

21603

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRIK GERARD BRIGHT,

APPELLANT

APPELLATE CASE NO. 2013- 001354

RECORD ON APPEAL

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SC Court of Appeals

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

- STATE’S EXHIBIT # 7 (SURVEILLANCE RECORDING)**
- STATE’S EXHIBIT # 17 (SURVEILLANCE RECORDING)**

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA, )

PLAINTIFF, )

-VS- )

TYRIK GERARD BRIGHT, )

DEFENDANT. )

2012-GS-02-00423

JUNE 10, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE J. DERHAM COLE, JUDGE

APPEARANCES:

NICK MCCARLEY, ESQUIRE  
ELIZABETH YOUNG, ESQUIRE  
ATTORNEY FOR THE PLAINTIFF

DAVE HAYES, ESQUIRE  
MICHAEL ROUTZONG, ESQUIRE  
ATTORNEYS FOR DEFENDANT

DANETTE HANKS  
CIRCUIT COURT REPORTER

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*Motions Hearing*

1 (WHEREUPON, court convened with all parties present  
2 and the following proceedings were had.)

3 (WHEREUPON, State Exhibit Numbers 1 and 2 were marked  
4 for identification.)

5 MR. MCCARLEY: Your Honor, we have a pretrial  
6 hearing in the matter of State versus Tyrik Bright on  
7 indictment number 2012-GS-02-00432. A true bill indictment  
8 for burglary in the second degree violent. I believe the  
9 first matter up is a Jackson versus Denno hearing, Your  
10 Honor.

11 Your Honor, would you like some context for this  
12 hearing or just proceed when ---

13 THE COURT: Well, I just need the indictment.

14 Okay. Mr. Hayes, you and Mr. Routzong represent the  
15 Defendant?

16 MR. HAYES: I do, Your Honor.

17 THE COURT: All right. Mr. McCarley, I'm ready  
18 when you are.

19 MR. MCCARLEY: Thank you, Your Honor. The first  
20 witness the State calls is Detective Keith Glover with the  
21 Aiken Department of Public Safety.

22 THE CLERK: The testimony you shall give the  
23 Court in this case will be the truth, the whole truth and  
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes, ma'am.

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1 THE CLERK: Have a seat in the witness box,  
2 stating your full name.

3 MR. MCCARLEY: Your Honor, Detective Glover  
4 wanted me to apologize to the Court for the fact that he  
5 does not have a jacket. He came from -- directly from a  
6 call that was in the rain.

7 THE WITNESS: Anthony Keith Glover with the Aiken  
8 Department of Public Safety.

9 **KEITH GLOVER,**

10 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MR. MCCARLEY:**

13 Q. Detective Glover, where do you work, sir?

14 A. I work for the Aiken Department of Public Safety.

15 Q. And how long have you been working there?

16 A. Twenty-six years and four months.

17 Q. And how long have you been in law enforcement in  
18 total?

19 A. Twenty-six years and four months.

20 Q. What's your position there at the Aiken Department of  
21 Public Safety, sir?

22 A. I'm a detective.

23 Q. And what are your duties as a detective?

24 A. To investigate crimes that are assigned to me and see  
25 if there's enough probable cause to make an arrest.

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1 Q. Okay. Do your duties include taking videotaped  
2 statements?

3 A. Yes, sir.

4 Q. How did you first become involved in the investigation  
5 of the burglary at Allstar Tents & Events on Christmas Eve,  
6 December 24th of 2011?

7 A. I received a call from the dispatcher saying that they  
8 were requesting an on-duty investigator to come down to the  
9 incident location.

10 Q. Okay. And did you respond to the scene?

11 A. Yes, sir.

12 Q. Okay. And during the course of that investigation,  
13 did you seek warrants on anyone?

14 A. Yes, sir, I did.

15 Q. Okay. Did you make an arrest?

16 A. Yes, sir.

17 Q. Okay. Who was arrested in that case?

18 A. Tyrik Bright.

19 Q. Did you have occasion to interview Mr. Bright?

20 A. Yes, I did.

21 Q. Was it videotaped?

22 A. Yes, it was.

23 Q. Did the Defendant agree to speak with you?

24 A. Yes, he did.

25 Q. Prior to him speaking with you, did you advise the

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1 Defendant of his Miranda rights?

2 A. Yes, I did.

3 Q. How did you do so?

4 A. We've got the standard format at Aiken Public Safety  
5 of Miranda rights. Aiken Public Safety Advisement of  
6 Miranda Rights form. And I read that to him and had him  
7 sign off on it.

8 MR. MCCARLEY: Permission to approach, Your  
9 Honor?

10 THE COURT: You may.

11 Q. Detective Glover, what I'm handing you has been marked  
12 State's Exhibit Number 1. What is that document, sir?

13 A. This is the Aiken Department of Public Safety  
14 Advisement of Miranda Rights form.

15 Q. Okay. And is that a copy of the form that you filled  
16 out with Mr. Bright?

17 A. Yes, sir.

18 Q. Okay. Would you mind reading that for us, please,  
19 sir?

20 A. Subject's name is Tyrik Gerard Bright. Social  
21 Security Number 249-45-8773. At the top of that it's got  
22 the case number 12-20-131. The location was at Aiken  
23 Public Safety on 12/29/2011. It says Advisement of Miranda  
24 Rights. Before we ask you any questions, you must  
25 understand your rights. You have the right to remain

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1 silent. Anything you say can and will be used against you  
2 in a court of law. You've got the right to talk to your  
3 lawyer for advice before we ask you question and have him  
4 with you during questioning. If you cannot afford a  
5 lawyer, the Court will appoint one to represent you without  
6 cost if you wish. If you decide to answer questions now  
7 without a lawyer present, you still have the right to stop  
8 answering at any time. You also have the right to stop  
9 answering at any time until you talk to a lawyer. I have  
10 read the statement of my rights and understand what my  
11 rights are. And at that point we ask them if they  
12 understand their rights and if they do we ask them to  
13 initial those six spots there I've got for them to initial.

14 Q. Did the Defendant, in fact, initial everywhere he was  
15 supposed to?

16 A. Yes, sir.

17 Q. And he agreed to do that?

18 A. Yes, sir.

19 Q. All right. So that was given to the Defendant and he  
20 initialed it?

21 A. Yes.

22 Q. Was it also read to him?

23 A. Yes, sir. We read it to him.

24 Q. Did he voluntarily waive his right to have an attorney  
25 present, Detective Glover?

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1 A. Right. And at the bottom of the form, it says waiver  
2 of rights. It says, I want to make a statement and answer  
3 questions. I do not want a lawyer at this time. I  
4 understand and know what I am doing. No promises or  
5 threats have been made to me. No pressure of any kind has  
6 been used against me. At that point Mr. Bright did  
7 initial, print and sign his name.

8 Q. Okay. Did the Defendant, at any time during the  
9 questioning, ask you to stop questioning him?

10 A. No, sir.

11 Q. Did he at any time ask for an attorney to be present?

12 A. No, sir.

13 Q. Did you coerce the Defendant in any form or fashion to  
14 make this statement regarding this statement?

15 A. No, sir.

16 Q. All right. Did you promise him anything in regards to  
17 sentencing or charging in order to get him to make this  
18 statement?

19 A. No, sir.

20 Q. Did you promise him anything at all?

21 A. No, sir.

22 Q. Okay.

23 MR. MCCARLEY: Permission to approach, Your  
24 Honor.

25 THE COURT: Yes.

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1 Q. Detective Glover, what I'm handing you has been marked  
2 State's Exhibit Number 2. Do you recognize this?

3 A. It appears to be a copy of the videotaped statement  
4 between myself and Mr. Bright.

5 Q. And have you seen that videotaped statement?

6 A. Yes, sir, I have.

7 Q. And is it a true and accurate copy of the one taken on  
8 December 29th, 2011?

9 A. Yes, sir.

10 Q. And you have watched it since then; correct?

11 A. Yes, sir.

12 MR. MCCARLEY: Your Honor, we would now move to  
13 publish this video to the Court as to voluntariness of the  
14 Miranda waiver and the statement given.

15 THE COURT: Okay.

16 (WHEREUPON, video was played in open court.)

17 **DIRECT EXAMINATION CONTINUED**

18 **BY MR. MCCARLEY:**

19 Q. Detective Glover, during that questioning, you  
20 referred to his attorney. Did he have an attorney at the  
21 time or were you expecting him to get one?

22 A. He didn't have an attorney at that time. Just when he  
23 either get -- they assign one to him or either he would be  
24 able to get one on his own. I advised him that that stuff  
25 would be in evidence for his attorney to see once he gets

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10

1 one.

2 Q. Yes, sir.

3 MR. MCCARLEY: And just to make sure, Your Honor,  
4 the State moves to enter both Exhibits 1 and 2 into  
5 evidence for the purposes of this hearing.

6 (WHEREUPON, State Exhibits 1 and 2 were admitted into  
7 evidence for purposes of hearing only.)

8 MR. MCCARLEY: Beg the Court's indulgence.

9 Please answer any questions Mr. Hayes has.

10

**CROSS EXAMINATION**

11 **BY MR. HAYES:**

12 Q. Detective Glover, how long have you known Mr. Bright?

13 A. I've been knowing Tyrik Bright for many years. I  
14 would say probably fifteen years, twenty years, somewhere  
15 up in there.

16 Q. Have you been able to identify the second person,  
17 alleged second person in the video?

18 A. No, sir, I have not.

19 Q. Nothing further. Thank you.

20 THE COURT: You may step down.

21 MR. MCCARLEY: Your Honor, at this time, the  
22 State believes that we've met the burden of proof that this  
23 is a voluntary statement and thus admissible at the trial  
24 of this case under Jackson v. Denno.

25 THE COURT: Does the Defense object?

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1           MR. HAYES: I do, Your Honor, on multiple  
2 grounds. One, under 403, that it's more prejudicial than  
3 probative and irrelevant. The question that's going to the  
4 jury, is this Tyrrik Bright. Throughout this whole video  
5 that's all they're arguing about is was it him. And  
6 Detective Glover is saying, and I know it's you, as well as  
7 multiple other people in my precinct here, as well as the  
8 two victims. That is a question for the jury and more  
9 prejudicial than it is probative.

10          As well as, Judge, throughout the whole video there is  
11 longstanding conversation that they know each other. And  
12 under 404, I believe that would be backdooring in a way  
13 character evidence that is not relevant. Number one, he  
14 tells him, I didn't know you were out and that I thought  
15 you were keeping straight. Then that's -- then he also  
16 asks him, when did you get out, and I believe he told him,  
17 four months ago.

18          THE COURT: Well, we're not there yet. Right now  
19 the question is whether or not that statement that was made  
20 was voluntary or not. Do y'all concede that the --  
21 whatever statement he made was voluntary?

22          MR. HAYES: Yes, sir. My argument would be ---

23          THE COURT: Okay. Now, do you have some  
24 objections to some portion of the video?

25          MR. HAYES: Yes, sir.

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1 THE COURT: All right. Tell me what those are.

2 MR. HAYES: Under 403, Judge, I would say that it  
3 is irrelevant.

4 THE COURT: All of it?

5 MR. HAYES: All of it, yes, sir. I'm arguing  
6 that it is more prejudicial than probative, as well as  
7 irrelevant. That he is having the argument with Detective  
8 Glover over whether or not it is him in that video. Any  
9 perceived confessions, I believe is what the State is  
10 arguing, is that you're showing me a picture ---

11 THE COURT: You're not suggesting that's a  
12 confession; are you, Mr. McCarley?

13 MR. MCCARLEY: Your Honor, there are, I do  
14 believe statements that are partial confessions in there,  
15 such as, if you enhance it I'll tell you what you want to  
16 know. If you blow it up, I'll tell you the person that was  
17 there with me. Show me my face and I'll tell you. How did  
18 y'all see me but not the person that was with me.

19 THE COURT: Okay. Well, you and I are not going  
20 to agree on that. I don't, I don't perceive that as a  
21 confession. I perceive that as a statement of the fact  
22 that he finds it incredulous that they believe it's him.

23 MR. MCCARLEY: Yes, sir.

24 MR. HAYES: And that's the Defense's argument,  
25 Judge. I also need to throw out 408 as compromising offers

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1 to -- compromise under our South Carolina Rules of Evidence  
2 are not admissible. Throughout the interview Detective  
3 Glover is telling him, if you want to tell us who the  
4 second person is, I know that it's you, we can help you  
5 out. If you don't, we're going to trial. I'm not going  
6 bend to give you any leeway between here and the trial. I  
7 would argue, Judge, that is a compromise and an offer to  
8 compromise working toward a plea deal.

9 Judge, if you were to deem that this video is relevant  
10 and should come in, there is multiple issues as to his  
11 previous character, as well as Detective Glover saying, I  
12 know it's you; I've got you on video. And I would ask for  
13 any references in that matter to be excluded or redacted.

14 THE COURT: Reference as to what?

15 MR. HAYES: Any reference as to his character,  
16 being that he just got out of prison.

17 THE COURT: Oh, sure.

18 MR. HAYES: I didn't know you were home. I know  
19 it's you on that video. I got you. Or if you want to give  
20 me who it is, I'll make a deal with you or we can deal.  
21 That would be the gist of our argument, Your Honor.

