

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

C. Victor Pyle, Jr., Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL ROBERT BISHOP,

APPELLANT

APPELLATE CASE NO. 2014-001616

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MICHAEL ROBERT BISHOP,)
)
 DEFENDANT.)
 _____)

2012-GS-23-05048

TRANSCRIPT OF RECORD

JULY 17, 2014
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SLOAN ELLIS, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

TIMOTHY SULLIVAN, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	CD (NOT TRANSCRIBED) -----	9	81
S-2	DAILY REPORT 10/2/10 -----	9	X
S-3	DAILY REPORT 10/4/10 -----	9	X

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
D-1	DAILY REPORT 10/2/10 -----	60	60
D-2	DAILY REPORT 10/4/10 -----	62	62

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C-1	P&E SHEET -----	10	
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State V. Bishop
Greenville County Courthouse
RANDOM STRIKE SHEET

7

JUDGE NAME : Victor C. Pyle Jr. VALUES (Ret)

TRIAL TYPE : Criminal

CASE ID : PYLE 7/17/14

COURTROOM CRT2

DESCRIPTION : PYLE 7/17/14

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
SX 1 Taylor, Bobby W	179	W	M	()	()	()	WM
✓ 2 Campbell, Shannon M	32	W	F	()	()	()	WF
✓ 3 Sammons, Christopher S	158	W	M	()	()	()	WM
✓ 4 Wheat, Terri L	202	W	F	()	()	()	WF
DX 5 Chatham, Robert L Jr.	38	W	M	()	()	()	WM
✓ 6 Andrews, Alissa R	197	W	F	()	()	()	WF
DX 7 Higgins, Annmarie C	86	W	F	()	()	()	WF
✓ 8 Link, Amanda M	111	W	F	()	()	()	WF
✓ 9 Li, Amy	110	A	F	()	()	()	AF
✓ 10 Fleury, Seth A	70	W	M	()	()	()	WM
SX 11 Betsch, Henry M	12	W	M	()	()	()	WM
✓ 12 Smith, Randolph J	169	X	M	()	()	()	BM
DX 13 Beason, Samuel L	10	W	M	()	()	()	WM
✓ 14 Arritt, Lucy M	5	N	F	()	()	()	WF
DX 15 Senn, Sherry F	163	W	F	()	()	()	WF
DX 16 Binns, Rosa V	199	W	F	()	()	()	WF
DX 17 Church, Paula J	41	W	F	()	()	()	WF
DX 18 Camp, Julie F	31	W	F	()	()	()	WF
✓ 19 Zarate, Robin E	195	W	F	()	()	()	WF
DX 20 Pandolph, Hayley J	167	W	F	()	()	()	WF
DX 21 Long, Nancy K	113	W	F	()	()	()	WF
✓ 22 Dobson, James A	58	B	M	()	()	()	BM
✓ 23 Turner, Joshua H (F)	201	W	M	()	()	()	WM
3X 24 Williams, Danny R	203	W	M	()	()	()	WM

Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Victor C. Pyle Jr. VALUES (Ret)

TRIAL TYPE : Criminal

ANEL ID : PYLE 7/17/14

COURTROOM CRT2

DESCRIPTION : PYLE 7/17/14

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
DX 25 Lucking, Victoria B	114	W	F	()	()	()	WF
✓ 26 Elliott, Phillip C (A)	63	W	M	()	()	()	WM
27 Bowen, Michelle A	18	W	F	()	()	()	
28 Paluch, Eric L	141	W	M	()	()	()	
CX 29 Bishop, John R	14	W	M	()	()	()	WM
30 Speer, Drew V	173	W	M	()	()	()	
31 Huber, Angela V	93	W	F	()	()	()	
~~32 Wideman, Ronnie N~~	~~189~~	B	M	()	()	()	
33 Shephard, Shuneese S	164	B	F	()	()	()	
34 Balderson, Beth A	198	W	F	()	()	()	
35 Doshier, Elizabeth White	59	W	F	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

1 (Whereupon State's exhibits 1 - 3 were marked for
2 identification)

3 **THE COURT:** Good morning. Be seated, please. All
4 right. We ready to go, folks?

5 **MR. SULLIVAN:** Defense is ready, Your Honor. We have
6 motions to take up.

7 **THE COURT:** All right. This is in the matter of State
8 versus Michael Robert Bishop. I understand, Mr. Sullivan,
9 you have a motion to suppress.

10 **MR. SULLIVAN:** Yes, Your Honor, based on two things,
11 the chain of command and we have an involuntary statement,
12 recording of a conversation was done by a private individual
13 outside the presence of the police on a Saturday morning and
14 then brought to the police on Monday, given to the officer
15 who signed the P&E sheet and turned it in.

16 That officer is no longer available. He's in Virginia,
17 will not be here to connect the chain of evidence. And I
18 would submit that since they can't establish the chain of
19 evidence, the tape should be disallowed.

20 And I have a copy of the P&E sheet showing the officer
21 signed it in, an Officer Manning. And the solicitor was
22 kind enough to inform me that he would not be available.

23 (Pause)

24 **THE COURT:** All right. Go ahead.

25 **MR. SULLIVAN:** Well, Judge, I have the copy of the P&E

1 sheet if there's no objection to it.

2 **MR. ELLIS:** No.

3 (Whereupon Court's exhibit 1 was marked)

4 **MR. SULLIVAN:** That's the P&E sheet where it was signed
5 in by this Officer Manning. And it stated that he will not
6 be here to say that this is the tape that he received from
7 the witness and turned into P&E. And there's a break in the
8 chain of custody.

9 **THE COURT:** So your only missing link is the officer --
10 is the ---

11 **MR. SULLIVAN:** The officer who received it from ---

12 **THE COURT:** So that's the only missing link?

13 **MR. SULLIVAN:** There's nobody else going to be here --
14 I guess they can get somebody here to say they brought it.

15 **THE COURT:** No, I mean, ---

16 **MR. SULLIVAN:** Yeah, that's the missing link.

17 **THE COURT:** All right. Solicitor.

18 **MR. ELLIS:** Your Honor, the State's position is this
19 video -- this audio recording is not a fungible object. So
20 as long as we have Mr. Chavis here, he was the person that
21 actually recorded the tape to say that this is the
22 conversation that he had with this Defendant on that given
23 day, that chain of custody is not an issue in this case.
24 It's just like a video recording from a convenience store of
25 an armed robbery. Chain of custody just doesn't come into

1 play when you're not dealing with a fungible object.

2 **THE COURT:** All right. Mr. Sullivan, I'd have to
3 disagree with you and deny your motion. I'm looking at
4 State v. Williams, which says proof of chain of custody need
5 not negate all possibility of tampering, but must be
6 established a complete chain of evidence as far as
7 practicable. And I believe since the person who did the
8 tape is present to testify, then I'll deny your motion.

9 **MR. SULLIVAN:** Thank you, Your Honor. I'd note that.
10 We expected that ruling.

11 **THE COURT:** Sure.

12 **MR. SULLIVAN:** The next point would be this was, of
13 course, a criminal investigation. The tape was made by a
14 private citizen. Now, in South Carolina law and North
15 Carolina, but in South Carolina under statute 17-30-30
16 subsection (c), it is lawful for one party to -- one party
17 to a conversation to record that conversation. But it has
18 in (c) that it is unlawful under that chapter for a person
19 not acting under the code of law.

20 And our position is that in this case Mr. Chavis was
21 the brother of the lady who worked -- I think that's the
22 relationship, and thought he could get the Defendant to talk
23 about the missing money. So he went on a Friday, which
24 would have been about the 22nd, 23rd and met with Officer
25 Manning, who was the lead officer, who is not available

1 because I think I've explained he's in Virginia, and said
2 early Saturday morning, approximately 0400 hours I purchased
3 a digital voice recorder hoping to get Michael Bishop to
4 talk about the theft for Detective Manning.

5 Now he met with Manning that Friday. We don't know
6 what he told him, how far he told him to go or if he was
7 acting at his direction. He made the tape on a Saturday and
8 went and turned it in on Monday.

9 Now I have a series of cases from Google, believe it or
10 not, Wikipedia, and they all discuss this. But it comes
11 down to was the -- how involved was the government in having
12 this citizen do this action. Now under Mr. Chavis' own
13 testimony he said he did it for Detective Manning. And the
14 cases -- usually it says a case by case situation where you
15 look at the totality of the circumstances, the officer's
16 involvement and whether or not it was done for private
17 interests outside of law enforcement.

18 In this case there's a case, a U.S. case of Skinner
19 versus Railway Association. I have a copy of that. But
20 what they say is if the government was passive, it's
21 admissible. If the government was involved to a certain
22 extent, encouraged it, then he becomes acting as their
23 agent. He is doing something in this taping that an officer
24 could not do.

25 And then I think we have the expectation of privacy.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

13

1 They're at a flea market. But if the officer went there,
2 and Mr. Bishop doesn't know him, we wouldn't have this
3 forty-five minute conversation. So I think the privacy part
4 comes in in the relationship between Mr. Bishop and knowing
5 this fellow. Did he have the expectation of privacy for
6 that conversation or did he know he was going to use it
7 against him in a court of law, which is where we are today?

8 So my position would be that Mr. Chavis was acting on
9 behalf of the Greenville Police Department in doing this
10 taping and turned it back in.

11 **THE COURT:** All right. Solicitor.

12 **MR. ELLIS:** Your Honor, I believe at this time it might
13 be appropriate to call Mr. Chavis to the stand to briefly
14 proffer some testimony about the circumstances ---

15 **THE COURT:** All right.

16 **MR. ELLIS:** --- surrounding that recording. Mr.
17 Chavis.

18 **MADAME CLERK:** Sir, please come forward to be sworn in.
19 Place your left hand on the Bible and raise your right,
20 please.

21 **Matthew Chavis,** being
22 duly sworn testified as follows;

23 **MADAME CLERK:** Thank you. You may be seated. Sir,
24 would you, please, state your name for the record.

25 **MR. CHAVIS:** Yes. Matthew Chavis.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

14

1 **MADAME CLERK:** Thank you.

2 **Proffered Direct Examination by Mr. Ellis:**

3 Q. Mr. Chavis, at some point in October 2010 did you learn
4 about a theft that occurred at Any Kind Check Cashing?

5 A. Yes, I did.

6 Q. And at some point after you learned about that theft
7 did you see this Defendant?

8 A. Yes.

9 Q. Where did you see him?

10 A. I saw him -- the first time I saw him was in Hickory,
11 North Carolina. It was on a Wednesday.

12 Q. Let's talk about that first time you saw him. Did he
13 talk about the theft?

14 A. Just a little bit.

15 Q. And after that conversation what did you do next?

16 A. To the best of my knowledge I think I contacted -- I
17 think I called Greenville County and asked them -- well, I
18 was letting them know that he was in North Carolina, you
19 know, was there a warrant on him or something? And I told
20 -- that might have been on a -- that might have been on a
21 Friday I talked with them and told them what was going on
22 with him.

23 And I think I -- I told them I think I can get him to
24 talk again. And I told them, I said, you know, I could get
25 a recording. He told me, he said, we can't -- we can't be

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

15

1 involved with that. You know, if we, you know, we'd have to
2 have a sting to set him up. And so I told them, I said, you
3 know, I said, don't worry about it, I'll get him myself.

4 Q. And do you remember if that was Officer Manning that
5 you were talking to?

6 A. I don't recall -- I don't recall who I talked with on
7 that Friday because I think that was a phone conversation, I
8 think.

9 Q. Okay. But it wasn't this officer sitting over there in
10 the corner?

11 A. I don't ---

12 Q. Or Lieutenant Irick?

13 A. I don't think it was.

14 Q. Okay. After you -- so did that officer you talked to
15 tell you how to record the conversation with the Defendant?

16 A. No.

17 Q. Did they instruct -- did that officer instruct you what
18 to say when you were recording him?

19 A. No, sir.

20 Q. That day you met -- so after that conversation you had
21 with the officer did you subsequently see the Defendant
22 again?

23 A. Yes.

24 Q. And when did you see him?

25 A. I saw him on that Saturday.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

16

1 Q. And did he have a conversation with you about the
2 theft?

3 A. Yes, sir. We had -- we had about forty-five minutes to
4 an hour of ---

5 Q. Did you record that conversation?

6 A. I recorded -- I started my recorder before he come up.

7 Q. When you say you recorded, did you buy that recorder
8 with your own money?

9 A. I did.

10 Q. And where was that -- where did that conversation take
11 place?

12 A. It took place at -- on Highway 161 in Kings Mountain,
13 North Carolina.

14 Q. Is that a flea market?

15 A. Yes, sir.

16 Q. When you were talking to him were there other people
17 around?

18 A. Yes, sir. It was, you know, customers.

19 Q. After you recorded that conversation what did you do
20 with the recording?

21 A. After I -- I took it to -- I brought it to Greenville
22 -- I think it was Greenville County, I think. I don't think
23 it was the city. It might have been. I think I brought it
24 -- I brought it right off of McGee Street.

25 Q. Did you give it to a police officer?

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

17

- 1 A. I did. I took it inside and showed them what I had.
2 And, you know, they listened to it and made a -- they made a
3 recording of it right then and said that they would use it
4 for evidence if they -- if it came to that.
- 5 Q. I'm going to show you what's been marked as State's
6 exhibit number 1. And I would like for you to tell me if
7 you recognize this item.
- 8 A. Yes, sir. That's where I initialed it.
- 9 Q. Is that the CD of the conversation that you had?
- 10 A. Yes, sir. That's the CD -- that's the CD they recorded
11 on at the police department.
- 12 Q. And I understand that CD is not on the recording device
13 that you used, is that correct? So I don't have the
14 recording device, I have a copy or CD?
- 15 A. Yes, sir. I have the original.
- 16 Q. And so -- and have you listened to that CD?
- 17 A. Yes, sir.
- 18 Q. And is that what it means by having your initials on
19 it?
- 20 A. Yes, sir.
- 21 Q. And is that conversation on the CD the same recording
22 that you recorded that morning in the flea market?
- 23 A. Yes, sir.
- 24 Q. Thank you, Mr. Chavis. Please answer any questions Mr.
25 Sullivan has.

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

18

1 **THE COURT:** Mr. Sullivan.

2 **MR. SULLIVAN:** Yeah, just a few.

3 **Proffered Cross Examination by Mr. Sullivan:**

4 Q. Mr. Chavis, are you related to Cathy Smalley? Are you

5 ---

6 A. Yes, sir.

7 Q. --- related to -- how are you related to Cathy?

8 A. That's -- sister.

9 Q. And how is Michael Bishop, the Defendant, related to
10 her?

11 A. I think they were dating or ---

12 Q. Okay. You knew them?

13 A. Sir?

14 Q. You knew them? You knew Michael and Cathy?

15 A. Yeah -- yes, I knew him.

16 Q. Were you involved in the business?

17 A. No.

18 Q. Now at the time you went to see or you talked to
19 Detective Manning were there any warrants out for Michael
20 Bishop in this case?

21 A. Right, because I knew -- I knew they had called -- I
22 knew they had called the cops on him before about ---

23 Q. But were there any warrants based on what they knew at
24 that time?

25 A. Based on what who knew?

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

19

1 Q. Before they got this tape were there any warrants for
2 Michael in this alleged crime for taking the money?

3 A. Yeah, I did ask that.

4 Q. Do you know if there were any warrants at the time you
5 made the tape?

6 A. No, I did not.

7 Q. There were no warrants?

8 A. Oh, I don't know.

9 Q. And you brought the tape -- I have your statement here.
10 I'm not trying to trick you. The highlighted part, if you
11 would read -- that's from your statement. If you'd read the
12 highlighted part.

13 A. My glasses -- I didn't bring my glasses.

14 Q. Let me read it and see if that's what -- since you
15 don't have your glasses. It's a statement that you gave.
16 It says that early Saturday morning at approximately 0400
17 hours I purchased a digital tape recorder hoping to get
18 Michael Bishop to talk about the theft for Detective
19 Manning. Is this your statement?

