and get another copy?

25 A. Yes, sir.

1 Q. All right. But when you did see the video, it did
2 show -- is it fair to say that it showed the burglary
3 from start to finish?

4 A. Yes, sir. I could clearly see the burglary.

5 Q. Will you tell the jury what you saw?

6 A. I actually saw a black male in front bust the window
7 out, went inside, took some items, placed in the duffle
8 bag. I did see where we seen him on the camera his face
9 again. I didn't know who he was, so I couldn't say.
10 Never met him, didn't know him. But you could clearly
11 see the individual on the videotape. It wasn't any
12 problem -- or the -- actually the hard drive system
13 actually in the store.

14 I actually also observed -- I was like, what is that
15 in his mouth? It looks like a grill. And so we all went
16 like, that is a grill. So again, once I was able to put
17 together, through the investigation, the statements from
18 contact, I, of course arrested him. Again, he had a
19 grill, so I wanted to have that piece of evidence because
20 it seemed to corroborate the person that we saw which was
21 the Defendant.

22 Q. Did you get a call from one of the managers at
23 Young's subsequent to this saying this man had been back
24 to the store?

25 A. Right. We did receive a call that the individual

1 that we believed and was certain was on the videotape had
2 returned to the store. So they said at that point they
3 were able to get his identification and also his address,
4 which was very helpful. So I went out there to speak
5 with them.

6 Q. They provided that to you?

7 A. And they provided statements to me about that.

8 Q. And then when you met Mr. Smith, was he -- did that
9 confirm for you -- was he the same person you saw on the
10 video?

11 A. Yes. He appears to be the same person on the video.

12 Q. And you're certain of that?

13 A. Fairly certain, yes, sir.

14 Q. Do you have anything against Mr. Smith?

15 A. Nothing at all.

16 Q. And just to be very clear about this, did you do
17 anything in any way to tamper with the DVD that was in
18 evidence?

19 A. Nothing to tamper with it.

20 Q. Did you do your best to try to retrieve whatever
21 might have been on there?

22 A. Right. I went to someone else because I'm not
23 really a technical person. It's not my area. It's store
24 surveillance, their system. So we did make attempts and
25 just wasn't able to.

Melissa Addison - Cross-examination by Mr. Story

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1 Q. And estimate, please, if you will, driving. How far
2 would these two locations be apart from one another?

3 A. If you're driving, five -- less than ten minutes.
4 Five minutes or so.

5 Q. Okay. And is this -- do you know what this is?
6 This swath that's here?

7 A. No, sir, I don't.

8 Q. Okay. That's all the questions I have. Thank you.

9 THE COURT: Mr. Story?

10 CROSS-EXAMINATION

11 BY MR. STORY:

12 Q. Investigator Addison, good afternoon.

13 A. Good afternoon.

14 Q. Or Sergeant Addison, correct?

15 A. Correct.

16 Q. What date did you arrest Jeremy Smith?

17 A. I believe it was September the 19th.

18 Q. September 19th?

19 A. (No verbal response)

20 Q. You viewed the videotape on September 13th, correct?

21 A. It was the next day, the 14th.

22 Q. Excuse me. It was the 14th, correct?

23 A. Yes, sir.

24 Q. Now, when -- it's your testimony that the responding
25 officer took a disk, a DVD, that was burned and placed it

1 into evidence?

2 A. Yes.

3 Q. Okay. But that evidence is lost, correct?

4 A. Correct.

5 Q. Not by any of your actions, correct?

6 A. Certainly not by any of my actions.

7 Q. When did you discover that evidence was lost?

8 A. It was a few days or so later. I'm not certain
9 exactly.

10 Q. But you viewed the tape, correct?

11 A. I viewed it inside the store. Like they played it
12 from the hard drive. Yes, sir.

13 Q. When you went to arrest Jeremy Smith on the 19th,
14 did you search the residence?

15 A. We did.

16 Q. Okay. And what did you find?

17 A. Other than the duffle bag and -- I didn't find
18 anything else.

19 Q. You didn't find anything else?

20 A. No, sir.

21 Q. Did you talk to any other suspects involving this
22 crime?

23 A. He was only the suspect that we have. We only saw
24 one person on the video.

25 Q. Okay. Did you interview any persons of interest

1 regarding this crime?

2 A. No, sir.

3 Q. You didn't talk to anyone else?

4 A. Other than the witnesses at the store, the clerks,
5 there was no one else. I'm sorry. Some family members
6 of his girlfriend, but not in regards to the actual crime
7 itself.

8 Q. You talked to some family members of Jeremy Smith,
9 but not in regards to the burglary?

10 A. No, sir.

11 Q. Okay. Do you recall when you interviewed them?

12 A. I don't recall exactly. It might have been the
13 17th.

14 Q. But was it before you arrested Jeremy?

15 A. Yes.

16 MR. STORY: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 Q. It's your testimony you gave me that you interviewed
19 a family member but not in association with the burglary?

20 A. It was in reference to locating the Defendant at the
21 time.

22 Q. Okay. But you watched the video on September 14th,
23 2009, correct, and positively identified the person on
24 the video?

25 A. I didn't positively identify him because, like I

1 said, I didn't know who he was. Just saw a clip picture.

2 And the clerks at the time indicated that ---

3 Q. But you waited until the ---

4 A. --- who he was.

5 Q. Pardon me. But you waited until the 19th to arrest

6 him, correct?

7 A. Until I located him, correct.

8 Q. Okay. But you know for a fact that the responding

9 officer took a burned DVD of the videotape, correct?

10 A. Yes.

11 Q. And placed it into evidence?

12 A. Yes.

13 Q. You do not know what happened to that videotape?

14 A. It's not showing on the DVD, so it's some technical
15 problem issue, I would assume.

16 Q. So you watched it, and then you watched a copy, and
17 you said nothing was showing?

18 A. We attempted -- I attempted, that is, to watch the
19 DVD, but it's nothing on the DVD. But I did see or view
20 it at the actual store.

21 Q. And this was a few days later when you watched a
22 copy?

23 A. The next day.

24 Q. The next day?

25 A. Right, the 14th when I went into the store to

1 interview the clerks and speak with them.

2 Q. Okay. You watched the copy that was burned onto a
3 DVD in place of that one?

4 A. No, sir. They pulled up the hard drive or what they
5 call -- I guess the live feed. I watched that on the
6 memory.

7 Q. And then a few days later you tried to watch the
8 copy, and there was nothing on it.

9 A. I'm not sure about a couple of days, but at some
10 point I attempted to actually view it and was unable to.
11 I got with some folks in the office to see if it was
12 something I was doing wrong and just wasn't able to view
13 anything.