22 THE COURT: Okay. Mr. McCarley.

23 MR. MCCARLEY: Thank you, Your Honor. I believe  
24 Mr. Hayes mischaracterized some of the statements of Mr.  
25 Glover. He said, home, I didn't know how long you've been

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1 home. And he actually says, you must be doing good,  
2 because I haven't seen you, or anything like that. He  
3 never says prison, he never says out. He says home.  
4 As to 403, Your Honor, the test is substantially more  
5 prejudicial, not just that it's more prejudicial than  
6 probative. It's obviously probative, or I believe to be  
7 probative, or we wouldn't be trying to use it. It is not  
8 substantially more prejudicial than it is probative. This  
9 is the Defendant's post Miranda statement given to Mr.  
10 Glover. We plan on calling Mr. Glover in the trial of this  
11 case; and thus it's relevant because they have -- they had  
12 this discussion and he was advised and then waived his  
13 rights.

14 THE COURT: All right. I want you to  
15 specifically point out for me why you believe there's  
16 something on there that's relevant to some issue in the  
17 case. Tell me what the relevance is. I know you believe  
18 that he confessed, so that's where I want you to start.  
19 Other than that, tell me what else you think ---

20 MR. MCCARLEY: Your Honor, that's the thrust of  
21 why we would like to play that video. It is because we  
22 believe there are partial confessions throughout. As I  
23 said earlier, you saw me but not who was with me. The  
24 portion, Your Honor, where he pulls out his ID and says,  
25 now, you don't know me. He repeatedly says, now, you don't

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1 know me. Well, Your Honor, in the trial of this case,  
2 we're going to call people that knew him. We're going to  
3 call his -- both of the owners of the company that he  
4 worked for that he then burglarized that already knew him.

5 So the State's theory of the case is not that anyone  
6 that doesn't know him can identify him from the  
7 surveillance footage that we plan to enter. The State's  
8 case is that someone that does know him, as the witnesses  
9 will know him, and knew him previously, can identify him  
10 from that footage. That's -- when he pulls out his ID,  
11 Your Honor, he pretty much says right then, if you don't  
12 know me, you wouldn't know me from that surveillance, but  
13 you do.

14 THE COURT: Well, let me ask you this.

15 MR. MCCARLEY: Yes, sir.

16 THE COURT: If Detective Glover and/or anybody  
17 else can identify the Defendant from that video, or the  
18 video -- the store video -- that the jury could not be in  
19 the same position.

20 MR. MCCARLEY: The jury will ---

21 THE COURT: They're not experts.

22 MR. MCCARLEY: They're not experts, but they do  
23 know him previously. The jury did not know him previously.  
24 There's -- I can see a video of anyone in the world that I  
25 don't know and not be able to identify them. But from that

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1 surveillance ---

2 THE COURT: He's going to be sitting in the  
3 courtroom.

4 MR. MCCARLEY: Yes, sir.

5 THE COURT: I mean, y'all have got pictures of  
6 him and he's here.

7 MR. MCCARLEY: Yes, sir.

8 THE COURT: Do you think a jury -- somebody else  
9 is in a better position to identify him from that video  
10 than the jury is sitting in the courtroom with him?

11 MR. MCCARLEY: Yes, sir, people that have known  
12 him for -- that he's worked for for months and someone like  
13 Detective Glover that's known him for fifteen or twenty  
14 years.

15 THE COURT: Well, how will they be able to  
16 identify his face better than the jury is sitting in the  
17 courtroom with him?

18 MR. MCCARLEY: Because they knew him previously  
19 to viewing that surveillance footage. This also goes in  
20 with the fact that it was Detective Glover during the  
21 course of his investigation thought it was an inside job so  
22 that narrows it down to who they're considering.

23 THE COURT: Well, that's a different issue  
24 altogether. I mean, that's -- well, that's a connection  
25 with the store. I'm talking about when you have a video or

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1 a picture that you want to place into evidence, somebody  
2 saying who's in that picture is in no better position than  
3 the jury to decide who's in the picture if the person in  
4 the picture is sitting in the courtroom.

5 MR. MCCARLEY: Your Honor, I think the State's --  
6 beg the Court's indulgence.

7 Your Honor, if I may, Ms. Young is going -- there's a  
8 hearing to limit some testimony from Mr. Glover and Ms.  
9 Young is going to handle that. And I believe we've moved  
10 in to where she can speak better on behalf of the State on  
11 that.

12 THE COURT: Okay.

13 MS. YOUNG: Your Honor, I do believe based on the  
14 conversations with Mr. Hayes that he is going to make a  
15 motion to exclude Detective Glover's ability to identify  
16 the Defendant from the video, as well as potentially the  
17 store owners, that Mr. McCarley has already spoke about.  
18 You know, that's Mr. Hayes' motion to make. However, we do  
19 have some case law regarding that. And since we're kind of  
20 moving -- you're moving into that, I wanted to go ahead and  
21 take over and pass these cases up and if Mr. Hayes wants to  
22 argue that, then we'll be prepared to defend that position,  
23 Your Honor. I've already given these cases to Mr. Hayes.

24 THE COURT: All right. Mr. Hayes, were you  
25 going to argue that?

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1 MR. HAYES: Judge, I was eventually going to  
2 argue to limit Detective Glover from identifying my client.  
3 Judge, basically the video or the audio here is basically  
4 what this whole case is about. There's two store owners  
5 that have video and they claim that they identify Mr.  
6 Bright from that video, as well as Detective Keith Glover.  
7 Judge, there is case law, and I believe the State has  
8 handed it up, Mitchell, as well as Fripp, as to allowing  
9 another individual to testify about who is in the video  
10 that they see. And the cases have said it is allowed, and  
11 it should be allowed. However, in Mitchell, the quote, and  
12 I'll quote from the last line of 413 on page three of  
13 Mitchell. I'll hand up my copy, as my reference is there  
14 to direct you. The trial court further found that the  
15 testimony's probative value outweighed the prejudice to  
16 Mitchell. But it excluded similar testimony from other  
17 officers as cumulative and prejudicial. Here in this case,  
18 Judge, I believe there's going to be two individuals, which  
19 were the owners of the stores, Ms. Wolf and Mr. Fanning.  
20 They're going to testify that that is my client, if they're  
21 staying consistent with what they said in their interviews  
22 with Detective Glover. After that, I believe the State is  
23 going to call Detective Glover, as well, to have him  
24 identify him from the video. Well, in this case, they  
25 allowed it, Judge, but I don't believe there was any other

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1 witnesses testifying that that is who it purported to be in  
2 the video. This lieutenant said that, on the stand, he had  
3 known him for twenty years, that's it a small town; it was  
4 Newberry, and that he recognized him in the community. No  
5 relation to police work.

6 Your Honor, and my argument would be that Detective  
7 Glover knows Mr. Tyrik Bright through police work. He's  
8 been an officer for almost twenty-six years. He's known  
9 Mr. Bright for fifteen years. And my argument is that he  
10 knows Mr. Bright due to his job and that it would be  
11 prejudicial ---

12 THE COURT: It doesn't matter how he knows him.  
13 I mean, if he knows him, he knows him. Now, he can't  
14 testify he knows him because he arrested him ten times.  
15 But he can testify how well he knows him. If you want to  
16 examine him on that, then he can explain how he knows him.  
17 But I think it's relevant he can testify to the fact that  
18 he knows who he is because he's known him for fifteen years  
19 or whatever.

20 MR. HAYES: Judge, I would argue that would  
21 affect my client's due process because I would be severely  
22 limited as to how I can cross him. If I ask him the  
23 question of how he knew him, he's going to tell me, I  
24 arrested him; that I've known him for fifteen years. And I  
25 would say that that's ---

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1 THE COURT: That's the risk you take.

2 MR. HAYES: Yes, sir. And I would say that  
3 violates his due process rights to confront his witnesses,  
4 because then if I get into that, I'm opening up a door into  
5 his past record and character evidence.

6 THE COURT: Well, what if you had an eyewitness  
7 who said the reason I know him, because he broke into my  
8 house before. You mean, they don't get to testify as an  
9 eyewitness because they might elicit something that's  
10 prejudicial?

11 MR. HAYES: Judge, in that scenario I would say  
12 that he would be able to, but in this scenario I'm saying  
13 that the only reason that he knows him is his connection to  
14 law enforcement, and that is a way of -- in a way,  
15 character evidence that would be more prejudice than  
16 probative.

17 THE COURT: Well, that's how he knows him. He can't  
18 testify that he's arrested him ten times. But he can  
19 testify he's known him for fifteen years. And he has,  
20 which is what he testified to. I mean, it doesn't matter  
21 how he knows him. Now, how he knows him might be more  
22 prejudicial than probative, but ---

23 MR. HAYES: Yes, sir. And that ---

24 THE COURT: --- that doesn't mean that he can't  
25 testify that he's known him for fifteen years.

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1           MR. HAYES: Yes, sir. And the argument is that  
2 I'm asking the Court to keep it out; that it is more  
3 prejudicial than probative, because as the gatekeeper, that  
4 would be the Court's determination.

5           THE COURT: Okay. Did I understand you to say  
6 that this case stands for the proposition that you can  
7 limit the number of people who can identify a defendant  
8 who's committed a crime?

9           MR. HAYES: Yes, sir. It says that -- the way  
10 it's saying is that cumulative evidence of somebody getting  
11 up and saying the same thing over and over and over is,  
12 one, a waste of time and judicial economy; two, that the  
13 cumulative effect of it would be more prejudicial than  
14 probative. The hearing in this case, I'm saying that we've  
15 already got two witnesses that are going to testify to the  
16 exact same material. We don't need Detective Keith Glover  
17 to come up and say, oh, I watched the tape, too, and it is  
18 him, as well.

19           THE COURT: Well, I'll have to read this case.  
20 But you mean to tell me your interpretation of this case is  
21 that if you have ten eyewitnesses to an armed robbery, you  
22 can't call but three of them, because if you have ten  
23 people identify him, it would be prejudicial? I mean,  
24 that's sort of a point; isn't it?

25           MR. HAYES: It is, Judge, but also ---

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22

1 THE COURT: It's also probative; isn't it? It's  
2 the identity of the Defendant as being the perpetrator.

3 MR. HAYES: Judge, and I'd say the cumulative  
4 effect, too, though, is damning to the client, is another  
5 way of putting it.

6 THE COURT: Well, so if you had ten victims in an  
7 armed robbery case, only three of them can testify? Is  
8 that what you're telling me? Is that what this case stands  
9 for?

10 MR. HAYES: No, sir. I'm just saying the  
11 limiting effect of it in an effort to have a fair trial,  
12 that instead of having multiple witness, after multiple  
13 witness, after multiple witness saying that's him, that's  
14 him, that's him, you can accomplish the same effect with  
15 one or two witnesses. And in this case, I'd say that  
16 having Detective Glover come up and testify to it, as well,  
17 that the only reasonable, rational conclusion from the jury  
18 is that my client is a criminal and that's how he knows  
19 him. And that is more prejudicial than probative.

20 THE COURT: Okay. I understand the argument.  
21 Any response to that?

22 MS. YOUNG: Thank you, Your Honor, if I may  
23 briefly. I disagree -- respectfully disagree with Mr.  
24 Hayes regarding the holding of Mitchell. And the reason  
25 that we passed up Mitchell, Your Honor, is that we believe

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1 that it stands for the proposition that it does allow  
2 witnesses to come in -- what you were asking for  
3 previously, you know, how are they in a better position to  
4 judge than the jury? Your Honor, this is not a -- if it  
5 was I don't think we'd be here -- but a trial that's not  
6 necessarily the most clear video surveillance tape. It's  
7 mostly in the dark. And the State's argument is that  
8 people who have had a position to have prior dealings with  
9 Mr. Bright, specially, Mr. Fanning and Ms. Wolf, who were  
10 the owners and proprietors of the business, and Mr. Bright  
11 did work there for a period of time, so they would have  
12 been in a position that the jury won't have the opportunity  
13 to observe him and his face on a daily basis, his  
14 mannerisms, his body language and some of those things that  
15 are evident on the tape, the jury's not going to -- they'll  
16 have a chance to see his face, but they won't have a chance  
17 to see his mannerisms and how he walks and things such as  
18 that. And we believe that Mitchell stands for the  
19 proposition that allowing lay witness testimony that can  
20 assist the finder-of-fact in one of the key points of the  
21 case, which the key point in this case is whether or not  
22 it's Mr. Bright, is admissible testimony.

23       Additionally, in regard to Mr. Hayes' argument about  
24 numerous law enforcement officers, the State's intention is  
25 only to call -- you know, they mention on the tape that

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1 other officers identified him, but we're only planning on  
2 calling Detective Glover. He didn't get asked this by Mr.  
3 Hayes or Mr. McCarley, Your Honor, but he has advised me,  
4 and I believe he would testify, that he's known the  
5 Defendant from the community, as well as living close to  
6 him in the neighborhood. So his knowledge of him -- he has  
7 knowledge of him that's completely outside the field of law  
8 enforcement. And we would not offer any testimony that he  
9 knows him because he arrested him previously, but that he  
10 has knowledge of him outside, you know, the presence of law  
11 enforcement, respective, but from living in the  
12 neighborhood and living in close proximity to Mr. Bright.

13 And additionally, and just kind of referring back to  
14 Fripp, which is another case similarly in time to Mitchell,  
15 that it does further explain allowing people's perceptions  
16 that have had contact with the Defendant. In this case, it  
17 was store clerks, where somebody can burglarize a store and  
18 that the cases do allow that testimony, Your Honor. And we  
19 would ask you to review that and allow us to present the  
20 testimony of the eyewitnesses or the owners of the video.  
21 They're not really eyewitnesses, but Mr. Fanning and Ms.  
22 Wolf, both of them had seen Mr. Bright. And from Mr.  
23 Hayes' argument, it didn't sound like he objected to those,  
24 but rather he objected to Mr. -- Detective Glover's  
25 testimony. We would ask that you consider allowing us to

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1 present that, as well, because we believe that it would  
2 assist the finder-of-fact in this particular case. Like I  
3 said, it's not the most clear video. If it was and we  
4 could blow it up and do all those things, we would. But,  
5 you know, we're going to do the best we have and that's why  
6 we're here, is to determine whether that is Mr. Bright on  
7 the video.