20 A. That is my statement. I signed it.

21 Q. Now if Detective Manning -- if you knew ahead of time
22 that he would not use your recording, would you have made
23 it? If the police said we're not going to use it, would you
24 have gone and made the tape?

25 A. Yeah, because I wanted to prove that he done it.

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

20

1 Q. What if the police said they wouldn't use it?

2 A. Well, I mean, I still had him saying that he done it.

3 I mean, I ---

4 Q. What would you do with that?

5 A. I would have took it to my mom's and said, look a here,
6 he admitted to doing it.

7 Q. Then what would she do?

8 A. You'd have to ask her.

9 Q. So you were going to tape this no matter what?

10 A. I was going to tape it no matter what.

11 Q. Then why did you go to the police officer and ask him
12 how to do it?

13 A. Because I knew he had committed a crime.

14 Q. You used the word sting operation.

15 A. Because I knew he had committed a crime.

16 Q. But you knew it was a sting -- it was a sting
17 operation.

18 A. No, no, that's what the police does. I don't know, I
19 mean, that ain't what I did. I recorded him.

20 Q. You recorded it and went back to the police?

21 A. I did take it to the police department.

22 Q. As part of a sting operation?

23 A. Well, you calling it a sting, I'm not.

24 Q. That's what you said a minute ago.

25 A. No, I said that's what they do. If that was the only

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

21

1 way they could do it was a sting.

2 Q. It was a sting operation.

3 A. No, they could do it as a sting.

4 Q. And you were part of the sting.

5 A. The only way I could -- the only way I could have done
6 it was to record it and take it to them.

7 Q. As part of the sting ---

8 A. No, I don't work for the police department, sir.

9 Q. I understand.

10 A. Okay.

11 Q. Have you ever done anything with the police department
12 in the past?

13 A. Not that I recall.

14 **MR. SULLIVAN:** Nothing further, Your Honor.

15 **MR. ELLIS:** Nothing further, Your Honor.

16 **THE COURT:** All right. Step down.

17 A. All right. Thank you.

18 **THE COURT:** All right. Anything else?

19 **MR. ELLIS:** No other witnesses, Your Honor. I do have
20 my arguments to make at the ---

21 **THE COURT:** All right.

22 **MR. ELLIS:** --- appropriate time.

23 **THE COURT:** Go ahead.

24 **MR. ELLIS:** Thank you, Your Honor. First of all and
25 foremost, to be a Fourth Amendment violation we have to have

1 a State action. It's clear from Mr. Chavis' testimony that
2 it was not State action. Moreover, the police officer that
3 he spoke to specifically told him that the police officer
4 could not be involved or they would have to set up a sting
5 operation. So there's no State action in this case. So
6 there's no standing to object under the Fourth Amendment.

7 Even if there was State action, Your Honor, there's no
8 reasonable expectation of privacy. They're in a public
9 place. They're in a flea market, people walking around as
10 you heard from the testimony.

11 And the South Carolina Supreme Court and the United
12 States Supreme Court, clear, that to exclude the evidence
13 there must be a reasonable expectation of privacy. And
14 they're in a public place. Anyone walking by could have
15 walked by with a recorder and recorded the conversation.

16 Finally, the underlying action is no different. Even
17 if the officers had been directly involved, this is no
18 different than a wiring of a CI. As long as one party knows
19 that there's a recording taking place, it's not an unlawful
20 action.

21 So to summarize, Your Honor, there's no standing
22 because there's no State action. And even if you did have
23 State action, there's no Fourth Amendment violation because
24 there's no reasonable expectation of privacy. Thank you,
25 Your Honor.

1 **THE COURT:** Anything further, Mr. Sullivan?

2 **MR. SULLIVAN:** Judge, I think that anybody can tape
3 this -- nobody's going to walk by and start talking to this
4 man about a robbery, nobody knows that it was done. The
5 specific purpose was aiding Detective Manning.

6 When you listen to the tape with other people there,
7 there's no conversation about the alleged taking of the
8 money. They're stopping, haggle over prices, make a sale at
9 the flea market, when that person leaves, then they continue
10 the conversation.

11 My position is he did act as an agent of the police.
12 And in that case -- in order to wire somebody there had to
13 be control over it. They can't just send anybody out there.
14 A CI means you've got a reliable person, you've got
15 information from them before, they've proved reliable in the
16 past and they produce it. They don't have that in this
17 case. This guy walks in as a complete stranger. They don't
18 know him.

19 **THE COURT:** I'll have to disagree with you.

20 **MR. SULLIVAN:** Thank you, Your Honor. Note that I
21 disagree with your ruling.

22 **THE COURT:** Anything further?

23 **MR. ELLIS:** Your Honor, as we discussed in chambers,
24 Mr. Sullivan and I have agreed to redactions of the tape.
25 The tape itself is not redacted, but I'm going to be there

1 and I'm going to start it at the time that Mr. Sullivan and
2 I agreed on and stop it at the time that Mr. Sullivan and I
3 ---

4 **THE COURT:** All right. That's good. All right. We
5 need to get us a jury. All right. Bring them up. Mr.
6 Sullivan, you have a list of your witnesses?

7 **MR. SULLIVAN:** The only witness I'd have potentially
8 would be ---

9 **THE COURT:** Okay.

10 **MR. SULLIVAN:** We were discussing that now, at the
11 point in time, we'll have to make that decision.

12 (Pause)

13 (Whereupon the jury panel entered the courtroom at
14 10:38 am)

15 **THE COURT:** Ladies and gentlemen, if I could have your
16 attention. At this time we will select a jury in the case
17 of the State against Michael Robert Bishop. He is indicted
18 for grand larceny.

19 The indictment alleges that on or about October 2nd,
20 2010 he feloniously took and carried away the personal
21 property of Any Kind Checks, which is alleged to be more
22 than ten thousand dollars and with the intent to deprive the
23 owner permanently of that property or that money.

24 Now potential witnesses in the case will be Officer
25 Stephen A. Brown, Matthew Chavis, Detective Edward Frick --

1 Edward F. Frick [sic], Betty Sease and Cathy Smalley. Now,
2 Mr. Bishop, would you stand up and turn around and face the
3 jury panel for me a moment, please, sir.

4 (Pause)

5 **THE COURT:** Thank you. You can be seated. I would
6 inquire at this time if any member of the jury panel is
7 related by blood or marriage or connected by employment to
8 the Defendant or to any potential witness in the case, are
9 you sensible or aware of any bias or any prejudice with
10 respect to the Defendant, to the State or to the subject-
11 matter of the case, that being an alleged grand larceny, or
12 do you know any reason why you could not give this Defendant
13 and the State a fair and impartial trial based on the law
14 and evidence to be presented in the case? If so, would you
15 please stand and give me your name. Your name, sir.

16 **JUROR:** John Bishop.

17 **THE COURT:** All right, Mr. Bishop.

18 **MR. BISHOP:** Is this the Michael Bishop from
19 Spartanburg?

20 **MR. SULLIVAN:** It is.

21 **MR. BISHOP:** I am his cousin.

22 **THE COURT:** You are his cousin?

23 **MR. BISHOP:** Yes, sir.

24 **THE COURT:** Thank you, sir. I would not place you on
25 this case. I appreciate you telling me that.

1 Now, do I have any member of the panel who has any
2 connection; family, business, social or otherwise with Walt
3 Wilkins, the Solicitor, or any member of his staff,
4 including Sloan Ellis, who is handling this case, or with
5 law enforcement, whether that be Federal, State, County or
6 Municipal? If so, would you please stand and give me your
7 name.

8 (No Response)

9 **THE COURT:** Do I have any member of the panel who is a
10 client now or formerly of Mr. Sullivan? If so, would you
11 please stand and give me your name. Tim Sullivan.

12 (No Response)

13 **THE COURT:** Do I have any member of the panel who's
14 been the victim of a crime like the alleged crime in this
15 case? If so, would you please stand and give me your name.

16 (No Response)

17 **THE COURT:** All right. Strikes are five for the State,
18 ten for the Defendant. Ladies and gentlemen, when your name
19 is called, I'll ask that you please come forward to this
20 podium up front, turn around, face counsel and await further
21 instructions. Thank you.

22 **MADAME CLERK:** Additionally, bring any personal
23 belongings with you should you be struck for the jury.
24 Juror number 179, Bobby Taylor.

25 (Whereupon Bobby Taylor, a white male, came forward)

1 **MR. ELLIS:** Please excuse Mr. Taylor from the trial of,
2 this case.

3 **MADAME CLERK:** Thank you. You may be seated. You're
4 excused in the trial of this case. Juror number 32, Shannon
5 Campbell.

6 (Whereupon Shannon Campbell, a white female, came
7 forward)

8 **MR. ELLIS:** Please present Ms. Campbell.

9 **MADAME CLERK:** Thank you. What says the Defendant?

10 **MR. SULLIVAN:** Swear the juror.

11 **MADAME CLERK:** Thank you. You may be seated in the
12 jury box. Juror number 158, Christopher Sammons.

13 (Whereupon Christopher Sammons, a white male, came
14 forward)

15 **MR. ELLIS:** Please present Mr. Sammons.

16 **MR. SULLIVAN:** Swear the juror, please.

17 **MADAME CLERK:** Thank you. You may be seated in the
18 jury box. Juror number 202, Terri Wheat.

19 (Whereupon Terri Wheat, a white female, came forward)

20 **MR. ELLIS:** Please present Ms. Wheat.

21 **MADAME CLERK:** Thank you.

22 **MR. SULLIVAN:** Swear the juror, please.

23 **MADAME CLERK:** Thank you. You may be seated in the
24 jury box. Juror number 38, Robert Chatham.

25 (Whereupon Robert Chatham, a white male, came forward)

1 **MR. ELLIS:** Please present Mr. Chatham.

2 **MADAME CLERK:** Thank you.

3 **MR. SULLIVAN:** Excuse him in this case, please, ma'am.

4 **MADAME CLERK:** Thank you. You may be seated. You're
5 excused from the trial of this case. Juror number 197,
6 Alissa Andrews.

7 (Whereupon Alissa Andrews, a white female, came
8 forward)

9 **MR. ELLIS:** Please present Ms. Andrews.

10 **MADAME CLERK:** Thank you.

11 **MR. SULLIVAN:** What number was that, ma'am?

12 **MADAME CLERK:** 197.

13 **MR. SULLIVAN:** Swear the juror.

14 **MADAME CLERK:** Thank you. You may be seated in the
15 jury box. Juror number 86, Annmarie Higgins.

16 (Whereupon Annmarie Higgins, a white female, came
17 forward)

18 **MR. ELLIS:** Please present Ms. Higgins.

19 **MADAME CLERK:** Thank you.

20 **MR. SULLIVAN:** Excuse Ms. Higgins, please.

21 **MADAME CLERK:** Thank you. You may be seated. You're
22 excused from the trial of this case. Juror number 111,
23 Amanda Link.

24 (Whereupon Amanda Link, a white female, came forward)

25 **MR. ELLIS:** Please present Ms. Link.

1 **MADAME CLERK:** Thank you.

2 **MR. SULLIVAN:** Swear the juror, please.

3 **MADAME CLERK:** Thank you. You may be seated in the
4 jury box. Juror number 110, Amy Li.

5 (Whereupon Amy Li, an Asian female, came forward)

6 **MR. ELLIS:** Please present Ms. Li.

7 **MADAME CLERK:** Thank you.

8 **MR. SULLIVAN:** Swear the juror, please.

9 **MADAME CLERK:** Thank you. You may be seated in the
10 jury box. Juror number 70, Seth Fleury.

11 (Whereupon Seth Fleury, a white male, came forward)

12 **MR. ELLIS:** Please present Mr. Fleury.

13 **MADAME CLERK:** Thank you.

14 **MR. SULLIVAN:** Swear the juror, please.

15 **MADAME CLERK:** Thank you. You may be seated in the
16 jury box. Juror number 12, Henry Betsch.

17 (Whereupon Henry Betsch, a white male, came forward)

18 **MR. ELLIS:** Please excuse Mr. Betsch.

19 **MADAME CLERK:** Thank you. You may be seated. You're
20 excused from the trial of this case. Juror number 169,
21 Randolph Smith.

22 (Whereupon Randolph Smith, a black male, came forward)

23 **MR. ELLIS:** Please present Mr. Smith.

24 **MADAME CLERK:** Thank you.

25 **MR. SULLIVAN:** Swear the juror, please.

1 **MADAME CLERK:** Thank you. You may be seated in the
2 jury box. Juror number 10, Samuel Beason.

3 (Whereupon Samuel Beason, a white male, came forward)

4 **MR. ELLIS:** Please present Mr. Beason.

5 **MR. SULLIVAN:** Please excuse Mr. Beason in this matter.

6 **MADAME CLERK:** Thank you. You may be seated. You're
7 excused from the trial of this case. Juror number 5, Lucy
8 Arritt.

9 (Whereupon Lucy Arritt, other female, came forward)

10 **MR. ELLIS:** Please present Ms. Arritt.

11 **MR. SULLIVAN:** Swear the juror, please.

12 **MADAME CLERK:** Thank you. You may be seated in the
13 jury box. Juror number 163, Sherry Senn.

14 (Whereupon Sherry Senn, a white female, came forward)

15 **MR. ELLIS:** Please present Ms. Senn.

16 **MR. SULLIVAN:** Excuse the juror in this matter, please.

17 **MADAME CLERK:** Thank you. You may be seated. You're
18 excused from the trial of this case. Juror number 199, Rosa
19 Binns.

20 (Whereupon Rosa Binns, a white female, came forward)

21 **MR. ELLIS:** Please present Ms. Binns.

22 **MADAME CLERK:** Thank you.

23 **MR. SULLIVAN:** Excuse Ms. Binns in this matter.

24 **MADAME CLERK:** Thank you. You may be seated. You're
25 excused from the trial of this case. Juror number 41, Paula

1 Church.

2 (Whereupon Paula Church, a white female, came forward)

3 **MR. ELLIS:** Please present Ms. Church.

4 **MADAME CLERK:** Thank you.

5 **MR. SULLIVAN:** Excuse Ms. Church, please.

6 **MADAME CLERK:** Thank you. You may be seated. You're
7 excused from the trial of this case. Juror number 31, Julie
8 Camp.

9 (Whereupon Julie Camp, a white female, came forward)

10 **MR. ELLIS:** Please present Ms. Camp.

11 **MADAME CLERK:** Thank you.

12 **MR. SULLIVAN:** Excuse Ms. Camp, please.

13 **MADAME CLERK:** Thank you. You may be seated. You're
14 excused from the trial of this case. Juror number 195,
15 Robin Zarate.

16 (Whereupon Robin Zarate, a white female, came forward)

17 **MR. ELLIS:** Please present Ms. Zarate.

18 **MADAME CLERK:** Thank you.

19 **MR. SULLIVAN:** Swear the juror, please.

20 **MADAME CLERK:** Thank you. You may be seated in the
21 jury box. Juror number 167, Hayley Randolph or Pandolph.

22 (Whereupon Hayley Pandolph, a white female, came
23 forward)

24 **MR. ELLIS:** Please present the juror.

25 **MADAME CLERK:** Thank you.

1 **MR. SULLIVAN:** Excuse her from this matter.

2 **MADAME CLERK:** Thank you. You may be seated. You're
3 excused from the trial of this case. Juror number 113,
4 Nancy Long.

5 (Whereupon Nancy Long, a white female, came forward)

6 **MR. ELLIS:** Please present Ms. Long.

7 **MADAME CLERK:** Thank you.

8 **MR. SULLIVAN:** Excuse her in this matter, please.

9 **MADAME CLERK:** Thank you. You may be seated. You're
10 excused in the trial of this case. Juror number 58, James
11 Dobson.