14 MR. STORY: No further questions.

15 THE COURT: Any redirect?

16 MR. MCMULLEN: Yes, please.

17 REDIRECT EXAMINATION

18 BY MR. MCMULLEN:

19 Q. You just said that you're not sure how many days
20 later you went back and discovered that the copy on the
21 disk wasn't working?

22 A. Correct.

23 Q. Not sure how many days?

24 A. Not sure.

25 Q. By the time you discovered that, was it too late to

1 go back to Young's and burn another one?

2 A. It's a possibly. It's been a long time, but I
3 definitely remember there was some efforts, was under the
4 impression that we may be able to get it some other time
5 with formatting it or possibly some machine or something
6 of that nature.

7 Q. Did you make those efforts?

8 A. We did.

9 Q. And we don't have a disk -- we don't have it, right?

10 A. We don't have it.

11 Q. So I mean, do you remember what you tried to do in
12 that regard?

13 A. In that regard, I gave it to some of the guys in the
14 office, investigators who were more technically advanced
15 with some equipment. And they attempted to play the DVD
16 on some other things, and it just didn't happen. And it
17 just was nothing there from what they're telling me.

18 Q. Okay. And so you're -- I hate to ask again. But
19 you don't know the time frame there?

20 A. I don't know the time frame.

21 Q. Thank you.

22 THE COURT: Any recross based upon the
23 redirect?

24 MR. STORY: No, Your Honor.

25 THE COURT: All right.

1 Thank you. You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 MR. MCMULLEN: Your Honor, the State rests.

4 THE COURT: All right. Ladies and gentlemen,
5 the State has rested their case. And now is a perfect
6 opportunity for y'all to go get some lunch.

7 Ladies and gentlemen, please do not discuss this
8 case with anyone, including yourselves. I'm going to
9 give you an hour and a half with instructions to be back
10 here just a little bit before two thirty. All right?
11 Thank you, ladies and gentlemen, have a nice lunch.

12 (WHEREUPON, the jury exited the open court at
13 approximately 1:02 p.m.)

14 THE COURT: All right. Are there any motions
15 from the Defense?

16 MR. STORY: Yes, Your Honor. I have two
17 motions.

18 THE COURT: All right.

19 MR. STORY: The first motion is a -- I would
20 like to renew my motion that my client's due process
21 rights were violated under Brady versus Maryland.

22 THE COURT: All right.

23 MR. STORY: The reason being, I believe they
24 should have told us well before this Monday if they knew
25 a few days afterwards that the DVD did not work. I

1 believe we should have been informed, and that was a
2 violation of my client's Brady rights.

3 THE COURT: All right. Denied.

4 MR. STORY: Okay. Thank you.

5 Your Honor, the second motion I would like to make
6 is a motion for directed verdict based on lack of
7 evidence the State's presented. The State has presented
8 no physical evidence. They have presented some
9 eyewitnesses who watched a video from over four years ago
10 that are trying to identify my client. And I don't
11 believe that's enough to meet the State's burden.

12 THE COURT: All right.

13 Mr. McMullen?

14 MR. MCMULLEN: May it please the Court. We did
15 -- Your Honor, we did present physical evidence in the
16 form of a photograph and of the grill that supposedly was
17 seen on the video. And I believe that the testimony, if
18 the jury believes it, meets all the elements that we need
19 to satisfy.

20 THE COURT: All right. All right. Based upon
21 the evidence that has been shown -- and at this stage of
22 the trial, the Court is more concerned about the presence
23 of any evidence, not the weight of the evidence. So I
24 find that the State has presented enough evidence to get
25 to the jury. Now, whether or not the jury finds that

1 MR. STORY: Yes, Your Honor.

2 THE COURT: All right.

3 MR. STORY: Your Honor, I would like to renew
4 my motion for directed verdict. I'd like to renew the
5 denial of due process based on Brady based on the
6 videotape that I was not aware of didn't exist, bad faith
7 on the Sheriff's department because they knew days
8 afterwards, according to the testimony, they didn't have
9 a videotape, and I wasn't informed until two days ago.

10 THE COURT: Okay. All right. I respect your
11 motion, but I'm respectfully denying it as well.

12 All right. When the jury comes out, I'll let you
13 rest on the record. Then I'll tell them that that's all
14 the evidence. You will get last argument because you put
15 up no evidence.

16 MR. STORY: Thank you.

17 THE COURT: All right. Let's bring our jury
18 in.

19 Have y'all had an opportunity to review the charge?

20 MR. MCMULLEN: No other change.

21 THE COURT: Any objection?

22 MR. STORY: No objection to the instruction I
23 read.

24 THE COURT: Okay.

25 (WHEREUPON, the jury entered the open court at

1 approximately 2:33 p.m.)

2 THE BAILIFF: Your Honor, all the jurors are
3 present in the courtroom.

4 THE COURT: All right. Thank you.

5 Ladies and gentlemen, I hope you had a nice lunch.

6 Mr. Story, are you ready to proceed?

7 MR. STORY: Yes, Your Honor.

8 THE COURT: All right.

9 MR. STORY: At this time, the Defense rests.

10 THE COURT: All right. Thank you.

11 All right. Ladies and gentlemen, the Defendant has
12 rested, and the Plaintiff rested -- or the State rested
13 right before we broke for lunch. That means that all of
14 the testimony that you're going to hear in this case has
15 been delivered to you.

16 Now the parties will give you their summations. I
17 will then charge you the law that is applicable to this
18 case, and then you will be sent to your jury room where
19 you will begin your deliberations.

20 All right. Is the State ready to proceed?

21 MR. MCMULLEN: We are, Your Honor.

22 THE COURT: Thank you. You may start.

23 MR. MCMULLEN: May it please the Court.

24 Mr. Story.

25 CLOSING ARGUMENT

1 BY MR. MCMULLEN:

2 Mr. Foreman, ladies and gentlemen, thank you so much
3 for your attention here today. Thank you for being here
4 and being prompt. Thank you for being part of the
5 greatest justice system in the world.

6 As I told you at the beginning, all we ask for is a
7 fair trial and a fair verdict. The Defendant certainly
8 has a right to a fair trial and his day in court, but so
9 does the State and so does the County of Sumter. And as
10 citizens, basically so do you.

11 And I told you at the beginning, we did not have a
12 video to show you unfortunately. I wish we did. But
13 that cannot be for us the end of the inquiry in a case
14 where we have other ways of proving who was there to
15 commit a burglary that night. There was a time when
16 nobody had videos to bring into courtrooms. They didn't
17 have fingerprints or DNA. People still got tried, and
18 some of them got convicted. So again, a fair trial is
19 all we ask for.