8 THE COURT: Well, ma'am, have you seen the video?

9 MS. YOUNG: Yes, sir, Your Honor.

10 THE COURT: And did you identify Mr. Bright on it  
11 by looking at his face?

12 MS. YOUNG: Could I personally?

13 THE COURT: Yes, ma'am.

14 MS. YOUNG: No, sir, Your Honor. I felt ---

15 THE COURT: Well, why is it that somebody else  
16 can identify him?

17 MS. YOUNG: Well, that's what I was getting back  
18 to, is that Mr. Fanning and Ms. Wolf, who worked with Mr.  
19 Bright, they had an opportunity to observe him, observe  
20 him, how he walks and ---

21 THE COURT: Well, that's a different issue  
22 altogether. I mean, mannerisms and gait and habit and  
23 things you do that other people might not do, that narrows  
24 it down for identification. I know that. But I'm talking  
25 about -- we've been talking about this man's face on the

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1 video.

2 MS. YOUNG: Yes, sir.

3 THE COURT: And what I understood is that the  
4 witnesses are going to say that they saw his face and they  
5 said that's him. But you're standing here, you've seen the  
6 video, the Defendant is sitting right beside you basically,  
7 or you can look at him all you want to, but you're telling  
8 me that you can't identify him, looking at him right now  
9 and looking at the video. Is that a fair statement?

10 MS. YOUNG: Well, I would say this, Your Honor, I  
11 have a hard time -- and I'm not trying to equivocate. But  
12 in the beginning as Mr. -- excuse me -- Detective Glover  
13 referred to, he does have his hand up a lot and he does  
14 have a hat on. The portion of the video which we feel like  
15 is -- the witnesses are going to say -- I mean, you're  
16 asking me to stand up here and a hundred percent say I can  
17 say that's him. If I didn't believe it was him, we  
18 wouldn't be prosecuting him or presenting it, Your Honor,  
19 but I don't think I could say -- I don't know him other  
20 than seeing him -- this is the first time I've seen him in  
21 person, for the first time, so I don't have that same  
22 opportunity that Detective Glover has, having known him for  
23 a number of years and ---

24 THE COURT: Well, what difference does that make?  
25 I mean, his appearance has obviously changed over the

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1 years. I mean, he's gone from a child to an adult. So I  
2 don't think ---

3 MS. YOUNG: It does, Your Honor. I mean, that's  
4 why I asked you to read these cases. They both are ---

5 THE COURT: Well, I'm going to.

6 MS. YOUNG: --- on point regarding how other  
7 witnesses can assist the finder of fact, particularly in  
8 case where the video may not be clear or they haven't had  
9 the same amount of time or opportunity to observe the  
10 Defendant. And that's what these cases are arguing.

11 THE COURT: Well, I understand. But what I'm  
12 saying is, if you can't see somebody's face, then I don't  
13 care how long you've known them, how would you identify  
14 them by their face?

15 MS. YOUNG: Well, you can see his face on that,  
16 Your Honor. I mean, it's not perfectly clear, crystal  
17 clear, but you can see the man's face.

18 THE COURT: All right. Well, maybe I need to  
19 look at the video.

20 MS. YOUNG: And we can -- would you like for us  
21 to get that this afternoon?

22 THE COURT: Yeah. Well, if you've got it on a  
23 disk?

24 MR. MCCARLEY: Yes, sir.

25 THE COURT: Well, I can just look at it myself on

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1 my computer, unless y'all think it would help to blow it on  
2 the big screen.

3 MR. MCCARLEY: Your Honor, it's cut up into  
4 pieces because that's the way it was retrieved. The  
5 surveillance system was actually tampered with that  
6 evening. Retrieved in section. The operative or the  
7 identifying part is about -- I believe it's about a three-  
8 minute segment. It's number 47. Would you mind if we just  
9 play that instead of the entire thirty minutes? The part  
10 that the witnesses can say they identified him from is one  
11 specific segment where ---

12 THE COURT: That's all I need to see.

13 MR. MCCARLEY: Yes, sir. Your Honor, do you want  
14 it up there or do you want it through this?

15 THE COURT: Well, I can do it on my own computer.  
16 We don't have to do it necessarily right now, because I can  
17 look at it after court if we've got some more work to do.  
18 We'll just do it after court.

19 MR. MCCARLEY: Yes, sir.

20 THE COURT: All right. Do we have any other  
21 matters we need to address with Mr. Bright's motions?

22 MR. HAYES: Judge, I'd ask the Court to exclude  
23 witnesses under 615 so that they may not hear the testimony  
24 of each other.

25 THE COURT: Okay. You want to sequester. Have

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1 y'all got any objection?

2 MR. MCCARLEY: No objection, Your Honor.

3 THE COURT: All right. It's reciprocal, of  
4 course.

5 MR. HAYES: Yes, sir. I have no witnesses.

6 THE COURT: All right. Any others?

7 MR. MCCARLEY: At this time I have nothing else,  
8 Your Honor.

9 MS. YOUNG: I was just going to say for  
10 housekeeping purposes, going away from Mr. Bright, we have  
11 a couple of bench warrant requests. We would maybe need a  
12 five minute break. It looks like I might have another plea  
13 signed up.

14 THE COURT: All right. We'll take a fifteen  
15 minute break.

16 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2012-GS-02-00423

2 COUNTY OF AIKEN

3

4 STATE OF SOUTH CAROLINA,

5

-vs-

TRANSCRIPT OF RECORD

6

TYRIK GERARD BRIGHT,  
7 Defendant.

8

9

Heard on June 11 & 12, 2013

10

Aiken, South Carolina

11

12 BEFORE:

13

THE HONORABLE J. DERHAM COLE

14

& A JURY

15

16 APPEARANCES:

17

Counsel on Behalf of the State:  
Nicholas R. McCarley, Esq.  
Elizabeth Burkhalter Young, Esq.

18

19

Counsel on Behalf of the Defendant:  
C. David Hayes, Esq.  
Michael D. Routzong, Esq.

20

21

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Cheri L. Young, RPR  
Circuit Court Reporter  
P O Box 5232  
Aiken, SC 29804-5232

25

## SELECTION OF THE JURY

1 ON TUESDAY, JUNE 11, 2013 AT 11:37 A.M.:

2 THE COURT: All right. Ladies and gentlemen, we are  
3 ready to begin with the trial of the case, the first  
4 trial. It will require some of your participation.

5 The title of the case is the State versus Tyrik Gerard  
6 Bright. Mr. Bright has been accused by the prosecutor by  
7 way of a document called an indictment. An indictment is  
8 not evidence of anything. It's not proof of anything, but  
9 it is the charging paper. It's like a warrant. It's the  
10 charging paper that brings the charge against another into  
11 this court.

12 In this particular case Mr. Bright is charged with the  
13 crime of burglary in the second degree.

14 The State alleges in this indictment that Mr. Bright  
15 did here in Aiken County on or about December the 24th of  
16 2011, willfully and unlawfully enter, without consent and  
17 with intent to commit a crime therein, a building which is  
18 known as All-Star Rentals located on Williamsburg Street  
19 Northeast here in Aiken, and that he entered the building  
20 without the consent and with the intent to commit a crime  
21 therein.

22 Now as to those allegations and as to that charge the  
23 Defendant has entered a plea of not guilty. A plea of not  
24 guilty places upon the State, because they've made the  
25 charge, the burden of proving the allegations that are set

1 afternoon.

2 (Jury panel excused and exits courtroom at 12:13 p.m.)

3 THE COURT: All right. Yesterday there were two  
4 motions heard. One was a Jackson V Denno motion wherein  
5 the State was intending to offer into evidence a video of  
6 an interview by Detective Glover of the Defendant  
7 subsequent to his arrest or pursuant to an investigation  
8 for crimes for which the Defendant is now charged.

9 And I understand now the State has made the decision  
10 to, not to introduce the video or the interview into  
11 evidence?

12 MR. McCARLEY: That is correct, Your Honor.

13 THE COURT: Okay. The other motion was by the defense  
14 to exclude identification of the Defendant as being one of  
15 the persons shown in a video of the location of the  
16 burglary.

17 The defense moved to exclude Detective Glover and  
18 Mr. Fanning and Ms. Wolf -- or Mr. Fanning and Ms. Wolf  
19 were the ones that the State was going to ask to identify  
20 the Defendant from the in-store video?

21 MR. McCARLEY: That is correct, Your Honor.

22 THE COURT: Okay. And they made a motion to exclude  
23 that identification based upon the fact that they're not  
24 experts and that the jury's in the same position they'd be  
25 in to make an identification of the Defendant from the

1 video if such an identification can be made.

2 And they contended that the video was not clear  
3 enough for such an identification to be made and therefore  
4 they should not be permitted, and that Mr. Glover's  
5 relationship with the Defendant was based upon  
6 professional experiences he had through his employment as  
7 a detective.

8 Mr. Hayes, I've read the two cases that were  
9 submitted. Those are State versus Fripp and State versus  
10 Mitchell. And while at the time during argument I had  
11 some reservation about the witnesses making that  
12 identification, I have looked at the video itself. And  
13 there's more exhibited in the video other than just the  
14 Defendant's face. It also shows him walking through what  
15 appears to be some type of warehouse. And it shows his  
16 clothing. It shows his mannerisms and it shows also at  
17 least some view of his face.

18 Having read the cases, I think it's clear based upon  
19 case law now that such an identification is proper where  
20 the identification is based upon the personal perception  
21 of the witness based upon their knowledge of the  
22 Defendant. And therefore your motion to exclude their  
23 identification of the Defendant as being one of those  
24 persons exhibited in the video is denied.

25 So they will be permitted to make that identification

1 so long as they can. Number one.

2 And, number two, it's based upon their personal  
3 perception and their personal knowledge of the Defendant.  
4 So that foundation will have to be laid.

5 There will, however, be no testimony or evidence  
6 elicited from Detective Glover that he knows the Defendant  
7 in his capacity as an Aiken County Public Safety  
8 Detective. In other words it can't be, it can't be stated  
9 nor can it be insinuated or intimated or inferred that he  
10 knows the Defendant based upon him investigating criminal  
11 activity that might have involved the Defendant.

12 So he can testify that he knows the Defendant from the  
13 community and he's known him for 15 years or whatever, but  
14 it can't relate to anything he's -- any knowledge he has  
15 of the Defendant based upon any criminal history or  
16 alleged criminal history of the Defendant unless the door  
17 is opened by the defense's cross-examination.

18 All right. Any other matters we need to address  
19 before the jury is sworn?

20 MR. HAYES: Judge, before we move on, I just want to  
21 make sure that I was clear on what my actual argument was  
22 for the record. It was the cumulative effect of having  
23 more than one person, i.e., Mr. Fanning, Ms. Wolf and then  
24 Detective Glover testify as to who the Defendant was, and  
25 that the cumulative effect was more prejudicial than it

1 was probative.

2 THE COURT: Well, I understand that's part of the  
3 argument. But that's based on the Mitchell decision. And  
4 the reason the Court ruled that there was a cumulative  
5 prejudicial effect, that was because the State in that  
6 case was attempting to call several police officers to  
7 testify they knew the defendant, they recognized him.

8 And I think the concern the Court had there was that  
9 it would give the appearance that the Defendant is known  
10 by the entire police department because he's got a  
11 criminal history.

12 That's not what's happening in this case.

13 MR. HAYES: Yes, sir.

14 THE COURT: You have one police officer testifying  
15 that he knows the Defendant. The other two people are, as  
16 I understand it, are people who own the business and who,  
17 for whom the Defendant was employed.

18 MR. HAYES: Yes, sir.

19 THE COURT: And so they know him based upon their work  
20 experience or his work experience and not based on any  
21 other contact.

22 So in that event I don't think the cumulative effect  
23 is anything that's prejudicial or if it is prejudicial,  
24 it's appropriately so. I mean, it's just people who can  
25 identify the Defendant as being what they contend as the

1 perpetrator of a burglary. So I think that's appropriate.

2 MR. HAYES: Thank you, Your Honor.

3 THE COURT: But your exception is noted.

4 MR. McCARLEY: Your Honor, the State noticed that you  
5 did not read the portion of the indictment whereby the  
6 Defendant has two prior burglary convictions. I just want  
7 to make sure for the record that I'm going to be able to  
8 refer to that in opening and prove that as an element of  
9 the crime.

10 THE COURT: Well, do you want to be heard on that,  
11 Mr. Hayes?

12 MR. McCARLEY: Your Honor, we've already agreed. We  
13 agreed late last week to stipulate to that fact. And I  
14 have the paperwork here for Mr. Hayes to sign.

15 MR. HAYES: Judge, as long as it's clear that they can  
16 only use it as the element of the crime and not as a way  
17 to prove character, I don't see where I have the grounds  
18 to object.

19 THE COURT: I agree with you. I will instruct them on  
20 what the stipulation is, that he has two prior  
21 convictions?

22 MR. McCARLEY: Yes, sir, Your Honor.

23 THE COURT: Okay. But they didn't agree to stipulate  
24 and avoid the jury having --

25 MR. McCARLEY: That is correct.

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 THE COURT: You didn't?