12 (Whereupon James Dobson, a black male, came forward)

13 **MR. ELLIS:** Please present Mr. Dobson.

14 **MADAME CLERK:** Thank you.

15 **MR. SULLIVAN:** Swear the juror, please.

16 **MADAME CLERK:** Thank you. You may be seated in the
17 jury box. Juror number 201, Joshua Turner.

18 (Whereupon Joshua Turner, a white male, came forward)

19 **MR. ELLIS:** Please present Mr. Turner.

20 **MADAME CLERK:** Thank you.

21 **MR. SULLIVAN:** Swear the juror, please.

22 **MADAME CLERK:** Thank you. You may be seated in the
23 jury box.

24 **THE COURT:** Mr. Turner, take this -- Mr. Turner, take
25 this first seat and serve as foreman for me, please, sir.

1 All right. One alternate. One for the State, two for the
2 Defense.

3 **MADAME CLERK:** Juror number 203, Danny Williams.

4 (Whereupon Danny Williams, a white male, came forward)

5 **MR. ELLIS:** Please excuse Mr. Williams.

6 **MADAME CLERK:** Thank you. You may be seated. You're
7 excused from the trial of this case. Juror number 114,
8 Victoria Lucking.

9 (Whereupon Victoria Lucking, a white female, came
10 forward)

11 **MR. ELLIS:** Please present Ms. Lucking.

12 **MADAME CLERK:** Thank you.

13 **MR. SULLIVAN:** Excuse Ms. Lucking, please.

14 **MADAME CLERK:** Thank you. You may be seated. You're
15 excused from the trial of this case. Juror number 63,
16 Phillip Elliott.

17 (Whereupon Phillip Elliott, a white male, came forward)

18 **MR. ELLIS:** Please present Mr. Elliott.

19 **MADAME CLERK:** Thank you.

20 **MR. SULLIVAN:** Swear the juror, please.

21 **MADAME CLERK:** Thank you. You may be seated in the
22 jury box.

23 **THE COURT:** Now, I need the balance of the panel to
24 report back downstairs to the jury assembly room. Thank you
25 very much.

1 (Whereupon the remaining jurors exited the courtroom)

2 **THE COURT:** Okay. Swear the jury, please.

3 **MADAME CLERK:** Yes, Your Honor. Would you please stand
4 up and raise your right hand. The response to the oath is I
5 will. You shall well and truly try the case 2012-GS-23-
6 5048, Michael Robert Bishop, indicted for grand larceny and
7 a true verdict rendered according to the law and the
8 evidence so help you God?

9 **THE JURY:** I will.

10 **MADAME CLERK:** Thank you. You may be seated.

11 **THE COURT:** Ladies and gentlemen, I'll give you a
12 recess before we start this case. While on recess do not
13 talk about it. You don't discuss the facts of this case
14 until you've heard all of the testimony, been given the
15 arguments by the attorneys and my charge on the law. So if
16 you'll be at ease and follow the bailiff, we'll start
17 shortly. Thank you.

18 (Whereupon the jury exited the courtroom at 10:57 am)

19 **THE COURT:** All right. We'll take a short recess.

20 **MR. ELLIS:** Thank you, Your Honor.

21 **MR. SULLIVAN:** Thank you, Judge.

22 (Whereupon court was in recess at 10:57 am)

23 (Whereupon court reconvened at 11:12 am)

24 **THE COURT:** All right. You want to make brief
25 statements to the jury.

OPENING STATEMENTS - MR. ELLIS

35

1 **MR. ELLIS:** Thank you, Your Honor.

2 **THE COURT:** All right. Bring them on, please. Now,
3 all cell phones off. If they're not, they're going to be
4 confiscated.

5 (Whereupon the jury entered the courtroom at 11:15 am)

6 **THE COURT:** All right. Solicitor, brief opening
7 statements.

8 **MR. ELLIS:** Thank you, Your Honor. Mr. Sullivan. I
9 stuck my hand in the VCR and there was no tape. Ladies and
10 gentlemen, as you listen to the testimony today, those words
11 are going to become critically important to you. So
12 remember that as we go forward.

13 My name is Sloan Ellis. And this is my paralegal,
14 Cathy Raines. We represent the State. And in that capacity
15 it's our burden to prove to you beyond a reasonable doubt
16 that the Defendant committed the crime of grand larceny.

17 Beyond a reasonable doubt doesn't mean beyond all doubt
18 or beyond a shadow of a doubt. It simply means that we
19 offer proof which leaves you firmly convinced of the
20 Defendant's guilt.

21 This is a very straightforward case. The evidence will
22 show that this Defendant was visiting a friend of his that
23 was working at Any Kind Checking Cashing on South
24 Pleasantburg Drive in Greenville. His friend let him wait
25 in the back room near the safe while she was working the

OPENING STATEMENTS - MR. SULLIVAN

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1 front, counter.

2 While she was distracted he took thirty-two thousand
3 dollars in cash out of the safe and left without telling
4 her. Sometime later she discovered that the cash was
5 missing. And the evidence will show how investigators were
6 able to determine that this Defendant, in fact, took the
7 money.

8 While you're listening to the testimony today it's
9 important to remember that this is this Defendant's day in
10 court and no one else's. You're here to determine whether
11 he committed the crime of grand larceny.

12 You didn't leave your common sense and good judgment at
13 the door of the courthouse when you walked in this morning.
14 Use that common sense and good judgment, listen to the facts
15 as you hear them from the witness stand and apply those
16 facts to the law that the Judge will give you at the end of
17 the case. And at the end of all the testimony I'm going to
18 come back and talk to you about what we've heard and ask
19 that you find this Defendant guilty. Thank you.

20 **THE COURT:** Mr. Sullivan.

21 **MR. SULLIVAN:** May it please the Court. Mr. Ellis, Ms.
22 Raines. I'm Tim Sullivan. I'm defending Michael. Let me
23 get something out of the way, this, don't worry about it.
24 This is -- I didn't get hurt, it doesn't hurt. It's some
25 medicine I'm putting on it for a doctor. So forget the

OPENING STATEMENTS - MR. SULLIVAN

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1 problem with my head. Let's talk about the problem we have
2 here.

3 I'm going to make a funny statement, but it's true.
4 You're going to hear different people talking about it,
5 you're here to find the truth, find the verdict that speaks
6 the truth and this type thing.

7 First of all you have to remember that right now you
8 don't know who did this. Mr. Bishop is accused, but he is
9 presumed innocent. Now at the end of the day you may not
10 know who did it. We may never know. Your job is to find
11 out if they can prove he did it.

12 You have to listen to the State's case. Can they put
13 up enough evidence to convince you beyond a reasonable doubt
14 that he did it? Now if they can't, you may think he may
15 have done it, he probably did it, I'm not sure, you have to
16 find him innocent.

17 So you're not here -- when you walk out, no matter what
18 you say today, they may prove beyond a doubt that you think
19 he did it, but you still may not know the truth. So to
20 think you're going to walk out here and say I know for sure
21 what happened, that ain't going to happen.

22 So that's what you want to keep in mind. You're here
23 to test their case. This is a test of the State's case.
24 Can they prove to you enough where you think he did it?
25 Thank you.

STEPHEN BROWN - DIRECT EXAMINATION BY MR. ELLIS

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1 **THE COURT:** All right. Solicitor.

2 **MR. ELLIS:** Thank you, Your Honor. The State calls
3 Officer Stephen Brown to the stand.

4 **MADAME CLERK:** Officer, if you'd come forward to the
5 stand. Please place your left hand on the Bible and raise
6 your right.

7 **Stephen Brown**, being duly
8 sworn testified as follows;

9 **MADAME CLERK:** Thank you. You may be seated. Would
10 you, please, state your name for the record.

11 **MR. BROWN:** Stephen Brown.

12 **MADAME CLERK:** Thank you.

13 Direct Examination by Mr. Ellis:

14 Q. Officer Brown, where are you employed?

15 A. Greenville City Police Department.

16 Q. And what do you do there?

17 A. I work in the warrant division alongside with U.S.
18 marshals.

19 Q. And what did you do there -- were you employed there
20 back in October of 2010?

21 A. Yes.

22 Q. What was your job at that point?

23 A. I was a regular beat officer, which means I responded
24 to calls that came in for service.

25 Q. Were you working on October 4th, 2010?

STEPHEN BROWN - DIRECT EXAMINATION BY MR. ELLIS

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- 1 A. Yes.
- 2 Q. As a regular beat officer?
- 3 A. Yes.
- 4 Q. Did you get a call to respond to 298 South Pleasantburg
- 5 Drive that day?
- 6 A. Yes, I did.
- 7 Q. What was the nature of that call?
- 8 A. It was in reference to a grand larceny at Any Kind of
- 9 Checks, which is 298 South Pleasantburg Drive.
- 10 Q. And is that in Greenville County?
- 11 A. Yes.
- 12 Q. What did you do when you arrived at that location?
- 13 A. I spoke with the complainant, who I believe is the
- 14 owner of the business, Ms. Betty Sease.
- 15 Q. And did Ms. Sease tell you what happened?
- 16 A. She explained to me that ---
- 17 Q. Without going into what she said did she tell you about
- 18 what happened that day?
- 19 A. Yes.
- 20 Q. Or about what she discovered?
- 21 A. Yes.
- 22 Q. At some point were detectives from the police
- 23 department also called out to the scene?
- 24 A. Yes.
- 25 Q. Why were those detectives called?

STEPHEN BROWN - CROSS EXAMINATION BY MR. SULLIVAN

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1 A. Detectives were called because there was a large amount
2 of cash missing from the safe in the back of the room.

3 Q. Did someone from Greenville County Forensics also come
4 to the scene?

5 A. Yes.

6 Q. And after you spoke with Ms. Sease and waiting on the
7 detectives and the forensics division to get there did you
8 do anything else with this case?

9 A. No.

10 Q. Thank you. Please answer any questions Mr. Sullivan
11 has.

12 **Cross Examination by Mr. Sullivan:**

13 Q. I have just a few, Officer Brown. This incident
14 happened on a Saturday on October 2nd?

15 A. Yes.

16 Q. And you went there on October the 4th, a Monday?

17 A. Correct.

18 Q. Can you tell me what time you got there? I can't --
19 I'm not good on military time.

20 A. My report says I arrived at 10:00.

21 Q. 10:00, okay. And Ms. Sease was there?

22 A. Yes.

23 Q. That's the owner?

24 A. Yes.

25 Q. And how was Cathy Smalley involved?

STEPHEN BROWN - CROSS EXAMINATION BY MR. SULLIVAN

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1 A. She was in -- Cathy Smalley was an employee of the
2 business and told me that she had been working there on the
3 day of October 2nd, the day the incident occurred.

4 Q. Did she say that Mr. Bishop was there?

5 A. She had told me Mr. Bishop was there on October 2nd as
6 well.

7 Q. And how about the fellow named Howard Milliken? Did
8 she say he came in?

9 A. Yes.

10 Q. Now in her talking with you did she tell you that she
11 did not know if Mr. Bishop took the money or not? That he
12 was there and left, is that correct?

13 A. That's correct. She told me she did not know if he
14 took the money.

15 Q. Did she also tell you that she was not aware of how he
16 got there, is that correct?

17 A. That's correct.

18 Q. And so that was the end of your matter with -- in this
19 case?

20 A. Yes.

21 **MR. SULLIVAN:** I have nothing further, Your Honor.

22 **THE COURT:** Thank you.

23 **MR. ELLIS:** Nothing further from the State.

24 **THE COURT:** Thank you. You can step down.

25 **MR. SULLIVAN:** He can be excused if he has other duties

EDWARD IRICK - DIRECT EXAMINATION BY MR. ELLIS

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1 to attend to.

2 **THE COURT:** All right.

3 **MR. ELLIS:** The State calls Sergeant Edward Irick to
4 the stand.

5 **MADAME CLERK:** Detective, please come forward to be
6 sworn.

7 **Edward Irick,** being duly
8 sworn testified as follows;

9 **MADAME CLERK:** Thank you. You may be seated. Would
10 you, please, state your name for the record.

11 **MR. IRICK:** Edward Irick.

12 **MADAME CLERK:** Thank you.

13 **Direct Examination by Mr. Ellis:**

14 Q. Sergeant Irick, where are you employed?

15 A. City of Greenville Police Department.

16 Q. And what do you do there?

17 A. Currently I'm a sergeant over the Crime Response Team.

18 Q. And what does that mean?

19 A. I supervise a group of four officers who work
20 specifically with the community to breach a gap between the
21 community and the police department. And we specialize in
22 combating property crimes.

23 Q. Were you working at the police department on October
24 4th, 2010?

25 A. I was.

EDWARD IRICK - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. What were your job responsibilities at that time?

2 A. At that time I was a detective in the Criminal
3 Investigations Division as a property crimes detective.

4 Q. And what does that mean?

5 A. We specifically investigate all property crimes, grand
6 larcenies, auto breakings, burglaries, anything that
7 involves the taking of another's property.

8 Q. Did you respond to the call about the theft from Any
9 Kind Checks on South Pleasantburg on ---

10 A. I did.

11 Q. --- October 4th?

12 A. I did.

13 Q. Was another detective working with you at the time?

14 A. Yes.

15 Q. Who was that detective?

16 A. Detective Brendan Manning.

17 Q. Is he still with the police department?

18 A. No, he's left the police department.

19 Q. What does he do now?

20 A. He's currently a loss prevention manager in a
21 department store in central Virginia.

22 Q. What did you and Detective Manning do when you arrived
23 at the check -- Any Kind Check Cashing?

24 A. We spoke with Officer Brown to get the kind of
25 preliminary report from him to find out what he'd gathered.

EDWARD IRICK - DIRECT EXAMINATION BY MR. ELLIS

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1 Then we spoke to all the witnesses, the owner of the
2 business as well as Ms. Smalley.

3 Q. And was the Forensics Division called out to the scene
4 while you were there?

5 A. They were.

6 Q. Why was that?

7 A. Any time you have a large -- any time you have a crime
8 scene and we look at a crime scene to determine whether or
9 not we believe forensics needs to be called for fingerprints
10 or the collection of evidence, in this case, dealing with
11 the theft of thirty-two thousand dollars, we let Forensics
12 Division make that call as to whether or not they have
13 anything to process.

14 Q. What did you see the forensics officers doing that day
15 at the scene?

16 A. They came to just kind of assess the scene and to see
17 if they could collect any latent fingerprints from the area
18 where the money was taken.

19 Q. Based on your knowledge of the investigation were any
20 prints collected or compared or matched to anyone?

21 A. No prints were matched.

22 Q. Did you try to locate the Defendant at some point?

23 A. We did. In the day subsequent of the initial
24 investigation myself and Detective Manning drove out to
25 Spartanburg and we ended up making contact with Mr. Bishop's

EDWARD IRICK - DIRECT EXAMINATION BY MR. ELLIS

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1 mother, I believe. And we spoke to her about the
2 whereabouts of her son, advised her that we'd like to get in
3 contact with her son and speak with him about this
4 investigation. And she said that she hadn't heard from him,
5 hadn't seen him.

6 Q. What happened next in the investigation?

7 A. From that point on Detective Manning was the lead
8 investigator in this case. And he was notified by another
9 man, Mr. Chavis, who advised him that he had spoken with Mr.
10 Bishop in North Carolina, and Mr. Bishop had spoken about
11 the case openly with Mr. Chavis.

12 MR. SULLIVAN: Judge, I object. This is hearsay, what
13 Officer Manning said. He did not have the conversation ---

14 THE COURT: All right. I sustain the objection.
15 Instruct the jury to disregard his last comment.

16 MR. ELLIS: Thank you, Your Honor.

17 Q. Detective or Sergeant, was Cathy Smalley ever charged
18 with a crime in this case?

19 A. No, sir.

20 Q. Why not?

21 A. We didn't have any evidence to charge her, nothing to
22 suggest that she actually committed the crime.

23 Q. Thank you, Sergeant. Please answer any questions Mr.
24 Sullivan may have.

25 THE COURT: Mr. Sullivan.

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 **MR. SULLIVAN:** No questions of this witness, Your
2 Honor.