20 And you'll hear about reasonable doubt. But a lot
21 of people, I think, emphasize the word doubt. But I'm
22 going to ask you also to be reasonable. This is not
23 beyond all doubt or beyond a shadow of a doubt or a doubt
24 that you come in here with that we just can't overcome no
25 matter what. It's the kind of doubt that causes a

1 reasonable person to hesitate to act. I submit to you
2 that even if you started with that reasonable doubt like
3 you're supposed to, that that robe of righteousness has
4 been stripped from the Defendant by the testimony of
5 these witness and by the evidence that we do have.

6 The witnesses you heard from had no reason to lie.
7 There was -- none of them knew this Defendant before the
8 trial began, or at least none of them disliked him. And
9 the first two witnesses, I should have said, they did
10 know who he was on sight. And I submit to you that it's
11 a lot like if you go to the dry cleaners every day or a
12 convenience store every day or a restaurant frequently,
13 that after a while the people who work there know you on
14 sight. And even if they saw you under other
15 circumstances, they'd say hello. They'd recognize you.
16 They'd be able to pick you off of a video.

17 Not only that, but there were the distinguishing
18 teeth, the grill. That's just one more piece of evidence
19 that's consistent with the story we all heard.
20 Therefore, I submit to you, there was no bad faith in the
21 lack of a video to show you.

22 The women who testified here today, I think they
23 were -- well, I'll leave it to you what to think. But
24 they were credible witnesses. They didn't have any
25 hidden agenda. They were sequestered. That is to say,

1 one didn't hear the testimony of the other. And we're no
2 more perfect than any other part of real life. So I just
3 ask again for fairness.

4 You've heard all the evidence. I do want to kind of
5 emphasize that the bag was seen. And another thing is
6 that the items that were stolen from the store are also
7 the items that Mr. Smith used to go buy there day-after-
8 day. And it makes sense that a tobacco user would go to
9 the same convenience store near his house day-after-day.
10 But then when Investigator Addison went and arrested the
11 man, he did have a duffle bag consistent with the one she
12 saw in the video. He did have the teeth consistent with
13 the ones in the video.

14 And it's not immediately apparent just how far this
15 is apart. But y'all live here and you know how far these
16 -- probably know how far [REDACTED] and Pack Road are
17 from this Young's convenience store. But if one inch
18 equals a hundred feet and if this is thirty-six or forty-
19 eight inches, it's less than a mile. And I submit to you
20 that this cut-through is a power line right-of-way that
21 makes it an even shorter trip than it would be by road.

22 You have heard the evidence. This isn't a
23 complicated case. I don't need to talk all afternoon. I
24 just ask you to be fair with us and be fair with the
25 Defendant and give us a verdict that speaks the truth.

1 Thank you.

2 THE COURT: All right. Mr. Story?

3 MR. STORY: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. STORY: Opposing Counsel.

6 CLOSING ARGUMENT

7 BY MR. STORY:

8 Members of the jury, I was really nervous about
9 trial before last night, just because I'm always nervous
10 before trial. And even a case like this, you know, I
11 just get kind of nervous to come and speak in front of
12 you guys who are meeting one of the highest callings that
13 a citizen can meet.

14 So the way I relax is I like to watch old movies. I
15 like to watch movies that I've seen a thousand times. So
16 you know, I'm not thinking about anything new, you know.
17 So last night I go to the Classic Movie Channel, and the
18 end of Casablanca was on. And I don't know if y'all have
19 seen that, but it has the best ending. I think it has
20 the best ending of any movie of all time.

21 After that, the movie Cat on a Hot Tin Roof with
22 Marlon Brando came on. And I don't know if y'all have
23 ever seen that. But if you haven't seen that, you should
24 go watch it. There's one scene in particular where the
25 people in the family, they're standing around, they're in

1 a room, and they're talking about Big Daddy. Big Daddy's
2 like the patriarch of the family. And they're talking
3 about him, and they're saying all these different things
4 about -- you know, talking about Big Daddy behind his
5 back. And Big Daddy walks in and catches the end of the
6 conversation. And he walks in -- and even though he just
7 catches the end, he yells out, this room stinks of the
8 powerful odor of mendacity.

9 Mendacity is a word for basically lies and untruths.
10 And I submit to you that this room stinks of the powerful
11 odor of mendacity because all the witnesses that were
12 presented here today contradict each other. None of them
13 can agree on hardly anything.

14 Now, let's begin there. Let's begin with these
15 witnesses. First you heard from Ms. Jennifer Vandegrift.
16 You heard her testify that she saw a video and that she
17 could identify my client on that video. She watched the
18 video on September 13th, 2009, at 230 Old Manning Road at
19 around three o'clock in the morning.

20 Now, at first she testified that the perpetrator
21 that she saw on this video had a black duffle bag and a
22 hat on. But then on cross-examination, she said that he
23 had a duffle bag and a black hat. The fact is, this was
24 over four years ago. She doesn't remember what was on
25 that video. She doesn't remember who was on that video.

1 But she started thinking. She's like, I know this guy
2 comes in all the time, a young black male. He comes in
3 all the time, and he buys blunt papers. Yeah, he always
4 comes in here, and he always buys blunt papers. And that
5 looks -- that looks like so and so. Maybe that's him.

6 She gets there with the officers there and already
7 had a chance to talk to the officers. Did they sway her
8 opinion when they were watching the video? I don't know.
9 She says he came in and she saw him all the time, and she
10 knew on that day that it was my client. It was Jeremy
11 Smith.

12 Then you heard Brandy Tilghman come up here and
13 testify. Ms. Tilghman's testimony was a little bit
14 different. She says, yeah, I remember seeing the video
15 of a burglary that happened on September 13th, 2009. And
16 I responded, and the perpetrator there stole a bunch of
17 Newport cigarettes. He stole a bunch of Newport
18 cigarettes, and he had a black backpack. A black
19 backpack. And also a grill. The person that watched the
20 camera was smiling in the camera, and they had a grill
21 on. I remember that. And I also remember that it was a
22 young black male that would always come in the store and
23 he would always buy Newport cigarettes. He would always
24 buy Newport cigarettes and nothing else.

25 So now I asked her about a hat. I said, well, did

1 you see a red hat? She goes, no, I don't remember a red
2 hat. Well, do you remember any kind of hat? No, I can't
3 recall. I can't recall. I mean, it's no surprise that
4 somebody can't recall a video they saw over four years
5 ago.