2 MR. MCCARLEY: I did not, sir. I plan on entering the  
3 physical stipulation itself, a piece of paper as evidence.

4 THE COURT: Have you seen that, Mr. Hayes?

5 MR. HAYES: I believe I have, Judge.

6 THE COURT: Are you in agreement with it?

7 MR. HAYES: That's correct, Judge.

8 THE COURT: Okay. Well, because of the hour I think  
9 we'll recess for lunch and we'll bring the jury back and  
10 start at two o'clock with the trial of the case. Anybody  
11 have a problem with that?

12 MR. MCCARLEY: No, sir, Your Honor.

13 THE COURT: Okay. Bring me the jury.

14 (Jury enters courtroom at 12:26 p.m.)

15 THE COURT: All right. Ladies and gentlemen, we're  
16 going to recess for lunch because of the hour. We'll  
17 start with the trial of the case at two o'clock this  
18 afternoon.

19 So while you are going to be excused now for lunch,  
20 let me caution you that you are not under any  
21 circumstances to discuss this case with any person  
22 whatsoever in any fashion whatsoever, because your  
23 decision has to be based solely upon what you see and hear  
24 during the course of the trial.

25 You cannot be influenced by any outside

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 continue, in that event you become the 12th. So we do  
2 appreciate your participation as an alternate juror just  
3 as we appreciate the participation of each of you jurors  
4 who have been selected for the purpose of deciding the  
5 verdict in this particular case.

6 You may swear the panel.

7 THE CLERK: Please stand and raise your right hand.

8 (Jury impaneled.)

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: All right. Ladies and gentlemen, as you  
11 well know, you have now been selected and sworn to decide  
12 the case of the State versus Tyrik Gerard Bright. As you  
13 also know, Mr. Bright has been accused by the solicitor by  
14 way of this indictment with having committed the crime of  
15 burglary in the second degree.

16 They allege that on December the 24th of 2011, he did  
17 willfully and unlawfully and without consent of the  
18 owners, enter a building on Williamsburg Street here in  
19 the City of Aiken with the intent to commit a crime  
20 therein.

21 Those are allegations that he denies. He's entered a  
22 plea of not guilty. As I've told you, that plea of not  
23 guilty has placed upon the State the burden of proving the  
24 allegations that they have made, the burden of proving  
25 each of the essential elements that make up the crime of

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 burglary in the second degree. And therefore the burden  
2 is upon the State to establish the Defendant's guilt to  
3 the satisfaction of you 12 jurors beyond a reasonable  
4 doubt before any verdict of guilty could be returned.

5 Any person who is accused of a crime, and it doesn't  
6 matter how serious the offense might be for which that  
7 person stands charged, any person accused of a crime is  
8 always presumed under the law to be innocent of that  
9 charge. And that presumption of innocence remains with  
10 any defendant as it does with this Defendant from the time  
11 that he is placed under arrest and throughout the course  
12 of the criminal process and even throughout the course of  
13 the actual trial in the case. That presumption of  
14 innocence will be with Mr. Bright even as you go back at  
15 this trial's conclusion to begin with your deliberations  
16 in this case.

17 And that presumption of innocence will be with him in  
18 that jury room and it will be with him forever unless you  
19 12 jurors determine that he's no longer entitled to that  
20 presumption of innocence.

21 In other words, after you have carefully considered  
22 all of the evidence in the case and from that evidence you  
23 have decided what you believe to be the true facts as they  
24 relate to these allegations, and after deciding those  
25 facts you will apply the law that I will have provided

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 you, if you 12 jurors unanimously determine that his guilt  
2 has been proven beyond a reasonable doubt then he would no  
3 longer be entitled to the presumption of innocence. But  
4 it is only if, unless and until you are satisfied of his  
5 guilt beyond a reasonable doubt that the presumption of  
6 innocence would no longer be applicable.

7 Now the way the trial will proceed is that in a moment  
8 the lawyers are going to address you in what are called  
9 opening statements. There are two occasions in the trial  
10 of the case where lawyers are permitted to address the  
11 jury. And that is at the beginning of the trial before  
12 any evidence has been introduced, then again at the  
13 conclusion of the trial after all of the evidence has been  
14 received.

15 But keep in mind, as I've just indicated, what the  
16 lawyers tell you in their statements is not to be  
17 considered by you as any evidence upon which you will base  
18 your decision. And that's because the lawyers don't know  
19 anything about this case of their own personal knowledge  
20 or perception like witnesses will be testifying to.

21 The lawyers won't take the witness stand. They won't  
22 be placed under oath and they won't be subject to direct  
23 and cross-examination like each of the witnesses will be.

24 And so what they tell you in their statements should  
25 not be considered by you as evidence upon which you will

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 base your decision. But you should listen to what they  
2 have to say because those statements do serve a purpose.  
3 The opening statements will serve to provide you with a  
4 basic understanding as to what this case is about from  
5 both the perspective of the State and of the defense so  
6 that you'll have some context in which to place the  
7 evidence that we will be receiving shortly thereafter.

8 The closing statements occur after all of the evidence  
9 has been received. And, again, while those statements are  
10 not to be considered as evidence, it does afford the  
11 lawyers an opportunity to try to persuade you or to  
12 convince you that the evidence in the case does or does  
13 not support a particular decision.

14 And as I've said, it's in between the lawyers'  
15 statements that we actually receive the evidence upon  
16 which you will base your decision.

17 The State has the burden of proof, as you know.  
18 Therefore the State will go forward first in its  
19 presentation of evidence.

20 Once the State has concluded with that presentation of  
21 evidence, a defendant has the same opportunity to testify  
22 or to call witnesses or introduce evidence. But a  
23 defendant in a criminal trial is never under any  
24 obligation to testify or to call a witness or to introduce  
25 evidence. And that's because the burden is not upon a

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 person charged with a crime to prove that he or she is not  
2 guilty or to prove that he or she is innocent because in  
3 some cases that might not even be possible.

4       The burden is on the State to introduce evidence  
5 because they have the burden of proving his guilt beyond a  
6 reasonable doubt. But a defendant has no corresponding  
7 burden. A defendant doesn't have to prove anything  
8 because, as I've stated, in some cases they might not be  
9 able to.

10       And therefore where a defendant does not testify or  
11 does not call a witness or does not introduce evidence,  
12 that's not something that you may allow to weigh in the  
13 slightest degree against the Defendant. You can't  
14 consider it in any way in your deliberations or in your  
15 determination as to whether or not his guilt has been  
16 proven beyond a reasonable doubt.

17       You simply must consider the evidence introduced  
18 during the trial in order to make your determination of  
19 fact, and then apply the law as I will have provided it to  
20 you. But while a defendant is not under any obligation to  
21 prove anything, a defendant is always afforded an  
22 opportunity to present evidence in the event he or she  
23 wished to do so.

24       So after all of the evidence has been received and  
25 after you hear the final summations of the lawyers, I will

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 then instruct you fully on the law as it relates to the  
2 criminal law generally and as it relates to this  
3 particular crime specifically. And after that you'll be  
4 asked to go back and to begin with your deliberations in  
5 the case.

6 And through that process you're simply going to be  
7 called upon through the exercise of good judgment and  
8 common sense, conscientiously applied to the testimony and  
9 evidence in the case to decide what you believe to be the  
10 true facts as they relate to these allegations. And then  
11 once you decide those facts, you'll apply the law that I  
12 will have provided you and you will determine whether or  
13 not the Defendant's guilt has been proven beyond a  
14 reasonable doubt.

15 And if it has, then your verdict would be guilty and  
16 if it has not, then your verdict would be not guilty.

17 So all that we will ask you to do in this case is to  
18 pay careful attention throughout the course of the trial.  
19 Give every witness the same degree of attention as they  
20 testify.

21 During the course of any trial, there may be some  
22 conflicts in testimony. And where those conflicts relate  
23 to a material fact that has to be decided in order for you  
24 to arrive at a decision in the case, you are the persons  
25 who decide what is the most believable and credible

## JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 testimony and that's the testimony that you will accept.

2       And you will reject any testimony or other evidence  
3 that you find not to be credible or believable. But in  
4 order for you to be in the proper position to be able to  
5 fairly evaluate a witness's testimony, you have to pay  
6 attention while they testify so that you'll be in the  
7 proper position at the trial's conclusion to judge that  
8 witness's testimony in light of not just his or her own  
9 testimony but in light of all of the testimony and all of  
10 the evidence received during the course of the trial.

11       And it's also important that you keep an open mind  
12 throughout the course of the trial. And that simply means  
13 that you are not to begin making up your minds or  
14 formulating your opinions as to what you think the  
15 ultimate decision in this case ought to be until after all  
16 of the evidence has been received, until I've instructed  
17 you on the law that's applicable in the case, and until  
18 you've been asked to go back and begin with your  
19 deliberations.

20       That is the process that is designed for you 12 jurors  
21 to arrive at a fair and just decision in this case and in  
22 any case that you might be called to serve upon.

23       So I do want to thank you in advance for your  
24 participation as well as for your careful attention. I  
25 would ask that you please give the lawyers your attention

## OPENING STATEMENTS ON BEHALF OF THE STATE

1 now as they give you their opening statements.

2 Mr. McCarley?

3 MR. MCCARLEY: Thank you, Your Honor. Mr. Hayes,  
4 Mr. Routzong. Ladies and gentlemen of the jury.

5 For Mike Fanning and Mary Wolf it was not grinch who  
6 stole Christmas in 2011. It was the Defendant, Tyrik  
7 Bright. And he didn't use a sled. He didn't go into  
8 homes and steal gifts. He walked across the street from  
9 his house and he went into All-Star Rentals which is owned  
10 by this brother and sister. And he did \$13,000 worth of  
11 damage and stole a long list of items.

12 He worked there. You're going to hear testimony from  
13 right here. Tyrik Bright worked at All-Star Rentals,  
14 worked for Mike and Mary. He was caught on video. They  
15 have eight video cameras at All-Star Rentals. And he was  
16 caught on video for a large portion of this burglary.

17 What you're going to hear from this stand is that the  
18 Defendant, Tyrik Bright, got onto the property. You're  
19 going to watch him try to kick down a door. You're going  
20 to watch him try to get into a window.

21 What you're not going to see, because it was turned up  
22 later in the investigation, is how he actually got into  
23 the building. He took the metal siding, tore it back and  
24 crawled into the building. He then went to a back door,  
25 let another unidentified person into the building. They

## OPENING STATEMENTS ON BEHALF OF THE STATE

1 proceeded to do \$13,000 worth of damage and steal goods,  
2 the damages and the goods totaling \$13,000. They're on  
3 video camera doing that.

4 It's also important to know that the Defendant has  
5 been convicted twice of burglary. That is an element of  
6 this crime. He has two prior convictions for burglary;  
7 one in 2005, one in 2007.

8 Which brings us to the law. What's the law in this  
9 case? What's he accused of? Burglary in the second  
10 degree violent. There's a number of different kinds of  
11 burglaries; burglary first, burglary second non violent,  
12 burglary second violent, and burglary third.

13 Tyrik Bright is guilty of burglary in the second  
14 degree violent because what he did meets these four  
15 elements; a person with two prior convictions for  
16 burglary, enters a building, without permission, and with  
17 the intent to commit a crime while inside. What I've just  
18 described to you from the facts and what you're going to  
19 hear from this stand and see on this video monitor, you're  
20 going to meet those four elements.

21 Now the State has the burden, as the Judge said. That  
22 is the law. That's a fact. And we welcome that burden.  
23 We have to prove every element of those four things beyond  
24 a reasonable doubt that it was Tyrik Bright that did those  
25 four things.

## OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1       Beyond a reasonable doubt simply means firmly  
2 convinced. If a person believes something beyond a  
3 reasonable doubt, they're simply firmly convinced.

4       If at the end of all the testimony that you hear --  
5 we're going to call four witnesses to prove beyond a  
6 reasonable doubt that Tyrik Bright committed this  
7 burglary. If you're firmly convinced, and you have to  
8 honor your oath, find him guilty of burglary in the second  
9 degree violent.

10       Reasonable doubt is not something that you're going to  
11 have to look high and low for. It's not something that  
12 you're going to have to pull out a flashlight and search  
13 for. Okay. It is, after all, reasonable. If it's there,  
14 you'll see it.

15       Please take your time. Listen to everybody that comes  
16 up here. Look at some of the evidence that we're going to  
17 enter. Watch this video. Consider it thoughtfully  
18 because while this is very, very serious it's not very  
19 complicated. Okay. And it's not going to take too long  
20 but it is very, very serious and we appreciate y'all's  
21 time and look forward to proving this case to you.

22       THE COURT: Mr. Hayes?

23       MR. HAYES: Your Honor, Mr. McCarley. Ladies and  
24 gentlemen, I agree with the State on the last part. It's  
25 not hard. This is probably one of the easiest trials I've

## OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 done in a long time.

2       However, one thing. The State is going to call four  
3 witnesses. Of these four, I believe three will say they  
4 looked at this video and they're going to say that they  
5 believe that's my client. Our position is that you find  
6 what you look for.

7       There is a video. It is not very long. Y'all  
8 decide. You are the finders of the facts. Y'all get to  
9 go back and view this as a group. And after watching that  
10 video if you believe that's Mr. Bright, you have to find  
11 him guilty; however, if you don't believe it's Mr. Bright,  
12 you've got to find him not guilty.

13       And they talked about firmly convinced or as I like to  
14 say a reasonable hesitation. If you have to hesitate  
15 because you're not absolutely sure or you're not positive,  
16 that hesitation is reasonable doubt. And that reasonable  
17 doubt has to be found in favor of the Defendant. That is  
18 reasonable doubt. If you have to hesitate, you're not  
19 firmly convinced.