3 **THE COURT:** Thank you, sir. You can step down.

4 **MR. SULLIVAN:** He can be excused if he's got other
5 matters to attend to.

6 THE COURT: Excuse me?

7 **MR. SULLIVAN:** He may be excused if he has other
8 matters ---

9 **THE COURT:** Thank you.

10 MR. SULLIVAN: --- to attend to.

11 **MR. ELLIS:** The State calls Cathy Smalley, Your Honor.

12 **MADAME CLERK:** Ms. Smalley, please come forward to be
13 sworn.

14 Cathy Smalley Oliver,
15 being duly sworn testified as follows;

16 **MADAME CLERK:** Thank you. You may be seated. And for
17 the record, would you, please, state your name.

18 MS. OLIVER: Cathy Oliver.

19 **MADAME CLERK:** Thank you.

20 Direct Examination by Mr. Ellis:

21 Q. I believe I said Smalley. Has your name changed?

22 A. It was Smalley and then it changed to Oliver.

23 Q. Ms. Oliver, do you know the Defendant, Mr. Bishop?

24 A. I do.

25 Q. How do you know him?

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 A. He was a friend of the family. We grew up together in
2 the same neighborhood.

3 Q. Have you known him for a long time?

4 A. Yes, sir.

5 Q. Were you just friends?

6 A. No.

7 Q. Did you have a relationship with him?

8 A. I did.

9 Q. Were you working at October -- on October 4th, 2010?

10 A. I was.

11 Q. Where were you working that day?

12 A. Any Kind Checks Cashed.

13 Q. What did you do there?

14 A. We cashed checks.

15 Q. Were you a cashier or a manager or what was your job
16 title?

17 A. I guess you would say a clerk. We did a little bit of
18 everything there, money orders, cashing checks.

19 Q. Who was the owner of that company?

20 A. Ms. Betty Sease.

21 Q. How do you know Ms. Sease?

22 A. Well, she's my birth mom, but she's not my mother. My
23 mother died in 1997 of cancer.

24 Q. Please explain that a little bit more.

25 A. I was adopted.

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. So how did you come to know your birth mom?

2 A. Well, I felt like I wanted to know who she was. And we
3 did a lot of investigating. My first husband did. He
4 investigated and some other friends of the family and
5 located her. And that's how we found out.

6 Q. How did you get the job at Any Kind Checks?

7 A. I had the one in Spartanburg first for her husband.
8 And then I got the one in Greenville through her.

9 Q. I want to talk about the business location of Any Kind
10 Checks and how it was laid out. Could you briefly tell the
11 jury about the layout of the business, like if there was a
12 front desk and if there was an office. Can you describe
13 what it looked like on the inside?

14 A. Okay. As you first walk in, it's a lobby. And then
15 there's like four windows -- on the right side there were
16 four windows like with bullet proof glass right there. And
17 that's where we cashed checks. And we did money orders and
18 took payments, like Duke Power payments and phone payments
19 and such.

20 And then they had a wall that divided it up halfway,
21 but you couldn't see on the other side unless you walked
22 around the wall. And that's where a cash register was and
23 some seating and the computers.

24 And then you had another little department like -- not
25 a department, but a little -- off from there was a little

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 office. And it's where the safe was, and a couch, and a
2 couple of desks and some exercise equipment that Ms. Sease
3 had there.

4 Q. Was there a large amount of money that was kept in the
5 safe?

6 A. There was.

7 Q. Please explain to the jury about how the money was
8 counted during the day or at the end of the day and what the
9 procedure was like, what you had to do.

10 A. We always counted it around the -- most of the time at
11 the end of the day, but sometimes we did it in the middle of
12 the day like about -- like say 2:00 for her to take it to
13 the bank. But on weekends we usually did it at the end of
14 the day.

15 Q. While you -- during business hours was the safe locked
16 or unlocked?

17 A. Unlocked.

18 Q. Was there a security system in the business?

19 A. Well, I thought there was, but -- I thought there was
20 cameras and all. And I always thought there was, but come
21 to find out, they wasn't hooked up.

22 Q. What do you mean wasn't hooked up?

23 A. That's just what I was told, that they were not
24 working. And I didn't know that til the police come out and
25 had asked that question.

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. I want to direct your attention to late September and
2 early October 2010. Were you married at that point?

3 A. I was.

4 Q. Who was your husband?

5 A. Maurice Smalley.

6 Q. And at some point shortly before October 2nd did you
7 have contact with this Defendant?

8 A. I did.

9 Q. At some point did you spend the night with him?

10 A. I did.

11 Q. Did you spend the night with him on that Friday night
12 before work on Saturday morning?

13 A. Right, in Greenville.

14 Q. Did your husband know about that?

15 A. I think he probably suspected it, but, I mean, I didn't
16 say anything to him.

17 Q. On that Saturday morning what did you do?

18 A. We got up and we went over to the store and went in and
19 unlocked the door, and he come in right behind me. And I
20 went and set up the cash register.

21 Q. When you say he, are you talking about the Defendant?

22 A. Yes, sir.

23 Q. Go ahead.

24 A. And I went and set -- got the till out of the safe and
25 put it in the cash register ready for that day.

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. Do you remember about what time that would have been?

2 A. 9:00.

3 Q. So you said the Defendant was with you, but were you
4 supposed to have anybody with you at the -- while you were
5 working?

6 A. Well, no, we wasn't supposed to have anybody with us,
7 but there was always occasions that people had other people
8 in there visiting with them at times.

9 Q. While you were working that day, where was he?

10 A. He was sitting at the little table there -- behind the
11 register there was a little table about, say, ten feet away
12 there, but then he moved in there on the couch and sat in
13 there and watched TV in the little office at the very back
14 room.

15 And then he started laying down. He said he was going
16 to lay down, that he -- he didn't feel good. And that's
17 when he told me -- he asked me if I wanted anything from the
18 store, that he was going to get some Tums, that his stomach
19 was hurting and he didn't feel good. And he left. And he
20 never come back. And I kept calling and calling, but never
21 got a response from him at all.

22 Q. Let me get back to when he was laying on the couch and
23 in that back room. Where was he in relationship to where
24 the safe was?

25 A. Probably about twenty feet away.

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. And while you were working that day was that safe open
2 and unlocked?

3 A. It was unlocked and it was just cracked open, yeah. It
4 wasn't fully open, but it was open.

5 Q. Do you see the person that was with you that day in the
6 store in the courtroom today?

7 A. I do.

8 Q. Where is he sitting?

9 A. Over here in the red shirt.

10 (Whereupon the witness pointed to the Defendant)

11 Q. Was there also an accountant or a bookkeeper that
12 worked in the store?

13 A. He would come by periodically.

14 Q. He would -- what was that person's name?

15 A. Howard.

16 Q. Do you remember if Howard worked that day?

17 A. He was coming in to do some book-work, he said.

18 Q. He said or did you see him?

19 A. Yeah, I seen him. He sat in the back, at the desk back
20 in the back. I don't know what he did, but he did some
21 book-work and come back out and sat for a minute and he
22 left.

23 Q. Is Howard still around?

24 A. No, sir. He's since died.

25 Q. Did Howard ask anything about why the Defendant was

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 there?

2 A. Yeah, he just asked me who he was. And I told him he
3 was my brother. And the only reason I did was because he
4 told me, just go ahead and say I'm your brother so that he
5 wouldn't question anything else.

6 Q. So at some point after he left how did you realize or
7 did you find out that there was some money missing?

8 A. When he didn't return, he didn't return for a certain
9 amount of time and I kept calling and calling just asking
10 him where he was at and begging him to come back. And then
11 I went and looked and the money was gone. And, of course,
12 my heart dropped. And I couldn't understand why, I thought,
13 he was a so-called friend would do that to me, but ---

14 Q. So ---

15 A. --- I've since learned, you know, don't ---

16 Q. That's okay.

17 A. --- don't trust at all.

18 Q. So did you -- after you found that the money was
19 missing did you call Ms. Sease?

20 A. No, I didn't because at the time she had already said
21 they were going out of town, it's what I understood, to
22 Anderson, where they currently live now.

23 Q. At the end of that day when you found out that money
24 was missing did you fill out the paperwork that you had to
25 fill out every day?

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 A. I tried to.

2 Q. And did you make a note that that money was missing?

3 A. No, I didn't.

4 Q. Why not?

5 A. Because I was terrified and scared to death on what to
6 do because I'd never been put in that position before. And
7 I was very nervous over it. And I thought I would try to
8 cover it up and then come back in and try to tell her on
9 Monday. And I learned you don't try to cover things up
10 because it -- it doesn't work. It never does.

11 Q. So you talked about coming back in on Monday. Did you
12 work on Monday morning?

13 A. I did.

14 Q. What happened Monday morning?

15 A. I was there about ten minutes til nine on Monday. And
16 it was -- the store was already open. The other guy that
17 worked there was already in there. And I waited for her to
18 come so I could sit down with her and tell her what happened
19 face-to-face.

20 Q. When you say her, do you mean Ms. Sease?

21 A. Yes.

22 Q. And did you tell her when you got there?

23 A. I did.

24 Q. What happened next?

25 A. That's when she asked the guy that was in there to call

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 -- I think she said call Howard. I can't remember if it was
2 Howard or Clarence first, and have them come over, that some
3 money has been taken from here.

4 Q. Did the police eventually get called?

5 A.. They did.

6 Q. Did you talk to them when they were there?

7 A. I did.

8 Q. The first time you spoke with them were you completely
9 honest with the police?

10 A. No, I wasn't.

11 Q. What ---

12 A. Again, I was very, very scared to death.

13 Q. Well, what were you not honest with them about?

14 A. That I had stayed overnight with him there and that he
15 come with me to the store first thing that morning.

16 Q. Why didn't you tell them the whole truth?

17 A. Because I was scared.

18 Q. After the money was taken did you ever see the
19 Defendant again?

20 A. I did.

21 Q. Do you remember when -- approximately when that was and
22 where it was?

23 A. I don't remember exactly when. I remember going up to
24 the house. And I know that Matthew went up to the house,
25 too and knocked on the door to see if he was there. Come to

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 find out, I found out later he'd been there the whole time,

2 I was told.

3 Q. Well, who is Matthew?

4 A. Well, he's Betty Sease's son.

5 Q. At some point after not seeing him at the house did you
6 actually see the Defendant and have a conversation with him?

7 A. I did. I went back up there later on, probably within
8 three to four days later and he was -- happened to be there.
9 And I didn't know that at the time. He was standing there
10 fixing some breakfast at the oven then.

11 Q. And did ---

12 A. And he acted like nothing had really even happened.

13 Q. Did he say anything to you about the theft that
14 occurred?

15 A. Yeah. I mentioned it to him. His mother was in there.
16 And I mentioned it to him. And all he said was, you know,
17 they didn't really need the money, yeah, I took it, you
18 know, something to that effect.

19 Q. Did he say what happened to the money?

20 A. Yeah. He said he -- he said he went to a drug house,
21 he told me. And he also told me about fifteen thousand -- I
22 think it was fifteen thousand of it getting stolen from him
23 while he was out. And I'm assuming at the drug house. I
24 don't remember that right off, but I know he told me at a
25 drug house.

CATHY SMALLEY OLIVER - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. So let's ---

2 A. Near -- somewhere off of Glendale Road, Fernwood,
3 Glendale Road in Spartanburg.

4 Q. Well, let's move a little bit forward in time now. At
5 some point did you actually go with him to a flea market in
6 North Carolina?

7 A. I did. Because I had to sell a lot of my stuff to try
8 to pay bills. And I thought with him there he would tell me
9 what he did with the money exactly and why he did it.

10 Q. So that's why you were hanging out with him that day?

11 A. I was trying to find out.

12 Q. At the flea market that day did you see Mr. Chavis?

13 A. Yes.

14 Q. Ms. Smalley, it's a little bit odd that you didn't tell
15 the police officer the whole truth at the very beginning
16 here and that you were hanging out with him after the theft.

17 A. Um-hum (affirmative).

18 Q. Were you involved in this theft?

19 A. No, I was not.

20 Q. Did you purposely turn your back on the Defendant to
21 allow him to take money out of the safe?

22 A. No. I was waiting on customers. I thought he was just
23 laying there and not thinking he would ever do that to me.

24 Q. Did he give any of that money to you?

25 A. No.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. Thank you, ma'am. Please answer any questions Mr.
2 Sullivan has for you.

3 **THE COURT:** Mr. Sullivan.

4 **Cross Examination by Mr. Sullivan:**

5 Q. If I mess up and say Ms. Smalley, that's how I've been
6 reading about you in the reports.

7 A. That's fine.

8 Q. You're Ms. Oliver. And I'm not trying to embarrass you
9 by any means. I just want to see what happened. Now, you
10 were married to a fellow named Maurice Smalley during this
11 time?

12 A. Right. Yes, sir.

13 Q. How long had y'all been married?

14 A. Maybe about fourteen years at the time.

15 Q. You had worked -- you'd known Michael Bishop for a good
16 while?

17 A. All his life, um-hum (affirmative).

18 Q. And did he actually work with you in the Spartanburg
19 store?

20 A. No.

21 Q. He'd never been in the Spartanburg store?

22 A. He's been in there, but he's never worked there.

23 Q. Did he ever help you count money in Greenville or in
24 Spartanburg?

25 A. No.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. You've never asked him, can you count money ---

2 A. No.

3 Q. Now, when the police first came out -- this supposedly
4 happened on Saturday the 2nd, is that correct?

5 A. Correct.

6 Q. And you did your report on the 2nd. Is that a fair
7 copy of the -- by Mr. Sloan?

8 A. Yes, sir.

9 Q. Okay. And what does this show? It says on the bottom
10 right, over or short. Like are you short of money or too
11 much money, something didn't balance. What does it say?

12 A. It says over and parentheses, short.

13 Q. And then what's ---

14 A. If it was over or short it would always go on that
15 line.

16 Q. What do you have on that line?

17 **MR. ELLIS:** Your Honor, ---

18 A. Zero.

19 **THE COURT:** Hold on.

20 **MR. ELLIS:** If Mr. Sullivan's going to ask her about
21 it, I'd ask that he go ahead and move that into evidence so
22 the jury can see what he's showing.

23 **MR. SULLIVAN:** I'll ask it a different way.

24 Q. On your report that day did you report any overages or
25 underage?

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 A. No.

2 Q. You showed it balanced on Saturday?

3 A. No, I didn't show it balanced at all. I couldn't get
4 it to balance.

5 **MR. SULLIVAN:** We'll have this marked, Your Honor.

6 **THE COURT:** Any objection?

7 **MR. ELLIS:** No, sir, Your Honor.

8 **MR. SULLIVAN:** I think he's got one, but you can make
9 it mine.

10 (Whereupon Defendant's exhibit 1 was marked and
11 admitted into evidence)

12 **MR. SULLIVAN:** I realize by doing this, Your Honor, I
13 have lost the last argument.

14 Q. Okay. Ms. Oliver, Defendant's exhibit 1 would be a
15 daily account, of course, dated October the 2nd. And again
16 at the bottom it's got over or short. And you say in that
17 line it would show over or short. What did it show on that
18 line at the end of that Saturday's business day?