6 So then we had -- and also, remember Ms. Brandy
7 Tilghman is married to a sheriff's deputy, which I'm not
8 insinuating that, you know, she's lying on behalf of the
9 Sheriff's department. But people like that tend to rely
10 on authority and tend to believe that just because
11 somebody's been arrested means that they must have
12 committed a crime.

13 Next we had Sergeant Addison. Now, she watched the
14 videotape too. And she remembers seeing a videotape in
15 September 13th, 2009. And she remembers that people --
16 that they knew who it was at the time. And they knew who
17 it was. And she watched the video and she saw a gray
18 duffle bag. A gray duffle bag.

19 Now, is the reason she saw that -- is the reason she
20 saw a gray duffle bag -- Brandy Tilghman saw a black
21 backpack, and Jennifer Vandegrift saw a black duffle bag.
22 Is that because Jennifer -- the reason is because
23 Jennifer and Brandy had -- they didn't see the pictures
24 before. Sergeant Addison saw pictures of the duffle bag
25 that she had taken at Jeremy Smith's residence. And I

1 asked her, did you search the residence? Yeah, I
2 searched the residence. Did you find anything? No. I
3 just found that gray duffle bag, even though Brandy and
4 Jennifer both remember a black backpack and a black
5 duffle bag. Or a gray duffle bag respectively. I took
6 the picture of the duffle bag, and I had a grill. Yeah,
7 because the person had a grill.

8 Members of the jury, this was 2009. This was over
9 four years ago. A lot of people had grills. A lot of
10 people had grills during that time. Plenty of people had
11 duffle bags. I've got a duffle bag at my house.
12 Hopefully, it doesn't match the description of any duffle
13 bags that anybody thinks they may have saw in a
14 videotape. But she said she didn't find anything else.

15 Where did these Newport cigarettes go? Or where did
16 the blunt papers go. Did he smoke them in less than four
17 days? Did he smoke them all? Did he bury them? I mean,
18 what happened?

19 And then Jennifer Tilghman identifies -- she's,
20 like, yeah, he came into the -- he came into the store
21 the next Monday as if he had the audacity, after robbing
22 a place, to come in the very next day and the day after
23 that, because Brandy Tilghman also said she recognized
24 him, and one of her clerk's recognized him. Because he
25 always, you know, bought these Newport cigarettes.

1 Now, I asked -- again I asked Sergeant Addison if
2 she talked to anybody else. At first she was like, no,
3 not during this investigation. But then she later said
4 that she did talk to other people, but they were family
5 members. I was just trying to find out where they were.
6 But she already knew where they were because on the 14th
7 they said they had taken -- Jennifer Vandegrift said she
8 had taken the address of Jeremy Smith when he came in and
9 presented his I.D.

10 Why did it take them four days later to arrest
11 Jeremy? The reason is actually very simple. It's what
12 psychologists usually call confirmation bias. And that's
13 a big -- you know, that's a term psychologists use. But
14 I'm sure y'all are all familiar with things like it.
15 Basically, they didn't know who was on that videotape.
16 When they watched the video, they didn't remember who was
17 on the videotape. But then when Jeremy Smith comes in
18 the next day, Jennifer Vandegrift says, well, there was a
19 young black man on the video, and I know this young black
20 man. He knows the store. It must have been him. And
21 when they talk to each other and when they start talking
22 to law enforcement, they tend to convince themselves that
23 this person who came in the next day must have been the
24 person who perpetrated this crime. It's a really common
25 phenomenon.

1 Now, the Assistant Solicitor says that they have no
2 reason. I don't disagree with that. I don't know of a
3 reason they would have to lie. The reason they can't
4 remember and that they're not telling the truth, what
5 actually happened, is because of this confirmation bias.
6 Because during the course of this investigation,
7 everybody involved convinced themselves that Jeremy Smith
8 was the person who perpetrated the crime. Why? Because
9 he was an easy target. He was an easy target because he
10 came in the store all the time, and he would buy tobacco
11 products, blunt papers or Newport cigarettes, depending
12 on which witness you believe maybe remembers the best.
13 And then they started to convince themselves after the
14 fact. That's the reason he wasn't arrested until four
15 days later because they were conducting their
16 investigation, and they weren't sure at the time. And
17 that's the reason they're contradicting themselves today
18 with the things found in the -- what they saw in the
19 video, what they didn't see in the video. They simply
20 can't remember. And that's what happened. That's what
21 happened with the witnesses.

22 Now, the State just got done telling you that he
23 wishes the video was here today. And I do too. Because
24 if the video was here today, you would see that it was
25 not Jeremy Smith on that video. If we had the video here

1 today, you would see that it was not him.

2 But we don't. We don't have the video. What we
3 have is people have said they saw a video over four years
4 ago, and they copied and gave it to the police
5 department. And now Sergeant Addison said, well, it just
6 didn't work. The video just didn't work. But they made
7 no effort to go back to the store and try to find -- get
8 the video again that was on the system. They said that
9 the video on the system lasted thirty days, and it's
10 erased within thirty days. If this happened on the 13th,
11 thirty days was plenty of time to go back and try to get
12 the video.

13 No video. A huge gaping hole in this case.
14 Contradictory statements by witnesses. A huge gaping
15 holes in this case, in the State's case. Now, if we'd
16 had the video, we could have seen where a perpetrator had
17 gone in and grabbed things and maybe touched the counter
18 and maybe done whatever else that the person did during
19 the commission of this crime. But we don't have the
20 videotape, so we can't see where anybody touched the
21 counter. We can't see any place where they could have
22 taken fingerprints. We can't see where a person may have
23 cut themselves on glass and there could have been DNA at
24 the scene. We can't see any of these things.

25 And the State isn't presenting any of this. They're

1 not presenting any physical evidence, any physical
2 evidence that links Jeremy Smith to this crime. Not a
3 fingerprint, not a DNA, nothing.

4 And then when they search the residence, they don't
5 find anything that was stolen. Nothing. No physical
6 evidence linking Jeremy Smith to this crime.

7 Now, as I stated earlier when I was talking about
8 Brandy Tilghman, sometimes people have biases towards
9 authority. And a lot of people believe just because
10 someone was arrested that they committed whatever crime
11 they were arrested for. Now, the Judge has instructed,
12 and I believe will instruct you today, not to take that
13 -- just because he was arrested and charged with a crime,
14 that you should take that to mean that he committed a
15 crime. That is not evidence in this case. But there are
16 cynical people who believe that anyway. And the reason
17 my client didn't get on the stand and say that he didn't
18 commit this crime, I submit to you, is because he's
19 saying it right now. He's standing here, sitting there,
20 during this trial maintaining his innocence.