20       Now, you also heard the State mention that he's got  
21 two prior burglaries. It is an element of the crime.  
22 That is the only reason it can be brought up. That's the  
23 only reason it's before you. Okay. It cannot be used to  
24 think, well, he's done it before, he's guilty of it this  
25 time. That is absolutely improper. And the Judge is

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1 going to instruct you on that at the end of the trial.

2 All right. So, ladies and gentlemen, I want you to  
3 pay close attention. I want y'all to watch the video,  
4 listen to the witnesses. And at the end of this trial  
5 you, you are the ones that have to decide. Watch the  
6 video. A picture is worth a thousand words.

7 THE COURT: Mr. McCarley?

8 MR. MCCARLEY: Thank you, Your Honor. The State of  
9 South Carolina calls Officer Chris Walker.

10 CHRISTOPHER WALKER, having been duly sworn, was  
11 examined and testified as follows:

12 THE CLERK: Have a seat in the witness box. State  
13 your full name for the Court and spell your last.

14 THE WITNESS: My name is Christopher Walker. Last  
15 name is spelled W-A-L-K-E-R.

16 DIRECT EXAMINATION

17 BY MR. MCCARLEY:

18 Q. Officer Walker, how are you doing?

19 A. Doing well.

20 Q. Good. Where do you work?

21 A. I work at the Aiken Department of Public Safety.

22 Q. How long have you been working there, sir?

23 A. I began my employment there on December 27th of 2007,  
24 became a certified law enforcement officer on the  
25 following April.

CHRISTOPHER WALKER - DIRECT

1 Q. And what is your position there?

2 A. I am assigned to the patrol division.

3 Q. What are your duties there in the patrol division?

4 A. Patrol division, we handle an array of situations. We  
5 are police, fire, first responders. Our police duties  
6 include answering calls of service, enforcing traffic laws  
7 and crimes in progress.

8 Q. Okay. And were you working as an officer for Aiken  
9 Department of Public Safety on Christmas Day, December  
10 25th, 2011?

11 A. Yes, I was.

12 Q. And did you receive a call to a burglary that day?

13 A. I did.

14 Q. At about what time; do you remember?

15 A. It was around one, one p.m.

16 Q. Did you go immediately to the scene of the burglary?

17 A. No. I was requested to respond with our audio-visual  
18 data collection kit.

19 MR. McCARLEY: Permission to approach, Your Honor?

20 THE COURT: You may.

21 BY MR. McCARLEY:

22 Q. Is that what you went to public safety to get?

23 A. This is exactly the box, the kit.

24 Q. And what is that, sir?

25 A. This is our data collection kit used to collect video

CHRISTOPHER WALKER - DIRECT

1 and audio surveillance.

2 Q. And you then took that to the incident location?

3 A. I did.

4 Q. And what is that location?

5 A. It's All-Star Rentals on the 100 block of  
6 Williamsburg.

7 Q. Is that in the City of Aiken?

8 A. It is.

9 Q. Which is in Aiken County?

10 A. It is.

11 MR. MCCARLEY: Okay. Permission to approach?

12 THE COURT: You may.

13 BY MR. MCCARLEY:

14 Q. Officer Walker, what I'm handing you has been marked  
15 State's Exhibit Number Three. Do you recognize that?

16 A. Yes, I do.

17 Q. And is that a true and accurate representation of what  
18 it depicts?

19 A. Yes, it is.

20 Q. Okay. Have there been any alterations, additions or  
21 deletions to that photo?

22 A. Not to my knowledge. I cannot tell; no, sir.

23 MR. MCCARLEY: Your Honor, the State moves to  
24 introduce State's Exhibit Number One into evidence. I  
25 apologize. Three into evidence, Exhibit Three.

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1 MR. HAYES: What was it?

2 THE COURT: Have you seen it? Show it to him.

3 MR. McCARLEY: (Document handed to defense counsel.)

4 MR. HAYES: No objection.

5 THE COURT: It's admitted.

6 (Thereupon, State's Exhibit No. 3, photograph, was  
7 received into evidence.)

8 BY MR. McCARLEY:

9 Q. What is that, sir?

10 A. This is the store front picture of the incident  
11 location.

12 Q. And is that where you responded on December 25th,  
13 2011?

14 A. Yes, it is.

15 Q. And did you have that box with you?

16 A. I did.

17 Q. And what exactly is inside that box and how is it  
18 used?

19 A. Inside this box is a number of devices used for  
20 collecting video and audio surveillance. We can collect  
21 it in several different ways. Simple as a flash drive.  
22 We can use CDs or DVDs to recover the video if we have  
23 that privilege. A lot of times surveillance systems are  
24 password protected and the administrator is not on the  
25 scene at the time or they have forgotten the password. So

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1 we have to use other means of collection.

2 And this device here is a digital video recorder and  
3 this is the actual device that I used to collect the video  
4 that day.

5 Q. And how did you use that device on that day?

6 A. You actually put this online from the DVR in  
7 between -- you put it in between the DVR and the monitor.

8 Q. What's DVR?

9 A. The DVR is the unit that actually records and stores  
10 all the data, the video or audio if it has audio. But  
11 this goes in between the actual box, the DVR and the  
12 monitor. So whatever is displayed on the monitor is  
13 depicted on this small screen here.

14 Q. And did you ever receive any training in this area,  
15 sir?

16 A. I have; yes, sir. I've, I attended a 40-hour class  
17 given by the MPGC in gathering electronic surveillance.

18 Q. Okay. And where in the building is that depicted in  
19 Exhibit Three here?

20 MR. McCARLEY: Your Honor, if I may publish this  
21 briefly?

22 THE COURT: You may.

23 (Exhibit displayed to the jury.)

24 BY MR. McCARLEY:

25 Q. Where in this building did you use this equipment?

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1 A. If you walk through the doors that you see here on  
2 this photograph and you walk through a showroom office  
3 area, you come to an elevated level. I guess a second  
4 level sort of divide. There's actually a wall in the rear  
5 of this, this showroom. You step up and you go around the  
6 wall and there's two cubicles in the back.

7 Q. And when you plugged that device up to the computer,  
8 what happened?

9 A. I immediately started to go through the past night's  
10 recorded surveillance in order to identify just when the  
11 intruder became on scene.

12 MR. MCCARLEY: Permission to approach, Your Honor?

13 THE COURT: You may.

14 BY MR. MCCARLEY:

15 Q. What I'm handing you has been marked State's Exhibit  
16 Four, Five and Six. Take a look at those.

17 A. (Complies.)

18 Q. Are those an accurate representation of the views of  
19 the security camera as you saw them that day?

20 A. Exhibit Four is an accurate depiction of the loading  
21 dock.

22 Q. Yes, sir.

23 A. Exhibit Five is an accurate depiction of the warehouse  
24 area. Exhibit Six is the location of the surveillance  
25 camera at the time. However it looks like the furniture

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1 has been moved, rearranged.

2 Q. Has the cubicle been moved out of the way right there?

3 A. It has.

4 Q. That is the same camera angle?

5 A. It is.

6 Q. And are those -- have there been any altercations,  
7 additions or deletions besides what you've told the jury  
8 in the photos?

9 A. Besides from the furniture being moved around in the  
10 showroom, no.

11 MR. McCARLEY: Your Honor, the State now moves to  
12 introduce Exhibits Four through Six into evidence.

13 MR. HAYES: Judge, I would object to Number Six as not  
14 being substantially the same as it was on the night of the  
15 incident, that the furniture being moved is a different  
16 view and all.

17 THE COURT: Let me see the picture.

18 (Document handed to the Judge.)

19 THE COURT: Let me see y'all just a moment, please.

20 MR. McCARLEY: Yes, sir.

21 (Off-the-record discussion.)

22 BY MR. McCARLEY:

23 Q. Officer Walker, as to Number Six, could you explain to  
24 the jury a little bit more exactly what is different about  
25 that?

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1 A. The office spaces or cubicle, the partitions have been  
2 rearranged since the night of the incident.

3 Q. Okay.

4 A. The furniture is just, has been rearranged.

5 Q. Okay. And looking at Number Six, is it this cubicle  
6 that's been moved --

7 A. Yes.

8 Q. -- that direction? Are these two offices the same?

9 A. That's the same, yeah. It's an addition to that  
10 office area, that cubicle area.

11 MR. MCCARLEY: Your Honor, permission to publish these  
12 three to the jury.

13 THE COURT: My understanding is that the furniture in  
14 the photograph is not the same as it was on December the  
15 24th of 2011. The purpose of you offering that photograph  
16 is what, Mr. McCarley?

17 MR. MCCARLEY: Is to establish the exact camera angle  
18 that was used that night.

19 THE COURT: Just simply the camera angle?

20 MR. MCCARLEY: Yes, sir.

21 THE COURT: Mr. Hayes?

22 MR. HAYES: Judge, I just renew my objection.

23 THE COURT: Note your objection. It's admitted.

24 (Thereupon, State's Exhibit Nos. 4, 5 and 6,  
25 photographs, were received into evidence and published for

CHRISTOPHER WALKER - DIRECT

1 the jury.)

2 BY MR. MCCARLEY:

3 Q. Now, Officer Walker, once you had the digital video  
4 recorder hooked into the computer and the surveillance  
5 camera video up and running, what did you do then?

6 A. Like I said, I started reviewing the night's footage  
7 and actually identified when an intruder was on the  
8 premise.

9 Q. And how did you identify when an intruder was on the  
10 premises?

11 A. The motion lights outside actually came on so that  
12 alerted me.

13 Q. And what did the screen look like to you when you were  
14 looking at it?

15 A. There was a -- the first thing I look for is every  
16 camera angle because we don't know where they came in and  
17 so if you look at everything it's easy to identify when  
18 something is going on. And then that's when we saw or I  
19 saw the activation of a motion light.

20 Q. When you saw the activation of motion lights, what did  
21 you do then with the camera?

22 A. I then isolated that one camera to determine if it was  
23 a person, an animal, a piece of trash blowing across the  
24 yard there, anything to identify what set it off.

25 Q. Now when you gathered this information, did you only

CHRISTOPHER WALKER - DIRECT

1 gather the relevant information or do you have -- did you  
2 record the entire night's surveillance?

3 A. I only gathered the relevant information.

4 MR. McCARLEY: Permission to approach, Your Honor?

5 THE COURT: You may.

6 BY MR. McCARLEY:

7 Q. Officer Walker, what I'm handing you has been marked  
8 State's Exhibit Number Seven. Do you recognize that CD?

9 A. This is the DVR that was made from the surveillance  
10 that we gathered.

11 Q. And have you watched that?

12 A. I have.

13 Q. In its entirety?

14 A. I have.

15 Q. Is that the same footage you viewed on December 25th,  
16 2011?

17 A. It is.

18 Q. Has it been altered or changed in any form or fashion?

19 A. No.

20 MR. McCARLEY: Your Honor, the State now moves to  
21 introduce State's Exhibit Number Seven into evidence.

22 MR. HAYES: No objection, Your Honor.

23 THE COURT: It's admitted.

24 MR. McCARLEY: Your Honor, may we publish it to the  
25 jury?

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1 THE COURT: You may.

2 (Thereupon, State's Exhibit No. 7, DVD of video, was  
3 received into evidence and published to the jury.)

4 BY MR. MCCARLEY:

5 Q. One quick question, Officer Walker. Could you please  
6 explain to the jury about viewing this footage why there  
7 are two time stamps on this video?

8 A. Absolutely. Like I said, this is in line. This  
9 digital recorder is a device that's in line from the DVR  
10 to their monitor.

11 Their surveillance system much like every other  
12 surveillance system has a time stamp. It tells you the  
13 date and the time. If it's accurate, it's up to them and  
14 whoever maintains their system.

15 This also had a time stamp. And this is -- this  
16 offers you a different time stamp because it loses time or  
17 resets for whatever reason, I'm not sure why, but there's  
18 a difference in the time.

19 And it's overlaid. You can see that the actual date  
20 and time that this incident occurred will be the one  
21 behind the bold time stamp. So it's, it's overlaid on  
22 top, but the actual time is the one that's behind. The  
23 first time stamp.

24 (Thereupon, video, State's Exhibit No. 7, was played  
25 for the jury.)

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1 BY MR. MCCARLEY:

2 Q. Officer Walker, is that all the video you collected  
3 that day?

4 A. That is.

5 Q. Okay. And I saw -- I saw the mouse, the cursor moving  
6 around a lot on the screen. What was going on there?

7 A. That was me selecting the different camera selections  
8 and knowing when to start recording -- start that camera  
9 in order for me to start the recording.

10 Q. Okay. And who was with you while you were viewing  
11 this on Christmas Day 2011?

12 A. For the most part, I was -- the first part the  
13 responding officer, first responding officer was there.  
14 He then went into service once I started collecting the  
15 data.

16 Mr. Fanning was there for some time and Detective  
17 Glover was there early on in my appearance there.

18 Q. And was Ms. Mary Wolf there?

19 A. She was. Yeah, she was in and out as well. Yeah, I'm  
20 sorry.

21 Q. Did they ever identify anyone from the surveillance  
22 camera?

23 MR. HAYES: Objection. Hearsay.

24 THE COURT: Well, the answer is yes or no but don't  
25 testify to what they said.

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1 THE WITNESS: Yes. They did identify someone.

2 BY MR. MCCARLEY:

3 Q. Mike Fanning identified someone?

4 A. Yes.

5 Q. Mary Wolf identified someone?

6 A. Yes..

7 Q. And what did you do after they identified someone?

8 A. After they made a positive identification, then I  
9 concluded my collection, packed my kit and returned to  
10 headquarters.