19 A. Well, this is not the one I had done then.

20 Q. Well, this is ---

21 A. This is 10/2.

22 Q. That's the day this has happened. It's a Saturday,
23 right?

24 A. Yeah, but they had to have gone back and refigured it
25 and fixed it.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. Well, who put this -- who put these figures down here
2 and who put this number here ---

3 A. I don't ---

4 Q. --- that's on there?

5 A. I don't know on that. I can't answer that.

6 Q. So it wasn't your duty to report any money missing?

7 A. It was if I put it in the computer, but I didn't do
8 this one or I would have showed it.

9 Q. Who did this on Saturday?

10 A. I was there on Saturday, but I didn't get anything to
11 show up.

12 Q. So it was ---

13 A. On Monday they went back and recounted everything, ---

14 Q. But you ---

15 A. --- the guy that was there and the ---

16 Q. Who is the guy?

17 A. I can't think of his name. I wished I could, but I
18 can't think of his name that was there working with ---

19 Q. Well, this ---

20 A. --- me then.

21 Q. --- piece of paper then, it shows everything balances.
22 You have no idea how it came about?

23 A. No, I don't.

24 Q. Who would have figured this out?

25 A. Well, I would assume the guy that was there. And Betty

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Sease had to have gone back so they could figure out how
2 much was really missing.

3 Q. But how did they know something was missing unless they
4 had a sheet?

5 A. They would have to go back from the following day or
6 the following week to look at it.

7 Q. So you never -- you've never accounted the money?

8 A. Right.

9 Q. How did you know something was missing?

10 A. Because it wasn't in the safe.

11 Q. Did you note that down on this report?

12 A. Not on that report, no. That would have been a
13 separate report.

14 Q. Do we have a copy of that report? For that Saturday?

15 A. Not to my knowledge unless they do. I don't know.

16 Q. Here's one for that Monday, daily activity log, 10/4.
17 Do you recognize that?

18 A. Yeah, that's where they had done it on the computer and
19 figured out how much was missing.

20 Q. Okay.

21 **MR. SULLIVAN:** I'd like to have this marked.

22 **THE COURT:** Any objection?

23 **MR. ELLIS:** No, Your Honor.

24 **MR. SULLIVAN:** Number 2.

25 (Whereupon Defendant's exhibit 2 was marked and

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 admitted into evidence)

2 Q. Now, this is the one you say that from Saturday until
3 Monday nobody knew anything was missing?

4 A. Right.

5 Q. But then Monday it shows up as -- puts that figure at
6 the bottom there?

7 A. Yeah. They redone all this, the paperwork. They had
8 to go back through the notebook and do that.

9 Q. So ---

10 A. They were waiting to do -- they were doing that or in
11 the process while the police were on their way there.

12 Q. But who called the police?

13 A. I'm not sure who called the police. It was either
14 Betty Sease or the guy that was there, but I'm sorry that I
15 can't think of his name right off.

16 Q. Did he work there?

17 A. Yes, he did.

18 Q. So that morning there were other people in the business
19 before the police came?

20 A. Yes.

21 Q. And on Saturday you're showing or somebody's showing
22 that everything's balanced at the end of the day and Mr.
23 Bishop had gone, he had not come back Saturday after about
24 3:00, had he?

25 A. No, he never come back at all.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. So at the end of the day, what time do you close?

2 A. Saturdays was at five.

3 Q. And this -- somebody did this report showing nothing
4 missing?

5 A. On the day they did that, but I didn't do that report.

6 Q. Okay. And then Monday between after he'd left and
7 Monday morning this money is missing?

8 A. Um-hum (affirmative)..

9 Q. And another guy could get in there, and you don't know
10 who he was?

11 A. I don't remember his name right ---

12 Q. And Ms. Sease could get in there, her business. How
13 about Howard, the Howard who's dead, could he get in there?

14 A. Yeah, they all had keys.

15 Q. Okay. Now, when you first talked to the police you
16 tell them Michael showed up around 11:30 or twelve.

17 A. Um-hum (affirmative).

18 Q. That you got there earlier and opened up?

19 A. Right.

20 Q. And then Howard came in ---

21 A. Um-hum (affirmative).

22 Q. --- and you introduced Michael Bishop as your brother?

23 A. Yeah. That's what he told me. He said, just tell him
24 I'm your brother.

25 Q. He'd been there before, Michael had?

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

65

1 A. Yeah.

2 Q. He'd been in the business before?

3 A. Yeah.

4 Q. How long had you worked there?

5 A. Off and on for several years.

6 Q. And you had no idea how the recording equipment worked
7 or didn't work or anything?

8 A. No, I did not.

9 Q. In your statement Howard came in, stayed about thirty
10 minutes and then he left. You didn't see what he did, did
11 you?

12 A. No. It was in the back room. No, I did not.

13 Q. He had a briefcase?

14 A. Not to my knowledge. I don't remember him having one.

15 Q. Okay. Did he bring some paperwork in, he was getting
16 paperwork done ---

17 A. He had some paperwork in his hand.

18 Q. Okay. And then around 3:50 Michael left according to
19 your statement and you didn't see him after that for a
20 while?

21 A. I don't remember what time he left exactly. But, no, I
22 never seen him anymore at all that day.

23 Q. Your statement, I'll just read this. It says you think
24 around 3:50 ---

25 A. Okay.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. So then the police came to talk to y'all. And then on
2 10/4 you went down and had an interview later after this
3 statement. You gave this statement on 10/4 where you said
4 Michael came about 11:00.

5 A. Um-hum (affirmative).

6 Q. Then you admitted that y'all had had a sexual
7 relationship for eight years. Would you like to see this?
8 This is your statement.

9 A. I have known him, but we haven't had no sexual
10 relationship for eight years.

11 Q. What does this say, though?

12 A. Well, I just seen him off and on, yeah.

13 Q. So off and on over eight years ---

14 A. Yeah.

15 Q. --- you had sexual relations? And you were married to
16 Maurice for fourteen during that period of time?

17 A. Somewhere around twelve to fourteen, yes.

18 Q. And you covered it up?

19 A. Right.

20 Q. And then actually on the day this happened y'all had
21 spent the night together at a motel at Pelham and 85 and
22 arrived at the business at the same time.

23 A. Right.

24 Q. So you had misled your husband in your sexual activity?

25 A. I misled a lot of people.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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- 1 Q. And you misled the police about ---
- 2 A. Um-hum (affirmative).
- 3 Q. --- the time that he got there?
- 4 A. Right.
- 5 Q. Then -- and then Howard has access to the money.
- 6 A. Um-hum (affirmative).
- 7 Q. Some unknown man had access to the money.
- 8 A. (Affirmative nod).
- 9 Q. Ms. Sease had access to the money.
- 10 A. Um-hum (affirmative).
- 11 Q. You have access to the money.
- 12 A. Um-hum (affirmative).
- 13 Q. At the end of the day on Saturday Michael leaves at
- 14 3:50, you close at five and this shows balances perfect.
- 15 Between then and Monday, this is missing, that's what this
- 16 shows right here?
- 17 A. Right.
- 18 Q. But you have no idea ---
- 19 A. No, I don't.
- 20 Q. Did you see Michael take the money?
- 21 A. No, I didn't.
- 22 Q. Now, after this you didn't see him for a while, didn't,
- 23 in fact, you saw him at a flea market in Hickory, North
- 24 Carolina?
- 25 A. Yes. We drove up there.

CATHY SMALLEY OLIVER - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. And then after that you went to a flea market with him
2 to High Point, North Carolina?

3 A. No, I don't remember at High Point.

4 Q. Kings Mountain?

5 A. Yeah.

6 Q. You went to Hickory one week and then you went to Kings
7 Mountain?

8 A. Um-hum (affirmative).

9 Q. And that's where you saw Matthew was at Kings Mountain?

10 A. Correct.

11 Q. So you'd been talking to him off and on for a good
12 while. After you talked to him over at his mother's house
13 and he said he blew this thirty thousand dollars on cocaine
14 in a week did you go tell the police and give them another
15 statement?

16 A. No, I didn't.

17 Q. Did you ---

18 A. I told them over the phone. I talked to Manning.

19 Q. Did you give them a written statement telling them
20 where this strike house was or dope house or anything like
21 that?

22 A. No. I told them I could.

23 Q. But ---

24 A. But, no, I -- they didn't ask me. They said it was not
25 permissible right now.

CATHY SMALLEY OLIVER - REDIRECT EXAMINATION BY MR. ELLIS

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1 Q. And there's nothing in writing ---

2 A. No.

3 MR. SULLIVAN: I have nothing further.

4 THE COURT: Any redirect?

5 MR. ELLIS: Thank you, Your Honor.

6 **Redirect Examination by Mr. Ellis:**

7 Q. How did you know that the thirty-two thousand dollars
8 was missing from the safe?

9 A. When the police got there Betty was counting it. And I
10 wished I could think of the other guy that worked there, but
11 I can't recall his name right off.

12 Q. Going back to Saturday, when you said after he left at
13 some point you realized the money was missing.

14 A. Oh.

15 Q. You started calling him. How did you realize that
16 money was missing at that point?

17 A. I went and looked and opened the safe. There was just
18 a crack in the safe. It was never really ever locked at any
19 time. Nobody ever locked it. They just shut it up and made
20 it look like it was locked. And I opened it up and seen
21 those bundles were missing. And that's how I knew they were
22 gone.

23 Q. Thank you, ma'am.

24 MR. ELLIS: That's all I have, Your Honor.

25 THE COURT: Thank you. You can step down.

BETTY SEASE - DIRECT EXAMINATION BY MR. ELLIS

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1 **MR. ELLIS:** The State calls Betty Sease to the stand.

2 **MADAME CLERK:** Ms. Sease, please come forward to be
3 sworn. Place your left hand on the Bible and raise your
4 right.

Betty Sease, being duly
sworn testified as follows;

7 **MADAME CLERK:** Thank you. You may be seated. Would
8 you, please, state your name for the record.

9 MS. SEASE: Betty Sease.

10. **MADAME CLERK:** Thank you.

11 Direct Examination by Mr. Ellis:

12 Q. Ms. Sease, what do you do for a living?

13 A. We own Any Kind of Checks Cashed.

14 Q. Could you bring that microphone a little bit closer to
15 you, please, ma'am. Thank you. So you and your husband own
16 that business?

17 A. Yes, we do.

18 Q. How long have you owned that business?

19 A. Since about thirty years now.

20 Q. What's the nature of that business, in general?

21 A. It's a check cashing service, wire, receive money
22 Western Union, send money orders.

23 Q. How many locations do you have?

24 A. Six.

25 Q. Please tell the jury about your relationship with your

BETTY SEASE - DIRECT EXAMINATION BY MR. ELLIS

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1 daughter, Cathy, that we just heard from.

2 A. Well, after she found me I thought things was going to
3 work out. And then this come about.

4 Q. Did you get her -- did you hire her to work in your
5 stores?

6 A. Yeah, we did.

7 Q. Did you help her out in other ways financially?

8 A. Yeah.

9 Q. Had you ever met, before this all took place, had you
10 ever met the Defendant, Mr. Bishop?

11 A. One time. She'd brought him over to my house.

12 Q. I want to talk to this -- about the store generally.
13 The jury's already heard about it, but I want to ask a
14 couple of questions to you. And these all focus on how the
15 store was set up back when this took place, not today, but
16 2010. Were there any security cameras in the store at that
17 point?

18 A. No, not -- the cameras wasn't working.

19 Q. So they weren't turned on or recording or anything?

20 A. No.

21 Q. How does the safe work?

22 A. Well, you're supposed to keep it closed during the
23 daytime, at all times closed. Sometimes we did lock it and
24 sometimes we left it open if it was going to be busy, that
25 we was going in and out of it a lot to get money for the --

BETTY SEASE - DIRECT EXAMINATION BY MR. ELLIS

72

1 cash checks with.

2 Q. Who was Howard Milliken?

3 A. He was our bookkeeper and our manager, he was.

4 Q. How long had he worked for you?

5 A. Maybe ten, fifteen years.

6 Q. I want to turn your attention to Saturday, October 2nd,
7 2010. Do you remember where you were on that Saturday?

8 A. I was in Anderson at home, our other house.

9 Q. During that weekend did you hear anything from Ms.
10 Oliver?

11 A. Well, she called me a couple of times saying that
12 everything was fine and it was slow. And that's all.

13 Q. What did you do on Monday morning, October 4th?

14 A. Well, when I got to work I seen that the paperwork was
15 spreaded everywhere. And I just assumed -- knew something
16 was wrong and because she was over there nervous and crying.

17 Q. Did you speak with her that morning?

18 A. Yeah, I did.

19 Q. After speaking with her -- what did you learn after
20 speaking with her?

21 A. She said that we're missing some money. And I said --
22 I probably said, hell, no, we wasn't. And I went and
23 counted the money.

24 Q. What did you find out after counting the money?

25 A. It was missing.

BETTY SEASE - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. Let me show you what has been admitted as Defense
2 exhibit number 1 and number 2. This is Defense 1. Can you
3 tell me what that is?

4 A. That's our report.

5 Q. And what day is that report dated?

6 A. It's dated the 2nd, but I couldn't tell you because I
7 wouldn't -- I don't do the -- I don't enter it into the
8 computer.

9 Q. So what's it showing as the ---

10 A. Zero balance.

11 Q. What does that mean?

12 A. It shows it wasn't -- that it wasn't short.

13 Q. How do those numbers get entered into the computer?

14 A. Someone has to put them in it.

15 Q. I want to show you what's been marked as Defendant's
16 exhibit 2. Tell the jury what that is.

17 A. It's a report on a Monday.

18 Q. And what is ---

19 A. And it shows it short.

20 Q. How much is it short?

21 A. Thirty-two thousand, one ninety-one, eighty-two
22 (32,191.82).

23 Q. Thank you, ma'am. And based on your calculation and
24 after you count the money missing, is that figure correct?

25 A. Approximately, yeah.

BETTY SEASE - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. So approximately thirty-two thousand dollars ---

2 A. Yeah.

3 Q. --- missing? After you learned the money was missing
4 what did you do next?

5 A. I called my bookkeeper, I called my husband and then we
6 called the police.

7 Q. Did you speak to the police when they came out that
8 day?

9 A. Yeah, I did.

10 Q. Did you ever recover the thirty-two thousand dollars?

11 A. No, we hadn't.

12 Q. Did you ever give the Defendant permission to take that
13 thirty-two thousand ---

14 A. No, sure hadn't.

15 Q. Thank you, Ms. Sease. Please answer any questions Mr.
16 Sullivan has.

17 **THE COURT:** Mr. Sullivan.

18 **Cross Examination by Mr. Sullivan:**

19 Q. Just one or two, Ms. Sease. Go back to these reports,
20 exhibit 1, the one of October 2nd, Saturday. This would
21 have been -- would that have been generated in the normal
22 course of business?

23 A. At check-up time.

24 Q. And this shows how much was missing or short or over?

25 A. Zero.

BETTY SEASE - CROSS EXAMINATION BY MR. SULLIVAN

75

1 Q. Now, whose initials are these? Somebody had to put
2 their initials that did it, the date they did it and by.
3 There's some initials. Whose initials are there?

4 A. Initials is CS, Cathy Smalley.

5 Q. So Cathy Smalley did this?

6 A. I don't know whether she finished the job. She could
7 have started it on the computer. I wasn't there at the
8 time.

9 Q. This shows that Ms. Smalley's initials ---

10 A. Yeah.

11 Q. --- were on the report showing zero missing.

12 A. It does.

13 Q. Okay. How about on this one for the thirty-two. Were
14 these bundles in like even amounts?

15 A. Yeah.

16 Q. But you have thirty-two thousand, one ninety-one,
17 eighty-two. If somebody picked up some bundles, where would
18 this odd figure come from?