21 I've heard it often said, as the Solicitor said,
22 that when a person, when a Defendant walks into this
23 courtroom, they are cloaked in a robe of innocence. And
24 they're cloaked in this robe. And it's basically the
25 State's job to try to strip the robe. And all they've

1 given to you to try to strip that robe is some
2 contradictory statements from witnesses who say they saw
3 a video over four years ago. That's it. No videotape
4 for you to see yourself. No physical evidence. Nothing
5 from the crime scene. Nothing. And that's the only
6 reason we're here today. Contradictory witness
7 statements.

8 As I said, I don't want to waste any more of your
9 time. I believe that the decision when you go back to
10 the jury assembly room -- I mean, the jury room and
11 discuss everything, I think that this is a pretty easy
12 decision.

13 Some people like to describe the weight of evidence
14 as a scale. And in order for you to find for the State,
15 to convict my client, the scale must be all the way down
16 to the bottom in the State's favor. All the way down to
17 the bottom.

18 What I believe the Judge will instruct you on now --
19 if anything I say contradicts anything he says, by all
20 means, he's the instructor of the law. Listen to what he
21 says. But what I believe he'll tell you is that
22 reasonable doubt is the kind of doubt that would cause a
23 reasonable person to hesitate to act. The only thing
24 they put on the scales are some statements by witnesses
25 over four years ago that contradict each other. That is.

1 it. And we're trying to put in a gray duffle bag and a
2 grill that who knows how many people had back in 2009. A
3 gray duffle bag, even though one witness said it was a
4 black backpack and one witness said it was a black bag.
5 That's all they have. That's it. That's not even -- I
6 mean, the scale isn't tipped at all. That's why when you
7 go back to the jury assembly room, you must find for the
8 Defense. You must find Jeremy Smith not guilty of these
9 charges. Thank you.

10 THE COURT: Secure the courtroom, please.

11 CHARGE

12 BY THE COURT:

13 All right. Ladies and gentlemen, as I said, all the
14 testimony and other evidence in this case have been
15 presented to you. The attorneys have given you their
16 closing arguments. Now is the time when I will charge
17 you the law that is applicable to this case.

18 Ladies and gentlemen, I remind you that during this
19 trial, you and I have certain duties to perform. As the
20 trial judge, it is my responsibility to preside over the
21 trial of this case. And I also have the duty to rule on
22 the admissibility of the evidence that is being offered
23 during this trial.

24 You are to consider only the competent evidence
25 before you. If there was any testimony ordered stricken

1 from the record in this case, you must disregard that
2 testimony. You are to consider only the testimony which
3 has been presented from this witness stand and any other
4 evidence that has been placed into the record.

5 I have the additional duty to charge you the law
6 that is applicable to this case. And as the presiding
7 judge, I am the sole judge of the law in this case. And
8 it is your duty, as jurors, to accept and apply the law
9 exactly as I now state it to you.

10 If you already have some idea as to what the law is
11 or what the law ought to be and it does not agree with
12 what I tell you the law is now, you must disregard and
13 abandon that idea because you are sworn to accept and
14 apply the law exactly as I state it to you.

15 Now, ladies and gentlemen, every case tried before a
16 jury, you, the jury, become the sole and exclusive judges
17 of the facts. As a trial judge, I cannot intimate,
18 state, comment, infer or make any statement to a trial
19 jury about the facts in a case. You are the trial jury.
20 You are the sole judges of the facts, and you're not to
21 infer by what I have said during the course of the trial
22 or in ruling upon the admissibility of evidence or
23 otherwise or anything that I might say now during the
24 course of these closing instructions to you that I have
25 any opinion about the facts of the case. The law simply

1 does not allow me to have an opinion about the facts in a
2 case. This is a matter solely for you the jury to
3 determine. And as jurors, it is your duty to determine
4 the effect, the value, the weight, and the truth of the
5 evidence that has been presented during this trial.

6 Now, ladies and gentlemen, I charge you again that
7 count one of the indictment in this case, indictment
8 number 2010-GS-43-118, alleges that on or about September
9 13th, 2009, the Defendant, Jeremy Smith, committed the
10 offense of burglary in the second degree, violent. I
11 remind you the fact that the Defendant was arrested,
12 charged and indicted is not evidence in this case and
13 cannot be considered by you as evidence of guilt. Nor
14 does it create any presumption or inference of guilt.
15 The indictment is simply the formal written instrument
16 which contains the charge made against the Defendant and
17 is the formal document by which this case is brought into
18 this court.

19 Ladies and gentlemen, the Defendant has pled not
20 guilty to the charge in the indictment, and that plea
21 puts the burden on the State to prove the Defendant
22 guilty. A person charged with committing a criminal
23 offense in South Carolina is never required to prove his
24 innocence. I charge you that this is an important rule
25 of law, that the Defendant in a criminal trial, no matter

1 how serious the charge is, will always be presumed to be
2 innocent of the crime for which the indictment was issued
3 unless guilt has been proven by evidence satisfying you
4 of that guilt beyond a reasonable doubt.

5 The presumption of innocence does not end when you
6 begin your deliberation, but it accompanies the Defendant
7 throughout the trial until you reach a verdict of guilt
8 based on evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 The presumption of innocence is like a robe or
11 righteousness placed about the shoulders of the Defendant
12 which remain with the Defendant until it has been
13 stripped from the Defendant by evidence satisfying you of
14 the Defendant's guilt beyond a reasonable doubt. And the
15 presumption of innocence is not a mere legal theory. It
16 is not just a legal phrase that we use, but it is a
17 substantial right to which every defendant is entitled,
18 unless you, the jury, are satisfied from the evidence
19 presented of the Defendant's guilt beyond a reasonable
20 doubt.

21 Now, ladies and gentlemen, there are two types of
22 evidence that are generally presented during the trial.
23 There's direct evidence and circumstantial evidence.
24 Direct evidence is the testimony of a person who claims
25 to have actual knowledge of a fact, such as an

1 eyewitness. It is evidence which immediately establishes
2 the main fact to be proved. Circumstantial evidence, on
3 the other hand, is proof of a chain of facts and
4 circumstances indicating the existence of a fact. It is
5 evidence which immediately establishes collateral facts
6 from which the main fact may be inferred.

7 Circumstantial evidence is based on inference and
8 not on personal knowledge or observation. And the law
9 makes absolutely no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence. However, to the extent that the State relies
12 on circumstantial evidence, all the circumstances must be
13 consistent with each other and when taken together point
14 conclusively to the guilt of the accused beyond a
15 reasonable doubt. And if these circumstances merely
16 portray the Defendant's behavior as suspicious, the proof
17 has failed.