11 Q. Okay. Were you yourself able to identify anyone in  
12 the video?

13 A. No.

14 Q. Did you know Tyrik Bright at that time?

15 A. No.

16 Q. What did you do with that video after you left the  
17 incident location, sir?

18 A. I went back to headquarters, placed the video -- the  
19 footage into evidence.

20 Q. And while you were there on the scene, did you learn  
21 through the course of the investigation where the  
22 Defendant gained entry?

23 A. I did.

24 MR. MCCARLEY: Permission to approach?

25

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1 BY MR. MCCARLEY:

2 Q. What I'm handing you has been marked State's Exhibit  
3 Number Nine. Do you recognize that, sir?

4 A. It's the portion of the building where the siding was  
5 torn.

6 Q. Okay. Is that an accurate representation?

7 A. It is.

8 Q. Okay. Have there been any alterations or deletions or  
9 changes to that picture?

10 A. It's been repaired.

11 Q. Okay. What's been repaired?

12 A. The siding. The siding was, was repaired somewhere  
13 there.

14 MR. MCCARLEY: Your Honor, the State moves to  
15 introduce Exhibit Nine into evidence?

16 MR. HAYES: Judge, I would object. It's the same as  
17 Number Six. It's not substantially the same or similar as  
18 it was on the date of the incident. I believe the  
19 testimony was that the siding had been repaired in that  
20 video or in that photograph.

21 THE COURT: The picture, I thought it had been  
22 repaired after the picture. Is that a photograph from  
23 that night?

24 MR. MCCARLEY: It is not. It is a photograph of --  
25 from recently of the point of entry.

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1 THE COURT: And the difference only is that the siding  
2 has been repaired?

3 MR. MCCARLEY: Yes, sir, Your Honor.

4 THE COURT: Overrule the objection.

5 MR. MCCARLEY: Permission to publish?

6 THE COURT: You may..

7 (Photograph displayed to the jury.)

8 (Thereupon, State's Exhibit No. 9, photograph, was  
9 received into evidence.)

10 BY MR. MCCARLEY:

11 Q. Officer Walker, when you were on the scene on  
12 Christmas Day 2011, did you actually see that siding  
13 peeled back?

14 A. I did.

15 Q. And was there a hole left there when it was peeled  
16 back?

17 A. There was.

18 Q. And would it have been big enough for a man to crawl  
19 through?

20 A. Yes, it was.

21 Q. Okay. Permission to approach?

22 This has been marked State's Exhibit Number Eight,  
23 Officer Walker. Do you recognize that?

24 A. I do.

25 Q. And what is that, sir?

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1 A. This is a picture of the loading area, the loading  
2 dock area.

3 Q. Have there been any alterations, changes, deletions to  
4 that paragraph?

5 A. No. The area is constructed the same way. Once  
6 again, the siding is repaired here.

7 Q. Okay. If you could -- well, the State moves to enter  
8 Number Eight into evidence.

9 MR. HAYES: Judge, I just have the same objection.

10 THE COURT: Taken from the other side as Number Nine?

11 MR. McCARLEY: It is not, Your Honor. It is a picture  
12 of the entire dock area.

13 THE COURT: And it's offered for what purpose?

14 MR. McCARLEY: It's offered in relation to the door as  
15 to the point of entry.

16 THE COURT: Okay. Overrule the objection.

17 (Thereupon, State's Exhibit No. 8, photograph, was  
18 received into evidence.)

19 BY MR. McCARLEY:

20 Q. If you wouldn't mind holding that where the jury could  
21 see it?

22 A. (Complies.)

23 Q. Where is the door that was being kicked in the video?

24 A. It's over here. In this, the left, left-hand corner  
25 of the loading dock.

## CHRISTOPHER WALKER - CROSS

1 Q. And where is that point of entry?

2 A. The point of entry is over here.

3 Q. And is that point of entry in camera view?

4 A. It is not.

5 Q. Understood. Beg the Court's indulgence.

6 Officer Walker, please answer any questions the  
7 defense has for you.

8 THE WITNESS: Sure.

9 CROSS-EXAMINATION

10 BY MR. HAYES:

11 Q. Officer Walker, you responded to the incident location  
12 on the 25th which is the day it was reported?

13 A. Yes, sir.

14 Q. At that time did you collect any fingerprints?

15 A. No, sir. I did not.

16 Q. Any DNA?

17 A. No, sir. I did not.

18 Q. And you're the actual individual that recorded what we  
19 saw here today?

20 A. I gathered the recording; yes, sir.

21 Q. How long was this burglary? What was the duration?

22 A. I couldn't give you an accurate length of time.

23 Q. Do you have an estimate from when you were viewing  
24 this?

25 MR. MCCARLEY: Objection. Speculation called for.

## CHRISTOPHER WALKER - CROSS

1 MR. HAYES: Judge, he --

2 THE COURT: Are you asking him how long the video  
3 lasts?

4 MR. HAYES: Yes, sir. I'm asking how long from the  
5 time the burglary began to the time it ended when he was  
6 recording the video.

7 THE COURT: How long does the video last?

8 MR. HAYES: The video's only about 30 minutes, Judge.  
9 But I believe there is -- sidebar?

10 THE COURT: Okay.

11 (Off-the-record discussion).

12 BY MR. HAYES:

13 Q. Officer Walker, looking at the time stamps on the  
14 video when you recorded it, when was the first time you  
15 saw an individual? Of what hour; do you recall?

16 A. I believe it was slightly before midnight. If I can  
17 recall correctly, I believe it was slightly before  
18 midnight or around about midnight.

19 Q. When was the last time you saw an individual according  
20 to the time stamp? Do you know what time it was then?

21 A. According to the time stamp, 2:30, around 2:30, half  
22 past two in the morning.

23 Q. And you were -- you decided what portions and what  
24 videos out of the eight cameras that you pulled up and  
25 recorded; correct?

1 A. Correct.

2 MR. HAYES: Thank you. Nothing further.

3 REDIRECT EXAMINATION

4 BY MR. McCARLEY:

5 Q. Officer Walker, did you record all of the footage from  
6 that entire 24th and 25th?

7 A. No, I did not.

8 Q. Did you record the relevant portions?

9 A. I did.

10 Q. Okay.

11 MR. McCARLEY: Nothing further from the State.

12 THE COURT: You may step down.

13 We're going to take a short break. I'll ask the jury  
14 to please go to the jury room. Do not discuss the case.  
15 I'll bring you back out after the break.

16 (Jury exits courtroom at 3:17 p.m.)

17 THE COURT: We'll be in recess for 15 minutes.

18 MR. McCARLEY: Thank you, Your Honor.

19 (Thereupon a break was taken at 3:18 p.m. At  
20 3:39 p.m. the trial resumed as follows:)

21 THE COURT: Ready for the jury?

22 MR. McCARLEY: Yes, sir, Your Honor.

23 (Jury enters courtroom at 3:39 p.m.)

24 THE COURT: You may proceed.

25 MR. McCARLEY: Your Honor, the State calls Mike

MIKE FANNING - DIRECT

1 Fanning.

2 THE CLERK: Please come forward, sir, put your left  
3 hand on the Bible and raise your right.

4 MIKE FANNING, having been duly sworn, was examined and  
5 testified as follows:

6 THE CLERK: Thank you. Please have a seat on the  
7 witness box. State your full name for the Court and spell  
8 your last.

9 THE WITNESS: My name is Mike Fanning, F-A-N-N-I-N-G.

10 DIRECT EXAMINATION

11 BY MR. MCCARLEY:

12 Q. Excuse me, sir. I'll get that out of your way.

13 Mr. Fanning, how are you doing, sir?

14 A. Great.

15 Q. Where do you work, sir?

16 A. I work at All-Star Tents and Events.

17 Q. And where is that located?

18 A. 156 Williamsburg Street.

19 Q. And what is your job there?

20 A. I'm a co-owner.

21 Q. What exactly does All-Star Rentals do?

22 A. We provide party and event rental equipment, anything  
23 from stages to tables, chairs, linens, glassware.

24 Q. How long have y'all been doing that?

25 A. I've been in business now for eight years.

MIKE FANNING - DIRECT

1 Q. About how many people work there for you?

2 A. Anywhere from 20 to 40. We've got a lot of seasonal  
3 people that we bring in.

4 Q. What do you mean by seasonal?

5 A. When we hit our busy times, we bring in part-time  
6 labor.

7 Q. Does Ms. Mary Wolf work there as well?

8 A. She's also a co-partner.

9 Q. And are you related to her?

10 A. She is my sister.

11 Q. Okay. Do you have surveillance and security cameras  
12 at your business, sir?

13 A. We do.

14 Q. Okay. Were the security cameras installed and working  
15 on December 24th and December 25th of 2011?

16 A. Yes, they were.

17 MR. MCCARLEY: Permission to approach, Your Honor?

18 Q. Mr. Fanning, what I'm handing you has been marked  
19 State's Exhibit Number Ten. Do you recognize that?

20 A. Yes. That's the CAD drawing of our facility showing  
21 all the camera locations.

22 Q. And are those the camera locations as they were on  
23 December 24th of 2011?

24 A. Yeah, they are.

25 Q. Okay. And is that an accurate depiction of the way

MIKE FANNING - DIRECT

1 your building looked on that date?

2 A. It is.

3 Q. Any changes whatsoever?

4 A. None.

5 Q. Okay.

6 MR. MCCARLEY: Your Honor, the State moves to  
7 introduce Exhibit Number Ten into evidence.

8 MR. HAYES: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (Thereupon, State's Exhibit No. 10, schematic of  
11 All-Star, was received in evidence.)

12 BY MR. MCCARLEY:

13 Q. Now talking about those video cameras, Mr. Fanning, do  
14 they cover every inch of your property there?

15 A. If you come on the property you will get picked up by  
16 a camera.

17 Q. Okay. Mr. Fanning, how do you know the Defendant,  
18 Tyrik Bright?

19 A. He was one of our seasonal workers.

20 MR. HAYES: Objection from my previous reasons, Judge.

21 THE COURT: You object to him explaining how he knows  
22 the Defendant?

23 MR. HAYES: I'm just -- Judge, I just want to preserve  
24 the record from my previous objection, that's all.

25 THE COURT: Okay. Overrule the objection.

MIKE FANNING - DIRECT

1 BY MR. MCCARLEY:

2 Q. Mr. Fanning, how do you know the Defendant, Tyrik  
3 Bright?

4 A. He was one of our seasonal workers.

5 Q. And about how long did he work there, sir?

6 A. A little over three months.

7 Q. And about how often during those, each week during  
8 those three months?

9 A. Essentially he lived across the street. So when we  
10 were busy we would either come, you want to work today or  
11 he would walk over and say, do we have work, anywhere from  
12 two to three days, maybe even five days a week.

13 Q. What type of work did he do for you, sir?

14 A. He was a laborer.

15 Q. And you -- how did you become aware that he lived  
16 across the street?

17 A. Because he told us. We would come over and get him  
18 from over there.

19 Q. Okay. Do you remember the last time that he picked up  
20 a paycheck from you, sir?

21 A. Yes. It was the Wednesday before Christmas.

22 Q. Okay. Do you remember by chance what he was wearing?

23 A. I made a comment. He had, like a mosquito net  
24 see-through thing on and we kind of kidded him about it.  
25 He said that was his style.

MIKE FANNING - DIRECT

1 Q. Do you see Tyrik Bright in the courtroom here today,  
2 sir?

3 A. I do.

4 Q. Could you please point him out?

5 A. He's sitting at that table next to those two  
6 gentlemen.

7 Q. Okay. And what's he wearing, sir?

8 A. White shirt.

9 MR. MCCARLEY: Your Honor, may the record reflect that  
10 the witness has identified the Defendant, Tyrik Bright?

11 THE COURT: It shall.

12 BY MR. MCCARLEY:

13 Q. Mr. Fanning, do you remember Christmas of 2011?

14 A. I do.

15 Q. Why do you remember that day, sir?

16 A. I had came by the shop to pick up some ice for  
17 Christmas Day and immediately I noticed that the office  
18 had been ransacked. And as I walked around, I saw some  
19 debris scattered where if they didn't quite get everything  
20 and broke up some boxes.

21 Immediately -- I didn't know whether there was  
22 somebody in the building, so I called public safety. They  
23 immediately secured the facility and cleared it to make  
24 sure there was nobody in there.

25 Q. Okay. And when you were there that day, I'm handing

MIKE FANNING - DIRECT

1 you what's already been introduced as State's Exhibit.

2 Nine, do you remember seeing this area of your business?

3 A. I do.

4 Q. Okay. And what is that?

5 A. That is on the loading dock and that was the breach  
6 point of where they got into the facility.

7 Q. Okay. And when was that repaired?

8 A. Early that morning, immediately. That was our first  
9 goal was to get all the busted doors, panels on the walls  
10 secure so that we could eventually go back to our families  
11 for Christmas Day.

12 Q. Yes, sir. Now as you were going around your property  
13 on Christmas Day 2011 and seeing as, what you described  
14 everything was amiss, what were you thinking had gone on?

15 A. Somebody knew what they were doing. Somebody had  
16 intimate knowledge of our facility.

17 Q. And why do you say that, sir?

18 A. Well, the lights that were on, you would have to know  
19 where the master switch was to cut it on. That was in the  
20 warehouse that -- right here. It was clear at the other  
21 end, and it's behind a --

22 MR. HAYES: Judge, I would object to speculation.

23 THE COURT: Overruled. You may continue --

24 THE WITNESS: Okay.

25 THE COURT: -- with your response.

MIKE FANNING - DIRECT

1 THE WITNESS: Basically just to be able to turn the  
2 lights on you have to know where the switch is. That was  
3 just that one side of the warehouse. That's an  
4 80-year-old facility. Everything's a hodgepodge of wiring  
5 and whatnot, but...