19 A. I couldn't tell you.

20 Q. On this report, on the 4th when the police came, whose
21 initials are on there?

22 A. Keith Lovegrove.

23 Q. Who?

24 A. Keith Lovegrove.

25 Q. Keith Lovegrove.

BETTY SEASE - CROSS EXAMINATION BY MR. SULLIVAN

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- 1 A. Right. He was an employee.
- 2 Q. He worked there, too?
- 3 A. Yes, he did.
- 4 Q. And then the safe was not locked. It was kept a little
- 5 bit of ajar.
- 6 A. It's supposed to be locked.
- 7 Q. But it was kept a little bit of ajar, right?
- 8 A. Not all the time.
- 9 Q. Who had ---
- 10 A. I don't know ---
- 11 Q. --- keys?
- 12 A. --- what it was that day.
- 13 Q. Okay. Who had keys to that business?
- 14 A. Oh, several of us. I did, my husband, my bookkeeper,
- 15 ---
- 16 Q. That's Howard, who's dead.
- 17 A. Right. And Keith because he was ---
- 18 Q. Keith.
- 19 A. --- coming in to work, and Cathy.
- 20 Q. So between Monday afternoon at 4:00 until sometime
- 21 Monday, from Saturday to Monday, all these people had keys?
- 22 A. right. Sure did.
- 23 **MR. SULLIVAN:** No further questions.
- 24 **THE COURT:** Thank you. You can step down.
- 25 **MR. ELLIS:** Thank you, Your Honor. The State calls Mr.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

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1 Chavis to the stand.

2 **THE COURT:** All right. Hold on just a minute. Let's
3 take a short recess before we do that. Take the jury out,
4 please.

5 (Whereupon the jury exited the courtroom at 12:05 pm)

6 **THE COURT:** All right. Take a short recess.

7 **MR. ELLIS:** Thank you, Your Honor.

8 (Whereupon court was in recess at 12:05 pm)

9 (Whereupon court reconvened at 12:19 pm)

10 **THE COURT:** All right. Let's have order.

11 **THE BAILIFF:** Order in the court, please.

12 (Whereupon the jury entered the courtroom at 12:19 pm)

13 **THE COURT:** All right. Solicitor, you may proceed.

14 **MR. ELLIS:** Thank you, Your Honor. The State calls

15 Matthew Chavis to the stand.

16 **MADAME CLERK:** Please come forward to be sworn.

17 **Matthew Chavis,** being

18 duly sworn testified as follows;

19 **MADAME CLERK:** Thank you. You may be seated. Would
20 you, please, state your name for the record.

21 **MR. CHAVIS:** My name is Matthew Chavis.

22 **MADAME CLERK:** Thank you.

23 **Direct Examination by Mr. Ellis:**

24 Q. Mr. Chavis, what do you do for a living?

25 A. I'm a small business owner in Greenville.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

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- 1 Q. And what's the nature of your business?
- 2 A. Resale.
- 3 Q. Resale items that -- at a store?
- 4 A. Yes, sir, resale store.
- 5 Q. You do any selling in any other places?
- 6 A. No. I -- I do flea markets or I used to do flea
- 7 markets once in a while.
- 8 Q. How do you know the victim in this case, Ms. Sease?
- 9 A. She's my mother.
- 10 Q. How do you know Ms. Oliver or Ms. Smalley?
- 11 A. She's -- was my adoptive sister.
- 12 Q. Do you know the Defendant?
- 13 A. Yes, sir.
- 14 Q. At some point around October 2010 did you learn about
- 15 the theft that occurred at Ms. Sease's Any Kind Checks
- 16 store?
- 17 A. Yes, sir.
- 18 Q. How did you learn about that?
- 19 A. I learned about it -- my brother had called me and told
- 20 me about it.
- 21 Q. At some point after you learned about that theft did
- 22 you see this -- did you see the Defendant?
- 23 A. Yes. I actually told him -- told my brother I probably
- 24 could talk to him and maybe he'd talk, you know, if I could
- 25 get him on tape about it.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. Did you -- before we start talking about a tape, did
2 you see him before there was a tape involved?

3 A. Yes. I saw him on that Wednesday, maybe October. No,
4 it was after that, I think. I don't know the exact date.
5 It was on a Wednesday. It was Hickory, North Carolina.

6 Q. And did he talk any about the theft?

7 A. He talked -- yes, he talked a little bit about it.

8 Q. Do you remember anything about what he said about it?

9 A. He said there was no way -- there's no way they can get
10 me, I stuck my hand in the VCR and felt inside it, and there
11 wasn't a tape.

12 Q. After you had that conversation with him, what did you
13 do next?

14 A. Well, on that -- we went our separate ways. I mean,
15 him and Cathy left. And she called me on Friday to let me
16 know they was coming to the flea market in Kings Mountain on
17 161.

18 Q. And after you learned that information what did you do?

19 A. After I learned that information I called Greenville
20 County and talked with a detective down there.

21 Q. What was the nature of that conversation?

22 A. I told him that, you know, I had talked to Mike up in
23 Hickory, North Carolina, he told me all about what happened
24 and everything. And basically he just told me, you know,
25 they hadn't got him yet, that they was still working on it.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. And after that conversation did you decide to try to
2 tape a conversation with the Defendant?

3 A. Yes.

4 Q. How did you go about doing that?

5 A. I went to Wal-mart to get a tape recorder, a digital
6 tape recorder. And when they showed -- when they showed up
7 at the flea market on Saturday morning, I cut -- I seen them
8 pull in, and I cut the tape recorder on. And I left it
9 running the entire day.

10 Q. I'm going to hand you what's been marked as State's
11 exhibit 1. Do you recognize that item?

12 A. Yes, sir.

13 Q. How do you recognize it?

14 A. It's a CD that was -- it was a CD made off the
15 recording at the police department.

16 Q. And have you listened to what's on that CD?

17 A. Yes, sir.

18 Q. And is that an accurate recording of the conversation
19 that you had with the Defendant that day that we were just
20 talking about?

21 A. Yes.

22 MR. ELLIS: Your Honor, at this time the State moves
23 State's exhibit 1 into evidence.

24 MR. SULLIVAN: No objections, Your Honor.

25 THE COURT: Without objection.

MATTHEW CHAVIS - DIRECT EXAMINATION BY MR. ELLIS

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1 **MR. SULLIVAN:** Well, subject to my objections earlier
2 made.

3 **THE COURT:** Certainly.

4 (Whereupon State's exhibit 1 was admitted into evidence)

5 Q. Mr. Chavis, ---

6 **MR. ELLIS:** I beg the Court's indulgence.

7 (Pause)

8 Q. Just to clarify, the person that we're going to hear on
9 this CD talking to you, do you see that person in the
10 courtroom today?

11 A. Yes, I do.

12 Q. Where do you see him?

13 A. He's sitting at -- in the red shirt, the Defendant.

14 **MR. ELLIS:** Your Honor, permission to publish?

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

16 **MR. ELLIS:** Thank you.

17 (Whereupon State's exhibit 1 was played for the jury)

18 (Whereupon the CD was stopped)

19 Q. Whose voice is that?

20 A. That's my voice.

21 (Whereupon State's exhibit 1 was continued for the
22 jury)

23 (Whereupon the CD was stopped)

24 Q. Whose voice is that?

25 A. That was my voice and Michael Bishop's.

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

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1 (Whereupon State's exhibit 1 was continued for the
2 jury)

3 (Whereupon the CD was ended)

4 Q. Mr. Chavis, that's all I have for you. Please answer
5 any questions Mr. Sullivan has.

6 A. Yes, sir.

7 **THE COURT:** All right. Mr. Sullivan.

8 **MR. SULLIVAN:** Could I confer with counsel for a
9 second, Your Honor, please.

10 (Pause)

11 **Cross Examination by Mr. Sullivan:**

12 Q. Mr. Chavis, ---

13 A. Yes, sir.

14 Q. --- you saw Cathy and Michael in Hickory at a flea
15 market ---

16 A. Yes, sir.

17 Q. --- before this?

18 A. Two days before.

19 Q. So they were back together as far as you could tell?

20 Friendly, no problem?

21 A. I didn't -- I didn't see no problem, you know, between
22 them.

23 Q. So then you bought a tape recorder at 4:00 in the
24 morning and headed to Kings Mountain? You knew they were
25 going to be there.

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

83

1 A. That was on -- that was on ---

2 Q. Saturday.

3 A. --- Saturday morning. Yes.

4 Q. And you talked to Officer Manning on Friday afternoon?

5 A. I did call him.

6 Q. And then went back to see him Monday?

7 A. I took him the tape recording, yes.

8 Q. Who had the tape from the time you started recording to
9 the time you took it to him?

10 A. I had the tape the entire time.

11 Q. So the police didn't have the tape?

12 A. No, sir.

13 Q. They weren't there when you were taping it?

14 A. No, sir.

15 Q. This was entirely your doing?

16 A. It was entirely my doing.

17 Q. You had the tape under your control to do with as you
18 please, correct?

19 A. I had it -- yes, I had the digital recording, which I
20 took to the police.

21 Q. They made this tape off of it?

22 A. Made the CD, correct.

23 Q. Listened to the tape and you mentioned that they
24 charged Cathy or somebody mentioned she had cashed a twenty-
25 five hundred dollar bad check on the tape.

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

84

1 A. Everybody cash, I mean, everybody cashes a bad check
2 cashing checks.

3 Q. Well, ---

4 A. At one point in time you will cash a bad check.

5 Q. Then I think you said, and I don't want to be gross,
6 that they're trying to put some more shit on her. What did
7 you mean by that statement?

8 A. Well, I mean, I was talking anything I could to get him
9 to talk. I mean, ...

10 Q. But what were they trying to put on her?

11 A. I couldn't, I mean, I don't even know. I mean, I don't
12 know what he was trying to put on her. I was just trying to
13 keep him talking.

14 Q. And then on the tape there was a statement made there
15 was no proof how much money was there. Is that on the tape?

16 A. Yeah.

17 Q. Do you know where the cameras were positioned?

18 A. No.

19 Q. You ever been to the store?

20 A. Yeah.

21 Q. How do you know Michael?

22 A. I know him through my sister.

23 Q. Now I don't want to embarrass you, sir, but weren't you
24 and he cell-mates in prison?

25 A. If you want to bring that up, we can bring it up. Yes,

MATTHEW CHAVIS - CROSS EXAMINATION BY MR. SULLIVAN

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1 we was.

2 Q. Okay. What were you in prison for?

3 A. I was in there for burglary. That was probably twenty
4 something years ago.

5 Q. But you have a record of burglary ---

6 A. Yeah, but I've changed my life.

7 Q. And then you were in prison with Michael?

8 A. Correct.

9 Q. Okay.

10 **MR. SULLIVAN:** I've got nothing further, Your Honor.

11 **MR. ELLIS:** Nothing from the State, Your Honor.

12 **THE COURT:** Thank you. You can step down.

13 A. Thank you.

14 **MR. ELLIS:** The State rests, Your Honor.

15 **THE COURT:** All right. Take the jury out, please.

16 (Whereupon the jury exited the courtroom at 12:49 pm)

17 **THE COURT:** All right. Any motions, Mr. Sullivan?

18 **MR. SULLIVAN:** Judge, I request a directed verdict.

19 The proof has come out so far that anybody -- that several
20 people could have taken that money. As a matter of fact, if
21 you look at their proof, he left at 3:15, the money was
22 counted at five, and it was all accounted for. I think
23 their proof shows he didn't take it.

24 And I didn't hear any confession on the tape. He knew
25 how the business worked because he hung around and watched.

1 So I don't think they've met their burden of proof beyond a
2 reasonable doubt that he took the money. I think there's
3 very little -- it's very tenuous.

4 **THE COURT:** Well, I think that would make a good
5 argument for the jury, Mr. Sullivan. I'm going to have to
6 deny your motion. I think there's evidence sufficient to go
7 forward.

8 **MR. SULLIVAN:** Thank you, Your Honor.

9 Now, I want to make clear that on the introduction of
10 the tape I did -- I just out of habit said no objection, but
11 I did object to that being introduced based on my prior in
12 the pretrial arguments.

13 **THE COURT:** All right. We'll make that a part of the
14 record.

15 Now, do you need to talk with your client concerning
16 testimony?

17 **MR. SULLIVAN:** I need -- I would like to know what they
18 consider -- I'm going to put him up and he's going to admit
19 he's got a record.

20 **THE COURT:** All right. Show him his record.

21 **MR. SULLIVAN:** It's fairly extensive. I'm just going
22 to -- we're going to acknowledge it. It's the only way I
23 could get out ...

24 **MR. ELLIS:** He's got eighteen auto breakings, nineteen
25 petty larcenies or, sorry, eighteen grand larcenies that I

1 will not seek to admit, Your Honor, because it's the same
2 crimes here today. He's got nineteen petty larcenies,
3 twenty-nine auto breakings, breach of trust, receiving
4 stolen goods, two forgeries and two more petty larcenies.

5 **MR. SULLIVAN:** What's the date -- what's the last date
6 on that?

7 **MR. ELLIS:** The latest date are the receiving stolen
8 goods and forgeries and petty larcenies from 2010.

9 **THE COURT:** All right. Now, do you need to talk with
10 him concerning testifying?

11 **MR. SULLIVAN:** I don't think it'll take long, Your
12 Honor.

13 **THE COURT:** All right.

14 **MR. SULLIVAN:** If we can do it right now and maybe
15 finish this ---

16 **THE COURT:** Sure. Go ahead and talk with him.

17 **MR. SULLIVAN:** And we can argue after lunch.

18 (Pause)

19 **MR. SULLIVAN:** Judge, at this time he is going to
20 exercise -- stand up, Michael. He's going to swear you in
21 and ask you some questions. We discussed it before the case
22 started.

23 **THE COURT:** All right.

24 **MR. SULLIVAN:** When I lost last argument because of the
25 introduction, then it kind of changed things. We've

1 discussed it again. And he's made the decision and he tells
2 me he'd rather not take the stand.

3 **THE COURT:** All right. Put him under oath, please.

4 **MADAME CLERK:** Would you raise your right hand. Do you
5 swear or affirm to tell the truth, the whole truth and
6 nothing but the truth so help you God?

7 **MR. BISHOP:** I do.

8 **MADAME CLERK:** Thank you.

9 **THE COURT:** Okay. You can be seated now, Mr. Bishop.
10 We have reached a point in your trial where you will make a
11 decision as to whether or not you will testify or otherwise
12 present testimony. You understand that?

13 **MR. BISHOP:** Yes, sir.

14 **THE COURT:** I tell you that you do not have to testify
15 because a defendant charged with a crime never has any
16 burden whatsoever. You don't have to take the stand and
17 testify or otherwise present testimony. That's your
18 constitutional right. You understand those rights?

19 **MR. BISHOP:** Yes, sir.

20 **THE COURT:** I tell you that you have a perfect right to
21 take the stand and testify in your defense. You understand
22 that?

23 **MR. BISHOP:** Yes, sir.

24 **THE COURT:** If you decide to testify, then you become
25 like any other witness in a case subject to cross

1 examination by the State. Understand that?

2 MR. BISHOP: Yes, sir.

3 THE COURT: You've heard your prior record. Some of
4 that is -- can be used by the State to impeach your
5 testimony if you testify. You understand that?

6 MR. BISHOP: Yes, sir.

7 THE COURT: Now, you have made a decision, as I
8 understand it, not to take the stand and testify or
9 otherwise present testimony or evidence, is that correct?

10 MR. BISHOP: Yes, sir.

11 THE COURT: Are you under the influence of any alcohol,
12 drug or any other substance right at this moment?

13 MR. BISHOP: No, sir.

14 THE COURT: Do you know what you're doing?

15 MR. BISHOP: Yes, sir.

16 THE COURT: And you, yourself, have decided not to
17 testify?

18 MR. BISHOP: Yes, sir.

19 THE COURT: Now has Mr. Sullivan put any pressure on
20 you not to take the stand and testify?

21 MR. BISHOP: No, sir, he hasn't.

22 THE COURT: Are you satisfied with his services in this
23 case?

24 MR. BISHOP: Yes, sir, I am.

25 THE COURT: All right. I find that you have knowingly

1 and intelligently waived your right to testify or otherwise
2 present testimony. So that being the case, Mr. Sullivan,
3 you'll have the final argument in the case.