18 The State has the burden of proving the Defendant
19 guilty beyond a reasonable doubt, and the burden rests on
20 the State regardless of whether the State relies on
21 direct evidence, circumstantial evidence or some
22 combination of the two.

23 Now, ladies and gentlemen, you should weigh all the
24 evidence in this case. And after weighing all the
25 evidence, if you are not convinced of the guilt of the

1 Defendant beyond a reasonable doubt, you must find the
2 Defendant not guilty.

3 Necessarily, ladies and gentlemen, you must
4 determine the credibility of witnesses who have testified
5 in this case. Credibility simply means believability.
6 And it becomes your duty as the jurors to analyze and to
7 evaluate the evidence and determine which evidence
8 convinces you of its truth.

9 In determining the believability of witnesses who
10 have testified in this case, you have a right to believe
11 one witness over several witnesses or several witnesses
12 over one witness. You may believe a part of the
13 testimony of a witness and reject the remaining parts of
14 the testimony of that same witness. And you may believe
15 the testimony of a witness in its entirety or reject the
16 testimony of a witness in its entirety. And you may
17 consider whether any witness has exhibited to you any
18 interest, bias, prejudice or other motive in this case.
19 And you may also consider the appearance and the manner
20 of a witness while on this witness stand.

21 Now, ladies and gentlemen, I instruct you and
22 emphasize the fact that the Defendant did not testify is
23 not a factor to be considered by you in your
24 deliberations and in your consideration of the question
25 of guilt or innocence of the Defendant. It must not be

1 considered by you in any manner whatsoever. A defendant
2 has the constitutional right to remain silent. And the
3 assertion of this right must not be considered by you in
4 your deliberations. And I repeat, under your oath you
5 are to draw no conclusion whatsoever from the fact that
6 the Defendant did not testify, and the fact that the
7 Defendant did not testify should not even be discussed in
8 the jury room.

9 Burden of proof, as I have stated to you is on the
10 State, and the Defendant is not required to prove his
11 innocence. The burden of proof remains on the State to
12 prove guilt beyond a reasonable doubt.

13 And ladies and gentlemen, we've discussed reasonable
14 doubt throughout this trial. And this begs the question,
15 what is a reasonable doubt in the law? A reasonable
16 doubt is the kind of doubt that would cause a reasonable
17 person to hesitate to act. The State has the burden of
18 proving the Defendant guilty beyond a reasonable doubt.
19 And some of you may have served on civil juries where you
20 were told that it is only necessary to prove that a fact
21 is more likely true than not true, such as by the greater
22 weight or the preponderance of the evidence. In criminal
23 cases, the State's proof must be more powerful than that
24 and it must be beyond a reasonable doubt.

25 Now, reasonable doubt is proof that leaves you

1 firmly convinced of the Defendant's guilt. There are
2 very few things in this world, ladies and gentlemen, that
3 we know with absolute certainty. And in criminal cases
4 the law does not require proof that overcomes every
5 possible doubt. If, based upon your consideration of the
6 evidence, you are firmly convinced that the Defendant is
7 guilty of the crime charged, you must find the Defendant
8 guilty. If, on the other hand, you find that there is a
9 real possibility that the Defendant is not guilty, you
10 must give the Defendant the benefit of the doubt and find
11 him not guilty.

12 Now, ladies and gentlemen, the issue in this case is
13 the identification of the Defendant as the person who
14 committed the crime charged. The State has the burden of
15 proving the identity beyond a reasonable doubt. You must
16 be satisfied beyond a reasonable doubt of the accuracy of
17 the identification of the Defendant before you may
18 convict the Defendant.

19 Identification testimony is an expression of belief
20 or impression by a witness. You must determine the
21 accuracy of the identification of the Defendant. You
22 must consider the believability of each identification
23 witness in the same way as you would any other witness.
24 You may consider whether the witness had an adequate
25 opportunity to observe the offender at the time of the

1 offense. This will be affected by things like how long
2 or short a time was available, how far or close the
3 witness was, the lighting conditions and whether the
4 witness had a chance to see or know the person in the
5 past.

6 Once again, I instruct you that the burden of proof
7 on the State extends to every element of the crime
8 charged and this specifically includes the burden of
9 proving beyond a reasonable doubt the identity of the
10 Defendant as the person who committed the crime. And if,
11 after examining the testimony, you have a reasonable
12 doubt as to the accuracy of the identification, you must
13 find the Defendant not guilty.

14 Now, ladies and gentlemen, the Defendant is charged
15 with burglary second, violent. The State must prove
16 beyond a reasonable doubt that the Defendant entered a
17 building without consent with the intent to commit a
18 crime in the building, and the entering of the building
19 occurred in the nighttime.

20 A building is any structure, vehicle, water craft or
21 aircraft where any person lodges or lives or where people
22 assemble for the purpose of business, government,
23 education, religion, entertainment, public transportation
24 or public use or where goods are stored.

25 Ladies and gentlemen, for the charge in the

1 indictment 2010-GS-43-118, there are two possible
2 verdicts which you may find in this case. On the charge
3 of burglary second, violent, you may find the Defendant
4 either not guilty or guilty. There is no significance
5 whatsoever, ladies and gentlemen, in the order that I
6 state the possible verdicts. Just simply that one must
7 be stated first.

8 Ladies and gentlemen, your verdict must be
9 unanimous. All twelve of you must agree on the verdict,
10 and your decision must not be based on sympathy, passion,
11 prejudice, emotion, or any other consideration that is
12 not in evidence in this case.

13 Mr. Foreman, when the jury agrees on a verdict, you
14 will write the verdict on the verdict form, which will be
15 given to you, and sign your name as the foreperson.
16 Please knock on the jury room door, inform the bailiff
17 that you have reached a verdict. And at that time, we
18 will receive you back here in court for the publication
19 of the verdict.

20 Now, ladies and gentlemen, I'm going to ask that you
21 return to the jury room, but please do not begin your
22 deliberations until you've been instructed to do so. I
23 still have a few matters that I need to take up with the
24 attorneys.

25 All right. Thank you, ladies and gentlemen.

1 again for another jury for tomorrow.

2 THE JUROR: Okay.

3 THE COURT: All right. Thank you.

4 All right. Court will be at ease pending the call
5 of the Court.

6 (WHEREUPON, the verdict form and exhibits were
7 delivered to the jury at approximately 3:16 p.m.
8 after which court stood at recess awaiting the
9 verdict of the jury.)