6 BY MR. MCCARLEY:

7 Q. Yes, sir. And did you make a list of the items that  
8 were stolen and damaged at your business?

9 A. We made the best list that we could at the time.

10 Q. Was anything ever returned or recovered?

11 A. No.

12 Q. Okay. Now before you saw the security video, did you  
13 have in mind someone because you thought it was an inside  
14 job?

15 A. I did.

16 Q. Okay. Where were you when you first saw the security  
17 video?

18 A. I was in -- it was actually my cubicle in the building  
19 and --

20 Q. And who was there with you, sir?

21 A. Public safety was. They had come in to extract the  
22 video off of our DVR.

23 Q. I understand. Was Officer Walker there with you?

24 A. Yes. Officer Walker was the one that did it.

25 MR. MCCARLEY: Okay. Permission to approach, Your

MIKE FANNING - DIRECT

1 Honor?

2 THE COURT: You may.

3 BY MR. MCCARLEY:

4 Q. Mr. Fanning, I'm handing you what's been marked  
5 State's Exhibit 17. Do you recognize that, sir?

6 A. Yes.

7 Q. And have you watched that?

8 A. I have.

9 Q. And is that the footage you watched on Christmas Day  
10 of 2011?

11 A. It is.

12 Q. Is it accurate?

13 A. Yes.

14 Q. Okay. Have there been any changes, alterations or  
15 deletions to that?

16 A. No.

17 MR. MCCARLEY: Your Honor, the State now moves to  
18 introduce Exhibit Number 17 into evidence.

19 MR. HAYES: I'm sorry. What -- can we approach?

20 MR. MCCARLEY: We can.

21 (Off-the-record discussion.)

22 THE COURT: All right. Objection?

23 MR. HAYES: Yes, sir. Judge, I would argue that this  
24 is cumulative. We've already got a full-length video  
25 entered into evidence. A portion of the video is at this

MIKE FANNING - DIRECT

1 point cumulative and irrelevant.

2 THE COURT: All right. Overrule your objection.

3 (Thereupon, State's Exhibit No. 17, video, was  
4 received into evidence.)

5 MR. MCCARLEY: Has that been admitted, Your Honor?

6 THE COURT: It is.

7 BY MR. MCCARLEY:

8 Q. Did you watch all of the video that Officer Walker did

9 --

10 A. Yes, I did.

11 Q. -- that night? Okay. And was there a specific  
12 portion of that video where you were able to make an ID?

13 A. It was the very last part of it.

14 Q. Who did you identify on that video?

15 A. Tyrik.

16 MR. MCCARLEY: Your Honor, permission to publish to  
17 the jury?

18 THE COURT: You may.

19 (Thereupon, State's Exhibit 17, video, was played for  
20 the jury.)

21 BY MR. MCCARLEY:

22 Q. Mr. Fanning, how exactly did you recognize Tyrik  
23 Bright from that clip?

24 A. Basically with the mosquito net cover that he had on  
25 when he picked up his paycheck and Christmas bonus, he had

MIKE FANNING - DIRECT

1 it on.

2 Q. Okay. Did you see his face in that video?

3 A. I did.

4 Q. And who did you recognize that as?

5 A. Tyrik.

6 Q. Okay. Did he have permission to be in the building?

7 A. No.

8 Q. Have you ever given him permission to be in the  
9 building at nighttime?

10 A. Not without a supervisor, not while he was working.

11 Q. Did anyone tell who you was on that video before you  
12 saw it?

13 A. No.

14 Q. Had anyone identified Tyrik Bright from that video  
15 before you saw it, Mr. Fanning?

16 A. No. It became apparent the more we watched, towards  
17 the end is when -- we couldn't tell who it was at first,  
18 but by the end of the video especially after he took the  
19 hood off we could tell exactly who it was.

20 Q. And did you see him flip on the lights?

21 A. Yes.

22 Q. And did that indicate to you that it was somebody that  
23 worked there?

24 A. Yes.

25 Q. Did you ever find a certain kind of a light bulb on

MIKE FANNING - DIRECT

1 your property?

2 MR. HAYES: Objection. Leading.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, we had recently purchased some  
5 fancy projector global lights for a lot of the events that  
6 we do and because they were new, I had it stored in the  
7 laundry area which is way out, you know, if you walked in  
8 there that's all you would see is laundry. You had to  
9 know where I kept those things up on a shelf, up there.  
10 And all of those were taken.

11 BY MR. MCCARLEY:

12 Q. And did you find a box of those on the grounds as  
13 well?

14 A. I did. I found one out in the parking lot.

15 Q. And how many were gone?

16 A. I think four were gone, maybe five.

17 MR. MCCARLEY: Permission to approach, Your Honor?

18 THE COURT: You may.

19 BY MR. MCCARLEY:

20 Q. Mr. Fanning, I'm handing you what's been marked  
21 State's Exhibits 11 through 13. Can you take a look at  
22 those please, sir?

23 A. (Complies.)

24 Q. Do you recognize those images?

25 A. I do.

MIKE FANNING - DIRECT

1 Q. And are they an accurate representation of still shots  
2 from the security video from the burglary?

3 A. They are.

4 Q. Have there been any alterations, additions or  
5 deletions to those photographs?

6 A. No.

7 Q. Who was in those photographs, Mr. Fanning?

8 A. Tyrik.

9 Q. Is that the same man in the courtroom you pointed out  
10 earlier?

11 A. Yes, it is.

12 Q. The same man who worked for you for three months?

13 A. It is.

14 Q. The same person that came to pick up that last check  
15 in that coat?

16 MR. HAYES: Objection. Asked and answered.

17 THE COURT: Overruled.

18 THE WITNESS: It is.

19 BY MR. MCCARLEY:

20 Q. Is that the same person that told you he lived across  
21 the street from your business?

22 A. Yes.

23 MR. MCCARLEY: Your Honor, at this time I'd move to  
24 enter 11 through 13 into evidence.

25 MR. HAYES: Your Honor, I would object based on that

MIKE FANNING - CROSS

1 it's cumulative. We've already had two photographs. I  
2 don't see what we need three more -- or two videos. I  
3 don't see why we need three photographs.

4 THE COURT: Overrule your objection.

5 (Thereupon, State's Exhibit Nos. 11, 12 and 13,  
6 photographs, were received into evidence.)

7 MR. MCCARLEY: Mr. Fanning, please answer any  
8 questions the defense has for you. Okay, sir?

9 THE WITNESS: Sure.

10 CROSS-EXAMINATION

11 BY MR. HAYES:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Mr. Fanning, in your business do you work in the  
15 office or do you work out in the field mainly?

16 A. Both.

17 Q. What do you do in the office?

18 A. Anything from scheduling to ordering to managing my  
19 day-to-day operations.

20 Q. What is it you do in the field?

21 A. Oversee installs, walk down quality to make sure  
22 they're installing some of these larger jobs correctly.  
23 And that's typically when we're busiest.

24 Q. You actually put up the tents or the stages?

25 A. I'm on-site at one point or another to make sure that

MIKE FANNING - CROSS

1 it's being done correctly.

2 Q. So what opportunity did you have to observe Mr. Bright  
3 working in the field?

4 A. He was on several of the larger jobs that I was very  
5 involved with.

6 Q. How about in the office?

7 A. He would come in and out of the office just like all  
8 the other guys that work for me.

9 Q. And so over a short period of time -- he was working  
10 part-time?

11 A. On and off. Some weeks he made over 40 hours.

12 Q. And that's over the three-month period? I believe  
13 that's what you testified to earlier.

14 A. Yes.

15 Q. Are you -- you said something about seasonal labor, I  
16 think is now you said it. How long does your seasonal  
17 labor usually work for you?

18 A. Anywhere from -- they can work for three or four weeks  
19 to three or four months depending on how they work out.  
20 Seasonal labor typically only wants to work a few weeks at  
21 a time and if they make the grade we'll keep them on as  
22 long as we can.

23 Q. What is your season? Let me ask you that question.

24 A. Our season starts in about the end of February through  
25 July. We pick back up at mid September through the, mid

MIKE FANNING - CROSS

1 December.

2 Q. So you were just finishing a season?

3 A. We were just finishing up, yes. As a matter of fact,  
4 a lot of the guys had already dropped off, had gone  
5 elsewhere.

6 Q. Okay. So, at that point in time there had been  
7 several layoffs?

8 A. Guys that just we, we weren't calling them in any  
9 more.

10 Q. Okay. How many?

11 A. I couldn't tell you right offhand. That was two years  
12 ago. A lot of them were just getting less and less hours  
13 and after the first of the year some never came back.

14 Q. There's -- which office had the video recorder in it?  
15 Which cubicle, or is it an office or?

16 A. It was the office that was above the showroom which  
17 was my office.

18 Q. All right. Is that in any other video?

19 A. Any other video?

20 Q. Any other video that was played here today?

21 A. Huh-uh.

22 Q. I beg the Court's indulgence. (Pause.)

23 Out of your seasonal workers, most of them know where  
24 your switches are to cut the lights on and off in the  
25 warehouse?

MARY FANNING WOLF - DIRECT

1 A. Some would, some wouldn't.

2 Q. And out of that, that's 20 to 40 people?

3 A. Back then about that time of year, probably more in  
4 the 20 to 25 range.

5 Q. So you had 20 to 25 seasonal workers at that time?

6 A. Probably so. Our company has grown since then and  
7 we've gone up to about 40 now.

8 MR. HAYES: I have nothing further. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. McCARLEY:

11 Q. Mr. Fanning, is there any question in your mind that's  
12 Tyrik Bright in that video?

13 MR. HAYES: Objection. Asked and answered already and  
14 outside the scope of my cross.

15 THE COURT: Sustained.

16 MR. McCARLEY: Thank you, Your Honor. No further  
17 questions for Mr. Fanning.

18 THE COURT: You may step down.

19 MR. McCARLEY: Your Honor, the State calls Ms. Mary  
20 Wolf to the stand.

21 THE CLERK: Please come forward. Place your left hand  
22 on the Bible and raise your right.

23 MARY FANNING WOLF, having been duly sworn, was  
24 examined and testified as follows:

25 THE CLERK: Please have a seat in the witness box.

MARY FANNING WOLF - DIRECT

1 State your full name for the Court and spell your last.

2 THE COURT: Just state your name and spell your last  
3 name.

4 THE WITNESS: My name is Mary Fanning Wolf, W-O-L-F.

5 DIRECT EXAMINATION

6 BY MR. MCCARLEY:

7 Q. Ms. Mary, how are you doing?

8 A. I'm good.

9 Q. A little nervous?

10 A. Slightly.

11 Q. Where do you work, ma'am?

12 A. All-Star Rents.

13 Q. And where is that located?

14 A. 156 Williamsburg Street.

15 Q. And what is your job there?

16 A. Well, I'm an owner, so, everything. A little bit of  
17 everything.

18 Q. About how many folks work there?

19 A. Twenty-ish.

20 Q. Does that number change?

21 A. Often.

22 Q. Specifically, do you handle paychecks and hours for  
23 employees and the like?

24 A. Yes.

25 Q. Okay. Permission to approach, Your Honor?

MARY FANNING WOLF - DIRECT

1 THE COURT: You may.

2 BY MR. MCCARLEY:

3 Q. Mrs. Wolf, what I'm handing you has been marked  
4 State's Exhibit 14. Would you mind taking a moment and  
5 looking through that document?

6 A. I apologize but I set my purse down and my glasses are  
7 in it.

8 MR. MCCARLEY: Your Honor, may I? May I bring the  
9 whole purse, Your Honor?

10 THE COURT: You may.

11 THE WITNESS: I apologize.

12 THE COURT: You're fine.

13 BY MR. MCCARLEY:

14 Q. Do you need to take another look at them now with your  
15 glasses?

16 A. Yeah. Go ahead.

17 Q. Do you recognize those documents?

18 A. Yes, sir.

19 Q. And are those documents kept in the regular course of  
20 your business?

21 A. Yes, sir.

22 Q. And how are they kept?

23 A. The top document would be put in -- each person has  
24 one of these in their personnel files. The second batch  
25 of documents is kept with all the other employees by the

MARY FANNING WOLF - DIRECT

1 week in a file cabinet locked up.

2 Q. Okay. Is data entered into a computer and then  
3 printed out?

4 A. Correct.

5 Q. Okay. And those are kept in the ordinary course of  
6 the operation of your business?

7 A. Yes.

8 Q. Have those records been altered or changed in any way?

9 A. No, sir.

10 Q. And are they an accurate representation of the  
11 employment history that they represent?

12 A. Yes, sir.

13 MR. McCARLEY: Your Honor, the State now moves to  
14 introduce Exhibit 14 as a business record of All-Star  
15 Rentals. This is the custodian.

16 MR. HAYES: No objection.

17 THE COURT: It's admitted.

18 MR. McCARLEY: Thank you, Your Honor.

19 (Thereupon, State's Exhibit No. 14, employment records  
20 of Tyrik Bright, was received into evidence.)