4 **MR. SULLIVAN:** Judge, I don't want to mislead the
5 Court, but I did introduce two exhibits.

6 **THE COURT:** You certainly did. So you lose that ---

7 **MR. SULLIVAN:** That's why I had this conversation. I
8 didn't want to mislead the Court. I'm sure ---

9 **THE COURT:** Sure.

10 **MR. SULLIVAN:** --- he would have reminded you of that
11 pretty quick.

12 **THE COURT:** All right. You waive opening argument,
13 then, solicitor?

14 **MR. SULLIVAN:** That was a -- I had to do it.

15 **THE COURT:** All right.

16 **MR. SULLIVAN:** It was a trial strategy.

17 **THE COURT:** So you waive opening?

18 **MR. ELLIS:** Yes, sir, Your Honor. Thank you.

19 **THE COURT:** All right. The jury -- I've ordered lunch
20 for the jury. And it should be here shortly. You want to
21 be back at 2:00? That give you enough time?

22 **MR. ELLIS:** Yes, sir, Your Honor. Thank you.

23 **MR. SULLIVAN:** Thank you, Your Honor.

24 **THE COURT:** All right. Be back at 2:00.

25 (Whereupon court was in recess at 12:56 pm)

CLOSING ARGUMENTS - MR. SULLIVAN

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1 (Whereupon court reconvened at 2:07 pm)

2 **THE COURT:** Be seated. All right. You ready to talk
3 to the jury, Mr. Sullivan?

4 **MR. SULLIVAN:** Yes, sir. I'll be brief.

5 **THE COURT:** All right. Bring the jury, please.

6 (Whereupon the jury entered the courtroom at 2:10 pm)

7 **THE COURT:** Ladies and gentlemen, in the trial of a
8 criminal case a defendant has no burden whatsoever. A
9 defendant does not have to take the stand and testify or
10 present testimony or evidence because that's his
11 constitutional right. The burden is always on the State to
12 prove a defendant guilty beyond a reasonable doubt.

13 Now, the Defendant in this case has exercised his
14 constitutional right not to take the stand and testify or
15 present evidence. So the evidence in this case is complete.
16 What we have remaining is the final arguments by the
17 attorneys and then my charge on the law. Okay. Mr.
18 Sullivan.

19 **MR. SULLIVAN:** May it please the Court. Mr. Ellis.
20 I'll be brief because it's really not that complicated. A
21 few people testified. The officers that you heard really
22 contributed nothing. It's what we kind of call throw away
23 testimony. They're important people. They do a good job,
24 but they don't know what happened. They took reports of
25 what people said. So we've got about four people really.

CLOSING ARGUMENTS - MR. SULLIVAN

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1 So the first thing, Mike was charged with grand
2 larceny. They have to prove two things. Number one, was a
3 crime committed? It sounds stupid, sounds basic, but it
4 wasn't.

5 We have Defense exhibit 1, which you'll have back
6 there, which is an end-of-day report on October 2nd, which
7 was a Saturday, signed by CS, which is Cathy Smalley, Ms.
8 Oliver now, which she danced around a lot and never admitted
9 it. Her mom said, that's Cathy.

10 So at 5:00 on Saturday, October 2nd there's no money
11 missing. So at that time there had been no crime committed.
12 There's nothing missing. Nobody could have taken it.

13 If Michael Bishop left at 3:40 and didn't come back,
14 then if somebody did take the money, it didn't show up until
15 the 4th when the KL initials are there. And they all said
16 anybody could put something in the computer and make it look
17 like they want to. This shows the amount missing is thirty-
18 two, one ninety-one. Well, all the talk you've heard say
19 they were even stacks of money.

20 Now you heard on the tape a lot of talk about the
21 business between Mr. Chavis and Mr. Bishop, just general
22 conversation. Michael had been there. He'd watched the
23 business. Matter of fact, he has known Ms. Smalley through
24 all their lives. I say Ms. Smalley because that's how she's
25 referred to in all the reports, Ms. Oliver.

CLOSING ARGUMENTS - MR. SULLIVAN

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1 I don't want to embarrass anybody because people are
2 human, but let's say she's not the most trustworthy. She
3 was married to a fellow for fourteen years and had a sexual
4 relationship with Mr. Bishop for eight years. That's in her
5 police report.

6 She told the officers that they didn't -- that Michael
7 didn't get there til that Saturday morning about 11:00. The
8 same day after further talking to her she says, well, I'm
9 lying about that. We actually spent the last couple of
10 nights or the last night at a motel on 85 and Pelham. We
11 got there together.

12 Now during this about the money, the situation, there's
13 a safe there with a lot of money in the drawer. The safe's
14 in the back. But like Ms. Smalley Oliver testified, it was
15 never closed. It was always left open a little bit.

16 And you find out this guy, Howard Morgan, I think his
17 name was, he was in there for a while back in the back
18 unsupervised, the bookkeeper. He's dead. We don't know
19 what he did, if anything. There is not anybody who has come
20 in front of you and said they saw Michael Bishop take any
21 money.

22 The only person there that day was Ms. Smalley. And
23 she said I didn't see him take the money. It was just
24 missing. Yet why would she put down it's missing when it's
25 -- this report says it's not? That's something for y'all to

CLOSING ARGUMENTS - MR. SULLIVAN

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1 decide on that.

2 And you've got Mr. Chavis who's a nice fellow who runs
3 a business here. Made a statement in here, that's how long
4 he's known Michael Bishop. They knew each other twenty
5 years ago when they shared a prison cell. So both of them
6 had a little history, but that's past. So they've known
7 each other a long time. The whole family has. And they
8 trusted each other.

9 Now we've got, no question, Michael was there with Ms.
10 Smalley on that morning. He left. And they tried to
11 intimate that they couldn't get him. I don't know if his
12 phone was cut off or whatever or she did try to get him. We
13 have no proof -- we have no phone records that the police
14 could have gotten from Verizon, all these calls, there's a
15 number and they won't answer. But we don't know what she
16 did, if anything.

17 But here's the thing that Michael took thirty thousand
18 dollars, but yet within a week or two, two weeks or so he's
19 at a flea market with Ms. Smalley in Hickory, North Carolina
20 selling stuff. And Mr. Chavis sees him. He calls this
21 detective who's no longer here. So we don't know what they
22 talked about. It was a sting.

23 So he buys a recorder at 4:00 in the morning or so from
24 Wal-mart on the Saturday to go to Kings Mountain and cuts
25 the recorder on. And y'all heard the recording. I'm not

CLOSING ARGUMENTS - MR. SULLIVAN

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1 going to tell you what was said. Listen to it.

2 I never heard Michael Bishop say, I took that money. I
3 heard him talking about the business and how much money was
4 there, how people had access to it, how the tape didn't
5 work and all this -- all this was discussed, which he would
6 have known by being there and knowing the family for all
7 these years.

8 So these are things for y'all to consider. Like I say,
9 he is innocent right now til y'all go back there and come
10 back -- but the question is have they proved beyond a
11 reasonable doubt that he took this money? And I'm going to
12 hush in a minute.

13 But here's the thing, according to the person in
14 charge, there's no money missing at 5:00 on that Saturday.
15 She tried to dodge it, but her mom said, that's Cathy
16 Smalley. That's her initials. That's how we do business.

17 So the safe was left open. And then Ms. Smalley Oliver
18 had a key. Howard Morgan had a key. The guy who came in,
19 which they couldn't tell me his name, the bookkeeper, he had
20 a key, Sease had a key. So we had floating keys to this
21 place with the safe open and this money is or isn't missing.

22 I don't know. And when it's over with, I don't think
23 you'll know. When you leave here today, I don't know what
24 your verdict's going to be, but I don't think you can say I
25 am absolutely sure Michael Bishop took that money. That's

CLOSING ARGUMENTS - MR. ELLIS

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1 the truth.

2 That's what -- that's not the question. Have they
3 proven to you that he took it? You may think he did. Well,
4 there's enough there, maybe he did it. He was there. Did
5 they prove to you beyond a reasonable doubt? You've got a
6 tape, a lot of discussion about general stuff, sticking his
7 hand in, no, there wasn't a tape there, the safe was open.
8 If he wanted to do it, this is how we'd do it, but he didn't
9 just say I did it.

10 And the thirty thousand dollars has already been spent
11 in two weeks? And he's back with Ms. Smalley at the flea
12 market? It just doesn't make sense.

13 **THE COURT:** Solicitor.

14 **MR. ELLIS:** Thank you, Your Honor. Mr. Sullivan.
15 Ladies and gentlemen, thank you for your attention today.
16 In a few minutes the Judge is going to instruct you on the
17 law. And he's going to talk to you about what's called
18 elements, the individual pieces of a statute that I've got
19 to prove beyond a reasonable doubt so you can feel satisfied
20 that Mr. Bishop should be convicted of grand larceny. The
21 elements of grand larceny are a taking, the act of carrying
22 a property away, the property of someone else valued at more
23 than ten thousand dollars without the consent of the owner
24 and with the intent to steal.

25 In this case we know a grand larceny happened. This

CLOSING ARGUMENTS - MR. ELLIS

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1 isn't a what happened case? This is a who done it case.
2 And as you know, it's clear beyond a reasonable doubt that a
3 grand larceny happened. So let's move to what your
4 deliberations are really going to have to focus on, who did
5 it.

6 We know that realistically there are only two people,
7 Ms. Smalley Oliver and this Defendant. Now you heard
8 Cathy's testimony. She told you about what happened that
9 day in the store. She told you about what she was doing,
10 what the Defendant was doing and when he left and when she
11 found out the money was missing.

12 She admitted that she lied to the police. Why did she
13 lie? Because she was having an inappropriate relationship
14 with somebody other than her husband. And she was scared.
15 And she didn't want her husband to know.

16 She didn't tell her mother about the missing money
17 because she was scared. And she was with the Defendant
18 after she found out about the money. That's all strange
19 stuff. It's true that she did some strange things. But as
20 I told you in the opening, this is not her trial. This is
21 the Defendant's trial. This is Mr. Bishop's trial. So we
22 have to focus on his behavior, what he did and what he said.

23 When you're thinking about Cathy's involvement, think
24 back to what you heard on the tape. What did he say on that
25 tape? He said, I thought about taking it and walking out

CLOSING ARGUMENTS - MR. ELLIS

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1 while she was in the bathroom. That's one of the things he
2 said.

3 How do we know that he's the person that took the
4 money? Obviously we've got opportunity. He's there. He's
5 next to the safe that's open. He's got motive. Thirty-two
6 thousand dollars is a lot of money. So we've got motive and
7 opportunity. But most importantly, we've got a recording of
8 him using his own words.

9 In most of the cases that are tried in this courtroom
10 there's lots of discussion about criminal intent. We've got
11 to prove that some individual had an intent to commit a
12 crime. It's what we call criminal intent. And there's a
13 lot of discussion, a lot of argument, meaning closing
14 statements are devoted entirely to what the defendant was
15 thinking at a given time.

16 In this case, I don't have to talk to you very much
17 about that because you heard straight from his mouth on that
18 tape what he was thinking. What did he say? He said, I was
19 sitting back there thinking, and he paused and kind of
20 laughed, and you know I have a criminal mind. Straight from
21 his mouth, you know what he's thinking while he's sitting
22 back there in that room.

23 What else did he say? I took a few notes. He said,
24 Greenville County moved on. They didn't care anymore. They
25 investigated it for a day or two and that's it. I was

CLOSING ARGUMENTS - MR. ELLIS

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1 sitting back there, and you know I have a criminal mind.
2 They can't prove that money was in there. There's no proof,
3 there's no real proof that that money was in there. They
4 can prove what was in the register because of the tapes, but
5 they can't prove what was in that safe. And I knew it when
6 I was sitting back there.

7 The money, he said the money was wrapped in ten
8 thousand dollar bands. He said there was eighty thousand
9 dollars in the cash register. He said, I thought about
10 getting a bag and putting it in there and not saying
11 anything to her. Her being Ms. Oliver Smalley.

12 I stuck three stacks of ten thousand dollars in my
13 pants. And, you know, and he said, a ten thousand dollar
14 band is only that big. I can envision what he's saying --
15 what he's doing when he's saying that. He's probably
16 saying, you know, ten thousand dollars in hundreds is only
17 that big. So it's easy to stick in my pants.

18 I figured I would just tell her -- I just would walk
19 out of the store. Most of it was in two thousand dollar
20 bands. You know there was ninety thousand dollars worth of
21 hundreds.

22 I went in the week before and sat with her. I thought
23 about using a Burger King bag and walking out while she was
24 in the bathroom. They can prove I was there. My
25 fingerprints are all over the place. If they test good

CLOSING ARGUMENTS - MR. ELLIS

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1 enough, my DNA's probably on the couch.

2 Howard threw a wrench in that plan. And Howard, as you
3 remember, was the bookkeeper that showed up while he was
4 sitting back there.

5 And finally, the quote I talked to you about in
6 opening, there's a TV with four different cameras. So I
7 walked over there, I stuck my damn hand in the VCR and there
8 was no tape. His self-described criminal mind went into
9 overdrive when he stuck his hand in that VCR and realized
10 there would be no proof of him taking that money. He could
11 reach in and take it out and walk out the front door.

12 I briefly want to talk about reasonable doubt. And as
13 I talked to you in opening statement, reasonable doubt
14 doesn't mean beyond all doubt or beyond a shadow of a doubt.
15 It means something -- proof which leaves you firmly
16 convinced of his guilt.

17 Now, deliberation and discussion does not mean that
18 reasonable doubt exists. It's your duty to go back in the
19 jury room and deliberate and discuss the facts of the case.
20 So just because you're discussing it, deliberating, having
21 that back and forth, it doesn't mean reasonable doubt
22 exists. Every person that's been convicted of a crime since
23 the founding of this Country was found guilty beyond a
24 reasonable doubt.

25 During your deliberations I'm sure your thoughts are

CLOSING ARGUMENTS - MR. ELLIS

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1 going to go back to Ms. Oliver and about her involvement and
2 her strange behavior. You may think, well, I know Bishop
3 stole the money, but I think Cathy was involved. You may
4 think, I'm sure Bishop took the money, but Cathy must have
5 known about it because her behavior was too strange.

6 When you have these thoughts you must remember that
7 you've taken an oath to stop at the but. When you're
8 thinking, I'm sure Bishop did it, but -- the oath you've
9 taken is to stop at the but. This is the Defendant's trial.
10 And once you are firmly convinced of his guilt, of his
11 involvement, your duty is to convict.

12 Ladies and gentlemen, that's where the evidence leads
13 you. That's what you've heard from the Defendant's own
14 voice. Remember his words, they can't prove the money was
15 in there. I put three stacks in my pockets. I stuck my
16 hand in the VCR and there was no tape. And finally, I have
17 a criminal mind.

18 Ladies and gentlemen, you've heard it straight from the
19 Defendant. He has a criminal mind and he used that criminal
20 mind to execute his plan to steal the money out of that
21 safe. And he was bragging about getting away with it when
22 he thought he did, but he didn't.

23 You've got all the evidence. You've got all the facts
24 in the case. You heard extensively from him on that
25 recording. At this time I'd ask you to listen to the law

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1 that the Judge gives you and apply that law to the facts as
2 you find them and find the Defendant guilty. Thank you.

3 **THE COURT:** Now, no one in or out of the courtroom
4 during my charge. So if anyone needs to leave, now is the
5 time to do it.

6 (Pause)

7 **THE COURT:** Now, Mr. Foreman, ladies and gentlemen of
8 the jury, as I told you a moment ago, our law does not
9 require a defendant in a criminal case to take the witness
10 stand and testify. And no presumption of guilt may be
11 raised and no inference of any kind can be drawn from this
12 Defendant's decision not to testify.