10 THE COURT: All right. I'm informed that the
11 jury has reached a verdict.

12 Please bring our jury in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 4:20 p.m.)

15 THE BAILIFF: Your Honor, all of the jurors are
16 present in the courtroom.

17 THE COURT: All right. Thank you.

18 Mr. Foreman, I understand the jury has reached a
19 verdict?

20 THE JUROR: Yes, sir.

21 THE COURT: Is it unanimous?

22 THE JUROR: Yes, sir.

23 THE COURT: Please pass it to Mr. Bradley.

24 (WHEREUPON, the verdict form was passed up to the
25 Court.)

1 THE COURT: All right. Please publish the
2 verdict.

3 THE CLERK: Yes, sir. For the State of South
4 Carolina, County of Sumter ---

5 THE COURT: The Defendant will please stand.

6 THE CLERK: --- in the Court of General
7 Sessions, docket number 2010-GS-43-118, State of South
8 Carolina, Plaintiff, versus Jeremy Smith, Defendant. We,
9 the jury, by unanimous agreement find the Defendant,
10 Jeremy Smith, on the charge of burglary second, violent,
11 guilty. Signed Terrence Peterson, Foreperson, dated the
12 15th day of January, 2014.

13 Ladies and gentlemen of the jury, is this your
14 verdict? Say so you all by raising your right hand.

15 (WHEREUPON, all jurors' right hand was raised.)

16 THE CLERK: Thank you.

17 THE COURT: Thank you.

18 Does the Defendant request polling of the jury?

19 MR. STORY: Yes, Your Honor.

20 THE COURT: Please poll the jury.

21 THE CLERK: All right.

22 Ladies and gentlemen of the jury, when I call your
23 name, please stand and answer two questions for me.

24 Robert Ford. Is this your verdict and still your
25 verdict?

1 don't have my laptop with me at the moment. I can make a
2 call and find out, Your Honor.

3 THE COURT: Mr. Story, do you know how he did?

4 MR. STORY: I believe he completed probation in
5 2005.

6 THE COURT: I need to know that. Can you find
7 out real quick for me?

8 AGENT TISDALE: Yes, sir.

9 THE COURT: All right. Mr. Story, if you'll
10 bring your client up to the podium.

11 (WHEREUPON, the Defendant and Counsel approached the
12 bar.)

13 THE COURT: Yes, sir.

14 MR. STORY: Thank you, Judge. Your Honor, we
15 respect the jury's decision. Obviously, I disagree with
16 it, but it's been entered. That being said, Mr. Smith is
17 twenty-nine years old and has five children. He has a
18 fifth-grade ---

19 THE COURT: Does he live with the children?

20 MR. STORY: I believe he lives with three of
21 the children.

22 Is that right?

23 THE DEFENDANT: Yes, sir.

24 MR. STORY: He lives with three of his
25 children. I think the other two live with their mother.

1 He hasn't been in any major trouble since 2005. I know
2 we have the simple possession last year and the reckless
3 driving. But he pled to his previous burglary. And you
4 know, we went over ---

5 THE COURT: And you realize this -- I mean,
6 we're in 2014 now?

7 MR. STORY: Yes, sir.

8 THE COURT: But this crime took place in 2009.
9 So it wasn't long after his other burglary?

10 MR. STORY: Yes, Your Honor. So he pled and
11 took responsibility in 2005. And we just ask that you
12 show mercy today.

13 THE COURT: All right. Would he like to say
14 anything or any of his family members like to say
15 anything?

16 MR. STORY: His girlfriend, Tia, is here today.

17 THE COURT: Would you like to say anything,
18 ma'am?

19 MS. CLYBURN: Yes, sir.

20 THE COURT: All right. Please come forward and
21 be sworn.

22 **TERATIA CLYBURN,**

23 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

24 THE COURT: Yes, ma'am?

25 THE WITNESS: I just want to say we do have

1 three children together. And we've been together about
2 eight years, and he has been in a few things. I believe
3 -- I just truly don't believe he did this. And the time
4 that it was done, you know, we were mourning the loss of
5 his sister. But I mean, I just really believe that this
6 was -- this just didn't go right. And I believe that he
7 has learned his lesson as far as being in trouble before,
8 and he did say it did happen right after that situation.
9 And he has made mistakes before. But I just honestly
10 believe that he did not do this. And that's pretty much
11 it. I mean ---

12 MR. STORY: Your Honor, I'm sorry ---

13 THE WITNESS: No. Go ahead.

14 MR. STORY: Your Honor, I neglected to point
15 out his sister died September 6, 2009. And I had a flier
16 from the funeral that was held on September 12th, 2009.

17 THE COURT: Well, breaking into a store
18 certainly is not -- is improper mourning, I would think.
19 I'm sorry that happened to his sister. But that doesn't
20 give him the right to go crash into a store the next day.
21 Would he like to say anything?

22 THE DEFENDANT: Yeah. Your Honor, anytime I do
23 anything I always take full responsibility for what I do
24 as I did when you heard my record when I committed that
25 crime. I didn't pick no twelve people or anything like

150

1 that because I knew I was guilty. I would have admitted
2 I was guilty and just took what was coming to me. I
3 wouldn't play with the judgment of the Court like that.

4 THE COURT: Okay.

5 Do you have the sentencing sheet, Mr. McMullen?

6 MR. MCMULLEN: Yes, Your Honor. Your Honor,
7 should they sign it first?

8 THE COURT: I don't think they have to sign it.
9 They're not consenting to anything.

10 Anything further from the Defense?

11 THE DEFENDANT: I mean, I wish y'all would have
12 had the tape. Then you would see for yourself that I
13 wasn't on it.

14 THE COURT: Mr. McMullen, would the State like
15 to say anything?

16 MR. MCMULLEN: No, sir.

17 THE COURT: All right. I need to find out what
18 he did on that probation before I sentence him. If y'all
19 want to stand down for just a minute. I want to wait to
20 find out from probation and parole how he finished his
21 probation.

22 All right. We'll stand down. I'll step out of the
23 room because everybody always gets uptight when I'm in
24 the room. So when the probation officer gets back, I'll
25 come back in.

1 (WHEREUPON, court stood at recess for a short
2 break.)

3 THE COURT: All right. Mr. Tisdale, what were
4 you able to find out about Mr. Smith?

5 AGENT TISDALE: Yes, sir. On the previous two
6 cases in which he was under supervision, he did receive a
7 revocation on the cases. I think one was P-TUP, and
8 another was a burglary in which there was judicial
9 closure.

10 THE COURT: Okay. But he did not receive -- he
11 did not complete his probation.

12 AGENT TISDALE: He did. One was P-TUP, and
13 then one the judge closed, I guess, basically because the
14 case expired. He closed the case.