13 Our law never imposes upon a defendant in a criminal
14 case the burden or duty of calling any witnesses or
15 producing any evidence or of testifying. Therefore, the
16 decision of this Defendant not to take the stand and testify
17 on his behalf cannot be held, taken, discussed or considered
18 by you in any manner whatsoever.

19 As I told you earlier, the Defendant in this case is
20 charged with larceny. Larceny, ladies and gentlemen, is
21 defined as the taking and carrying away by any person of the
22 goods or things personal of another with the felonious, that
23 is, the unlawful intent to permanently deprive that owner of
24 his or her property.

25 Now, as you can see, there are several elements of this

CHARGE OF THE COURT

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1 offense, each of which must be proved by the State beyond a
2 reasonable doubt. First of all, there must be a taking and
3 carrying away of the personal property of another, including
4 money, personal property or chattels as opposed to real
5 estate. Secondly, the property must be the property of
6 another, and the ownership of that property must be made and
7 that its value is over ten thousand dollars.

8 Third, there must be a felonious, that is, an unlawful
9 intent to permanently deprive that owner of his or her
10 property. And lastly, there must be an intent to
11 permanently deprive that owner of his or her property.

12 Now, ladies and gentlemen, I am the judge of the law in
13 this case. You are the judges of the facts. The
14 Constitution of our State does not allow me to charge you on
15 the facts of this case or to discuss the facts with you or
16 in any way let you know what my personal feelings, if any,
17 are about this case. And that's because you and you alone
18 are the judges of the facts.

19 Therefore, if during the course of this trial or if
20 during the course of my charge you have a feeling or you
21 have been left with the impression that I have a personal
22 feeling about this case one way or another, then you
23 disregard that feeling or that impression. You and you
24 alone are the judges of the facts.

25 Now, it's your duty and your duty alone to weigh the

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1 testimony and evidence presented in this case and to pass
2 upon the credibility or the believability of the witnesses
3 you heard testify. In this connection you have a right to
4 believe all that a witness told you or you can disbelieve
5 all a witness told you. You can believe part of what a
6 witness told you and disbelieve a part of what a witness
7 told you.

8 You can believe one witness as against several or you
9 can believe several as against one. You also have the right
10 to take into consideration any bias, or prejudice or
11 interest you feel a witness in the case might have.

12 As I told you earlier, I am the judge of the law in
13 this case. And I am required to charge the law applicable
14 to the facts in this case. It's not a question of what you
15 feel the law might be or what it should be. It is not
16 necessarily what the lawyers may have told you it is because
17 under your oath you are required to take the law as I give
18 it to you and apply that law to the facts as you determine
19 those facts to be.

20 In this case, as in all criminal cases, this Defendant
21 comes into this courtroom presumed to be innocent. And this
22 presumption continues and carries through the entire trial
23 until and unless it is proved by evidence beyond a
24 reasonable doubt. The burden is on the State in this case
25 to prove this Defendant guilty and to prove each and every

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1 element of the offense with which he is charged beyond a
2 reasonable doubt.

3 Now, some of you may have in the past served as jurors
4 on a civil case. And if so, you were told that it was only
5 necessary to prove that a fact is more likely true than not
6 true. But in criminal cases, the State's proof must be more
7 powerful. As I've told you, it must be beyond a reasonable
8 doubt.

9 Now, proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of this Defendant's guilt.
11 There are very few things in this world that we know with
12 absolute certainty. And in criminal cases our law does not
13 require proof that overcomes every possible doubt.

14 If, based on your consideration of the evidence in this
15 case you are firmly convinced that he is guilty, then you
16 must find him guilty. If, on the other hand, you think
17 there's a real possibility that he's not guilty, then you
18 must give him the benefit of that doubt and find him not
19 guilty.

20 Ladies and gentlemen, our law never imposes upon a
21 defendant in a criminal case the burden of duty of calling
22 any witnesses. And I've told you before, and I'll remind
23 you that the Defendant does not have to take the stand and
24 testify in his behalf and cannot be held, taken or discussed
25 by you in any manner whatsoever during your deliberation.

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1 Under the oath you took in this case you swore to try
2 this case based only and solely on the testimony and the
3 evidence presented in this courtroom. I tell you that it is
4 your duty to lay aside all outside opinions, bias, prejudice
5 or sympathy you may have in reaching your verdict.

6 The word verdict is taken from the Latin word
7 *veredicto*, which means to speak the truth. Now, ladies and
8 gentlemen, you have no friends to reward in this case or
9 enemies to punish. I charge you to abide by your oath and
10 return a verdict that speaks the truth.

11 You will have in the jury room with you the indictment
12 in this case. This indictment, you will have in the jury
13 room with you, charges this Defendant with the crime of
14 larceny. But that does not mean that he is necessarily
15 guilty because you've got to find him guilty beyond a
16 reasonable doubt of this offense.

17 Now, Mr. Foreman, whatever the verdict of the jury is,
18 it must be unanimous, that is, all twelve of you must agree.
19 And you'll find a place on the back of the indictment where
20 it says verdict. There are one of two possible verdicts,
21 guilty or not guilty. And whatever that verdict is, it must
22 be unanimous, that is, all twelve of you must agree.

23 So, Mr. Foreman, whatever the verdict is, guilty or not
24 guilty, please write it out in the space where it says
25 verdict. And sign your name on the line where it says

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1 foreperson of the petit jury.

2 Now, at this time I'm required to suspend and go over
3 my charge with the lawyers. I need you to go back into the
4 jury room. Do not begin deliberating until I send word in
5 for you to do so. Thank you.

6 (Whereupon the jury exited the courtroom at 2:36 pm)

7 **THE COURT:** Anything further from the State?

8 **MR. ELLIS:** No, Your Honor.

9 **THE COURT:** From the Defense?

10 **MR. SULLIVAN:** None, Your Honor.

11 **THE COURT:** All right. Get the exhibits, tell them to
12 deliberate and bring my alternate.

13 **MR. ELLIS:** Your Honor, the CD, we're going to send
14 back with nothing to play the CD on because if they do wish
15 to hear it again, I'll have to ---

16 **THE COURT:** Sure..

17 **MR. ELLIS:** --- let them play it in the courtroom so I
18 can control it.

19 (Whereupon the jury began deliberating at 2:37 pm)

20 (Whereupon the alternate entered the courtroom at 2:38
21 pm)

22 **THE COURT:** Thank you, sir, for your service on this
23 case. I think you might be through for the week. What I
24 need for you to do is to report back downstairs to the jury
25 assembly room, and Judy will let you know, okay?

1 **MR. ELLIOTT:** Yes, sir.

2 **THE COURT:** Thank you so much for your service.

3 (Whereupon the alternate exited the courtroom)

4 **THE COURT:** All right. Be at ease. Don't leave the
5 building.

6 **MR. ELLIS:** Thank you, Your Honor.

7 **MR. SULLIVAN:** Thank you, Your Honor.

8 (Whereupon court was in recess at 2:39 pm)

9 (Whereupon court reconvened at 2:57 pm)

10 **THE COURT:** They want to listen to the tape again.

11 Bring them on.

12 (Whereupon Court's exhibit 2 was marked)

13 (Whereupon the jury entered the courtroom at 2:59 pm)

14 **THE COURT:** Now, Mr. Foreman, you've asked about taking
15 notes. And that is perfectly all right, but I need to tell
16 you that when you're back deliberating that you can use
17 those notes only to refresh your memory of what the
18 testimony was. You can't use those notes as a transcript of
19 this trial because that's being made by the court reporter.
20 So you can use those notes to refresh your recollection,
21 okay? All right, solicitor.

22 **MR. ELLIS:** Thank you, Your Honor.

23 **MR. SULLIVAN:** How much of the tape do they wish to
24 hear? All of it?

25 **THE COURT:** They've asked to replay the tape.

VERDICT OF THE JURY

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1 **MR. SULLIVAN:** Okay. I didn't know if they wanted part
2 or all of it.

3 (Whereupon State's exhibit 1, CD, was played for the
4 jury)

5 (Whereupon the CD was ended)

6 **THE COURT:** Okay. If you'll retire to your
7 deliberations. Thank you.

8 (Whereupon the jury exited the courtroom at 3:20 pm)

9 **THE COURT:** Okay. Be at ease.

10 (Whereupon court was in recess at 3:20 pm)

11 (Whereupon court reconvened at 3:36 pm)

12 **THE COURT:** All right. Anything before I bring the
13 jury? We've got a verdict.

14 **MR. ELLIS:** Nothing from the State, Your Honor.

15 **MR. SULLIVAN:** Nothing from the Defense, Your Honor.

16 **THE COURT:** Bring them on.

17 (Whereupon the jury entered the courtroom at 3:37 pm)

18 **THE COURT:** Mr. Foreman, if you've reached a verdict,
19 will you give it to the bailiff, please, sir. All right.
20 Would you, please, publish the verdict.

21 **MADAME CLERK:** Yes, sir, Your Honor. Your Honor, this
22 is case number 2012-GS-23-5048, the State versus Michael
23 Robert Bishop, indictment for grand larceny. The verdict is
24 guilty, signed the Foreperson, Joshua Turner. If this is
25 your verdict, please raise your right hand.

SENTENCE OF THE COURT

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1 (Whereupon all jurors raised their right hand)

2 **MADAME CLERK:** Thank you.

3 **THE COURT:** Anything further from the jury, gentlemen?

4 **MR. ELLIS:** No, sir, Your Honor.

5 **MR. SULLIVAN:** Nothing from the Defense, Your Honor.

6 **THE COURT:** Thank you, ladies and gentlemen, for your
7 service on this case. I believe that you're through for the
8 week. But what I need for you to do is report downstairs to
9 the jury assembly room, and Judy will give you that
10 information.

11 Thank you so much. I've enjoyed working with you this
12 week. Anyone have a question I can try to answer for you?

13 (No Response)

14 **THE COURT:** Okay. You're free to go. Please report to
15 the jury assembly room. Thank you so much.

16 (Whereupon the jury exited the courtroom at 3:39 pm)

17 **THE COURT:** Okay. Now, Mr. Bishop, you exercised your
18 constitutional right not to testify during your trial. You
19 have a perfect right to address the Court now concerning
20 sentence. Is there anything, sir, that you'd like to say
21 before I sentence you?

22 **MR. BISHOP:** Yes, sir. This charge is four years old.
23 I mean, I did a year in SCDC without being -- without it
24 having brought to me to try to take care of it. I've been
25 -- was in Spartanburg County Jail for a while, three years

SENTENCE OF THE COURT

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1 ago, whenever it was, never brought to me.

2 Obviously I was in the -- dealing with the wrong kind
3 of people for some reason that -- I guess they knew I had a
4 past record, thought they might could use me as some kind of
5 a scape goat.

6 But, I mean, I knew a lot about that business, you
7 know, I helped her count the money one day, the only reason
8 I knew the money was -- any money was even there. I stayed
9 one Saturday with her and she couldn't get the books right.
10 And she asked me to count the money for her.

11 And I don't see how I could have -- how I could have
12 walked out with any money. I had t-shirt, shorts, probably
13 had flip-flops on at that time. That's about what I wore
14 back then, summertime, even in the wintertime I dressed like
15 that.

16 But, I don't know. I got a good job. I haven't -- I
17 haven't even thought about breaking the law in years. And
18 it's -- I'm actually overwhelmed that something like this
19 could come back on me.

20 Which I don't know if anybody else in here heard what I
21 heard, but that almost makes me lose faith in our system
22 because I didn't hear any evidence. I've got a packet over
23 there that ain't got no evidence in it that my attorney give
24 me. You know, I'm not going to apologize for something I
25 didn't do.

SENTENCE OF THE COURT

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1 **THE COURT:** Okay. That's fine. All right. Anything
2 further, Mr. Sullivan?

3 **MR. SULLIVAN:** Your Honor, what he said, there's some
4 truth to it. This happened in October of 2010. He was not
5 served the warrant until 2012. And then he's been coming
6 back to court. He doesn't drive. The ladies from his
7 church have been bringing him to court all these times. So
8 they sat on the warrant for a good while.

9 But I knew -- I thought it was a triable case. I
10 thought it would be the case to try. I thought if he'd pled
11 with his record, he's going to get time. So I thought it
12 was a very triable case and took a chance, and it didn't
13 work out.

14 So the sentence would be up to you. And I'm sure
15 you're going to hear his record and he's going to do some
16 active time. I will say this, Judge, when he gets active
17 time he's asked me to file a notice of appeal. And if
18 something happens to me, I'd like that on the record that he
19 does want to preserve that right.

20 **THE COURT:** All right.

21 **MR. SULLIVAN:** I anticipate doing it, but ...

22 **THE COURT:** All right. You want to put his record on
23 the record?

24 **MR. ELLIS:** Yes, sir, Your Honor. Thank you. 1989,
25 eighteen counts of grand larceny, nineteen counts of petty

SENTENCE OF THE COURT

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1 larceny, twenty-eight counts of auto breaking, 1996, fraud
2 check, 2005, breach of trust, 2010, driving under
3 suspension, receiving stolen goods, two counts of forgery
4 and two counts of petty larceny, Your Honor.

5 **THE COURT:** And do you know what credit he's entitled
6 to?

7 **MR. ELLIS:** According to my calculation, it's eighty-
8 two days for this charge, Your Honor.

9 **MR. SULLIVAN:** I think he was incarcerated and they got
10 a bench warrant. They got him over here and then he made
11 his bond.

12 **THE COURT:** All right, Mr. Bishop. The sentence of the
13 Court is you be committed to the Department of Corrections
14 for a period of ten years. Also, as a condition of parole
15 that you make restitution in accordance with the order I
16 signed in the amount of thirty-two thousand dollars. Okay.

17 **MR. ELLIS:** Thank you, Your Honor.

18 (Hearing ended at 3:45 pm)

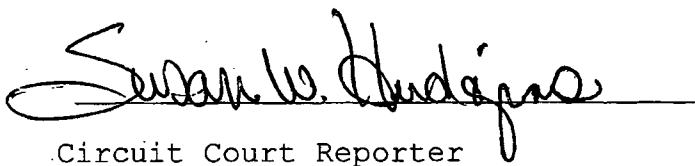
19 (End of requested transcript of record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 17th day of July 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 9, 2014


Circuit Court Reporter

WITNESSES
B M Manning
Greenville Police Department
4/25/2012

ARREST WARRANT NUMBER
M384585

ACTION OF GRAND JURY
TRUE BILL
FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT
Guilty

Foreperson of Petit Jury
Date: 07/17/2014

DOCKET NO. 2012-GS-23-
SPE
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS
February
TERM 2012

THE STATE
vs.
MICHAEL ROBERT BISHOP

Indictment for
3421
GRAND LARCENY
VIOLATION § 16-13-0030

RECEIVED
ACCT.

RECEIVED
JUL 03 2012
Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on

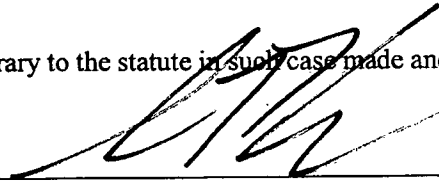
FEB 19 2013

the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL ROBERT BISHOP did in Greenville County, on or about the 2nd day of October, 2010, feloniously take and carry away the personal property of ANY KIND CHECKS to wit: U. S. Currency, with a total value of more than Ten Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of §16-13-0030 of the South Carolina Code of Laws (1976) as amended.

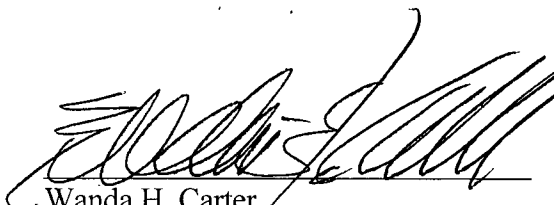
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

November 12, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

NOV 12 2014

SC Court of Appeals