15 THE COURT: He was never revoked?

16 AGENT TISDALE: No, sir.

17 THE COURT: The Defendant will please stand.

18 (WHEREUPON, the Defendant stood.)

19 THE COURT: All right. Mr. Smith, I've
20 considered your record. I've considered -- and I
21 listened to the testimony. I think you're guilty as all
22 get out. There's no question in my mind that you did
23 this. You tried to hang your hat on the fact that the
24 video wasn't there. But those three women saw you. Just
25 like when I watch a football game on a Sunday afternoon,

1 it may be in Denver and I'm watching on video, but when
2 it's over with, I know who won that game. And so I don't
3 think there's any question in my mind that you committed
4 this crime.

5 The sentence of the Court is that you be committed
6 to the State Department of Corrections for a period of
7 ten years. Good luck.

8 MR. MCMULLEN: Thank you, Your Honor.

9 THE COURT: All right. Court's adjourned until
10 -- Ms. Tollison, for you at ten thirty. For y'all at
11 eleven. We will strike our last jury.

12 (WHEREUPON, the trial ended at approximately 4:49
13 p.m.)

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

WITNESSES

SCSO

Addison

ARREST WARRANT NUMBER

M194505

D/A: 09/19/09

ACTION OF GRAND JURY

True Bill

Lesley A. Thompson
Foreperson of Grand Jury
Date: 12-30-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-43- 118
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2010

**THE STATE
vs.**

JEREMY SMITH

Indictment for

BURGLARY (2nd, Violent)

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR
BURGLARY (2nd, Violent)

At a Court of General Sessions, convened on December 30, 2009, the Grand
Jurors of SUMTER County present upon their oath:

That JEREMY SMITH did, in Sumter County on or about September 13, 2009,
enter the building, to-wit: 230 Old Manning Road occupied by Young's Food Store,
without consent and with the intent to commit a crime therein and said defendant
entered or remained in said building in the nighttime, in violation of Section 16-11-
312(B)(3), South Carolina Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.

C. Kelly Jackson
SOLICITOR

WITNESSES

J. Thomas

Sumter County Sheriff

DOCKET NO. 2011-GS-43-0325

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

March

TERM

2011

THE STATE

vs.

JEREMY SMITH

ARREST WARRANT NUMBER

M442682

M442683

ACTION OF GRAND JURY

True Bill

Indictment for

Weapons / Unlawful carrying of pistol
Possession of Pistol with Obliterated Serial Number

[Signature]
Foreperson of Grand Jury

Date: *3/31/2011*

VERDICT

Foreperson of Petit Jury

Date:

11

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

INDICTMENT FOR

Weapons / Unlawful carrying of pistol
Possession of Pistol with Obliterated Serial Number

At a Court of General Sessions, convened on March 31, 2011 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE - UNLAWFUL CARRYING OF A PISTOL

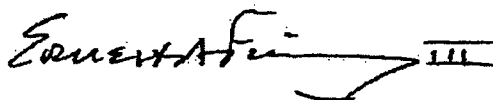
That Jeremy Smith did in Sumter County on or about January 13, 2011, carry about his person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

**COUNT TWO - POSSESSION OF A PISTOL WITH OBLITERATED SERIAL
NUMBER**

That Jeremy Smith did in Sumter County on or about January 13, 2011 knowingly possess a pistol, to wit: a black and silver .32 caliber handgun, that the serial number had been obliterated beyond recognition, in violation of Section 16-23-0030,0050(A)(1), 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.

Solicitor



WITNESSES

L C Mays, III Sumter County Sheriff

DOCKET NO. 2012-GS-43-1260

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

November TERM 2012

THE STATE

vs.

JEREMY SMITH

ARREST WARRANT NUMBER

2012B431020065 2012B431020066
2012B431020067

2012B431020068

ACTION OF GRAND JURY

True Bill

Claude E. Smith
Foreperson of Grand Jury

Date: *11-8-12*

VERDICT

Foreperson of Petit Jury
Date:

Indictment for

Filing a false police report of a Felony violation
Unlawful Conduct Towards a Child
Possession of a Pistol by a Person Convicted of a Crime
of Violence
Unlawful Carrying of a Pistol

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Filing a false police report of a Felony violation
 Unlawful Conduct Towards a Child
 Possession of a Pistol by a Person Convicted of a Crime of
 Violence
 Unlawful Carrying of a Pistol

At a Court of General Sessions, convened on November 8, 2012 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE - FILING A FALSE POLICE REPORT OF A FELONY

That in Sumter County, South Carolina, on or about June 10, 2012, the Defendant, Jeremy Smith, knowingly did file a false police report concerning a felony, to wit: attempted murder, by claiming, falsely, that ; in violation of Section 16-17-722, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO - UNLAWFUL CONDUCT TOWARDS A CHILD

That in Sumter County, South Carolina, on or about June 10, 2012, the Defendant, Jeremy Smith, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, MINOR , three years of age at the time of the incident did do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered; to wit shooting the child with a handgun, in violation of Section 63-5-70, Code of Laws of South Carolina (1976, as amended)

COUNT THREE - POSSESSION OF A HANDGUN BY A PERSON CONVICTED OF A CRIME OF VIOLENCE

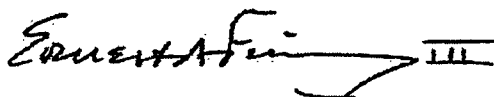
That in Sumter County, South Carolina, on or about June 10, 2012, the Defendant, Jeremy Smith, did have in his possession a handgun, after having been convicted of a crime of violence to wit: Burglary; all in violation of Section 16-23-30(B), Code of Laws of South Carolina, (1976, as amended)

COUNT FOUR - UNLAWFUL CARRYING OF A PISTOL

That in Sumter County, South Carolina, on or about June 10, 2012, the Defendant, Jeremy Smith, unlawfully did carry about his person a handgun; in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made
 and provided.

Solicitor

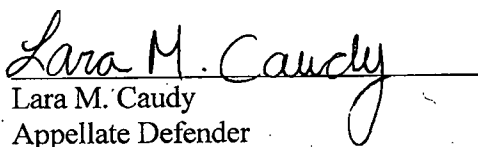


FLSRPT.DOT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 13th, 2014


Lara M. Caudy
Appellate Defender

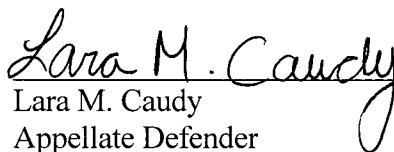
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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November 13th, 2014


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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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