21 BY MR. McCARLEY:

22 Q. Ms. Mary, if you wouldn't mind taking a look at that  
23 top piece of paper.

24 A. Uh-huh.

25 Q. And you said there's one of those in everybody's file?

MARY FANNING WOLF - DIRECT

1 A. Yes, sir.

2 Q. Could you please tell the jury whose employment  
3 records those are?

4 A. Tyrik Bright's.

5 Q. Okay. On that top document, where does it say he  
6 learned about your business?

7 A. Live across street. So the question is: How did you  
8 hear about us? Live across street.

9 Q. Okay. How long do those records go back for the  
10 Defendant?

11 A. September 19th of 2011.

12 Q. Okay. And when do they end?

13 A. No end.

14 Q. When's the last time he was paid?

15 A. Oh, I'm sorry.

16 Q. That's fine.

17 A. I believe it was December 21st was his last paycheck.

18 Q. Okay. And in the three months that he worked, that  
19 Tyrik Bright worked there, did you have an opportunity to  
20 view him?

21 A. I'm sorry?

22 Q. Did you see him a lot?

23 A. Every day. Every day he was there.

24 Q. Okay. About how often per week was that that he  
25 worked?

## MARY FANNING WOLF - DIRECT

1 A. Four days.

2 Q. Okay.

3 A. Five.

4 Q. Would those documents show it --

5 A. Absolutely.

6 Q. -- if you were to go all the way through them?

7 A. Uh-huh.

8 Q. Okay. Ms. Wolf, do you remember Christmas Day 2011?

9 A. Yes, sir.

10 Q. And why do you remember that day, ma'am?

11 A. We were robbed.

12 Q. Did you go to your business on that day?

13 A. Yes, sir.

14 Q. And what did you see when you went there, ma'am?

15 A. Chaos.

16 Q. What did you do when you got there?

17 A. Probably cried first, and --

18 Q. Did you take an inventory of the stolen items?

19 A. That was what we attempted to try to do, go through  
20 each office, each cubicle.

21 Q. And were there also -- was there property of yours  
22 that was damaged?

23 A. Oh, yes.

24 Q. What was damaged?

25 A. The biggest thing that I recall is the back door, the

MARY FANNING WOLF - DIRECT

1 glass was broken out. It wasn't like they could get in  
2 but the glass was broken all over the floor. And then of  
3 course the siding had been pulled where they entered in.

4 Q. Okay. Were computers damaged?

5 A. Thrown all over the place.

6 Q. And was some of the inventory gone?

7 A. Absolutely.

8 Q. What was the total value of the items taken,  
9 approximately?

10 A. 13,000, something like that.

11 Q. And did you submit a detailed inventory of what was  
12 taken and damaged to the insurance company?

13 A. Yes, I did.

14 Q. And did you submit that same information to the  
15 victims assistance program?

16 A. Yes, I did.

17 Q. And it was all the exact same information?

18 A. Yes, sir.

19 Q. Ms. Wolf, did you watch the security video from  
20 Christmas Eve of 2011?

21 A. Yes, I did.

22 Q. When did you watch that, ma'am?

23 A. Christmas Day was the first time.

24 Q. Okay. Where were you when you watched the security  
25 video?

MARY FANNING WOLF - DIRECT

1 A. In my -- technically my brother and I's office we  
2 shared.

3 Q. Who was there with you when you watched it?

4 A. We were in and out, so I'm not sure. The for-sure  
5 person that was there was Mr. Walker because he was  
6 performing the video thing. He was the one able to get it  
7 off the video. So we were in and out assessing, sweeping,  
8 cleaning, and then we'd come back through and then we'd  
9 look.

10 Q. Okay.

11 A. My answer is, I don't know who was there.

12 Q. I understand.

13 MR. HAYES: Judge, I would object based on my prior  
14 objections. It's cumulative.

15 THE COURT: Overruled.

16 MR. McCARLEY: Permission to approach, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. McCARLEY:

19 Q. Ms. Wolf, what I'm handing you has been marked and  
20 already entered into evidence as State's Exhibit 17. Do  
21 you recognize that, ma'am?

22 A. Yes, sir.

23 Q. And have you watched that?

24 A. I sure have.

25 Q. Is it an accurate representation of the video footage

MARY FANNING WOLF - DIRECT

1 that you viewed on Christmas Day 2011?

2 A. Yes, sir.

3 Q. Any changes, alterations, deletions or anything like  
4 that?

5 A. No, sir.

6 Q. When you watched that on Christmas Day, were you able  
7 to identify anyone in that video?

8 A. One of the persons.

9 Q. And who was that, ma'am?

10 A. Tyrik Bright.

11 Q. Is he in the courtroom here today?

12 A. He is.

13 Q. Would you mind pointing him out for us, please,  
14 ma'am?

15 A. He's right over there.

16 Q. What's he wearing?

17 A. He's wearing a white shirt with a, maybe that's red  
18 tie with some pattern.

19 Q. Thank you.

20 Your Honor, may the record reflect that the witness  
21 has identified the Defendant, Tyrik Bright?

22 THE COURT: It shall.

23 MR. MCCARLEY: Your Honor, permission to publish this  
24 again?

25 THE COURT: You may.

MARY FANNING WOLF - DIRECT

1 (Thereupon, the video was played for the jury, State's  
2 Exhibit No. 17.)

3 BY MR. McCARLEY:

4 Q. Now, Ms. Wolf, did anyone identify one of the  
5 gentlemen in that video before you did?

6 A. I'm not sure.

7 Q. Okay. Did anyone tell you who to pick out of that  
8 video?

9 A. No, sir.

10 Q. Did you make your own independent identification of  
11 who was in that video?

12 A. Without a doubt.

13 Q. And who was in that video?

14 A. I did not know the one fellow with the camo-type  
15 jacket on, but the other fellow with the fishnet was  
16 definitely Tyrik.

17 MR. HAYES: Judge, I would object. That's cumulative.

18 THE COURT: Overruled.

19 BY MR. McCARLEY:

20 Q. Ms. Wolf, did Tyrik Bright have permission to be in  
21 the building that night?

22 A. No, sir.

23 Q. Permission to approach?

24 Ms. Wolf, I want to hand you what's already been  
25 introduced into evidence as State's Exhibits 11 through

## MARY FANNING WOLF - CROSS

1 13. Could you take a quick look at that?

2 A. Uh-huh.

3 Q. Are those still shots from the video that you watched  
4 on Christmas Day?

5 A. Yes.

6 Q. And who is depicted there?

7 A. Tyrik Bright.

8 Q. Beg the Court's indulgence. (Pause.)

9 MR. MCCARLEY: Ms. Wolf, please answer any questions  
10 that Mr. Hayes has for you.

11 THE WITNESS: Thank you.

12 MR. HAYES: Judge, may I approach, look at the records  
13 real quick?

14 (Reviews exhibits.)

15 MR. HAYES: Beg the Court's indulgence.

16 CROSS-EXAMINATION

17 BY MR. HAYES:

18 Q. Mrs. Wolf, did you at any time work outside of the  
19 office?

20 A. Did...

21 Q. Did you help set up the tents and set up the stages  
22 and the lighting and everything else as well?

23 A. Occasionally I go out in the field; yes, sir.

24 Q. How often?

25 A. Two times a week, three.

MARY FANNING WOLF - CROSS

1 Q. And in those times, what opportunities did you have to  
2 see Mr. Bright working in the field?

3 A. I really could not answer you. If he was on that  
4 particular job site, he would have been there. I mean,  
5 the guys work all the jobs, you know, a lot of the jobs.

6 Q. All right. What about in the office? What  
7 opportunities did you see Mr. Bright working in the  
8 office?

9 A. Payday. Every morning they -- that first form you see  
10 and then the paycheck stub is attached is their timecard.  
11 They have to swipe their card every day and it's right at  
12 my door.

13 Q. Okay.

14 A. So every morning I'd see the employees.

15 Q. And that would be on the days he worked?

16 A. Uh-huh.

17 Q. And he was part-time; correct?

18 A. He was temporary.

19 Q. Temporary. How many temporary workers did you have?

20 A. On that particular time, I mean, we bring in as many  
21 as ten a season.

22 Q. Now, ten temporary workers. They work 40 hours a day  
23 (sic), they work part-time, a few hours a day? What is  
24 their schedules generally?

25 A. Our work is just very different. It's a case-by-case

## MARY FANNING WOLF - REDIRECT

1 basis. I could not answer that. Each person is  
2 different.

3 Q. How many full-time employees do you have or regular  
4 employees that are not seasonal?

5 A. Fifteen, I'm going to guess.

6 Q. Beg the Court's indulgence.

7 Between the 25th -- I'm sorry. Between the 24th and  
8 the 25th, did you have discussions with your brother?

9 A. Yes.

10 Q. Did you have discussions with police officers?

11 A. Yes.

12 MR. HAYES: I have nothing further. Thank you.

13 THE WITNESS: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. MCCARLEY:

16 Q. Ms. Wolf, did you make a list of all the people who  
17 worked at All-Star Rentals between July of 2011 and  
18 December of 2011?

19 A. Yes, sir.

20 Q. And did you review that list with your brother?

21 A. I sure did.

22 Q. And did you consider all of those people and the  
23 possibility of their involvement in this?

24 A. I did.

25 MR. HAYES: Judge, I object. This is outside of my

## MARY FANNING WOLF - REDIRECT

1 cross.

2 MR. McCARLEY: Your Honor, I believe it's firmly  
3 within the scope of his cross. He discussed seasonal  
4 workers, other workers, implying the possibility of other  
5 peoples' involvement of misidentification.

6 THE COURT: Overruled. Go ahead.

7 BY MR. McCARLEY:

8 Q. Do you remember that list you compiled?

9 A. Yes, sir.

10 Q. Would you mind telling me a little bit about the  
11 people on that list?

12 A. Well, I started by the females, took them off the  
13 list. And then I had no choice but to segregate the  
14 number of blacks that were on the list and the number of  
15 whites. And then I took those names of males because at  
16 that time we had a pre-release program where we brought  
17 gentlemen from the pre-release program for work --

18 MR. HAYES: Judge, I'm going to object. Sidebar?

19 THE COURT: Let me see y'all just a moment.

20 (Off-the-record discussion.)

21 BY MR. McCARLEY:

22 Q. Ms. Wolf, not discussing Tyrik Bright but discussing  
23 the rest of the people, you can go on.

24 A. So then I pulled out the fellows, we may have had  
25 three, four, I'm not sure on the number that came from the

1 pre-release program. So it really didn't matter what  
2 color or nationality they were, they go home every night  
3 to what we call the camp. And so they were out of the  
4 possibilities and that just left a few behind.

5 Q. And did you see any of the few left behind on that  
6 video?

7 A. Oh, no, sir.

8 Q. Did you see Tyrik Bright on that video?

9 MR. HAYES: Objection. Asked and answered.

10 THE COURT: Overruled.

11 MR. MCCARLEY: No further questions for this witness,

12 Your Honor,

13 THE COURT: Do you have anything else?

14 RECROSS-EXAMINATION

15 BY MR. HAYES:

16 Q. Ms. Wolf, when was this list made?

17 A. It was requested a few days ago, last week possibly.

18 Q. So this list was not made when the burglary happened;  
19 was it?

20 A. No, sir.

21 Q. And out of this list, there's 29 names by my prior  
22 counts, how many of them were black males?

23 A. I'm going to say seven, eight. I don't have it in  
24 front of me.

25 MR. MCCARLEY: Your Honor, I'm more than happy to

1 provide the witness with a copy if she'd like to refresh  
2 her recollection.

3 THE COURT: If she needs her list, if y'all are going  
4 to ask her about, for sure.

5 MR. MCCARLEY: May I approach with this list,  
6 Mr. Hayes?

7 (Document handed to the witness.)

8 THE WITNESS: From my memory, there's approximately  
9 eight black males.

10 BY MR. HAYES:

11 Q. Now you said this list was not made the day it  
12 happened, it was made more recently?

13 A. Yes, sir.

14 Q. How did you make this list? Did you go to your  
15 employment records and pull whoever were the employees at  
16 that time?

17 A. From QuickBooks it gave me all the employees that were  
18 paid employees from that time period requested.

19 MR. HAYES: Thank you.

20 THE WITNESS: Okay.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: You can take your list with you.

24 ANTHONY KEITH GLOVER, having been duly sworn, was  
25 examined and testified as follows:

ANTHONY KEITH GLOVER - DIRECT

1 THE CLERK: Please have a seat on the witness box.  
2 State your full name for the Court and spell your last  
3 name.

4 THE WITNESS: Anthony Keith Glover, G-L-O-V-E-R.

5 DIRECT EXAMINATION

6 BY MS. YOUNG:

7 Q. Detective Glover, where are you employed?

8 A. The Aiken Department of Public Safety.

9 Q. And how long have you been employed there?

10 A. About 26 years and three or four months.

11 Q. And I keep calling you detective so you're obviously a  
12 detective; correct?

13 A. Yes, ma'am.

14 Q. How long have you been in that position?

15 A. Since 1999.

16 Q. And what are some of your general duties as a  
17 detective for the Department of Public Safety?

18 A. Normally we're assigned a case or we're called out to  
19 different calls. And my job is to collect and preserve  
20 evidence from a crime scene, and to basically put the  
21 puzzle together to make an arrest.

22 Q. How did you become involved in a case involving the  
23 Defendant, Tyrik Bright?

24 A. I received a call from my dispatcher and she told me  
25 that the line was requesting for the duty investigator to

ANTHONY KEITH GLOVER - DIRECT

1 come to All-Star Rental for a burglary.

2 Q. And do you recall what date that was that you  
3 responded to the All-Star Rentals?

4 A. Yes, ma'am. It was Christmas Day 2011. Actually I  
5 was in church when they called me out of church.

6 Q. And do you know approximately what time you responded  
7 to the scene?

8 A. I got the call approximately a little after one and  
9 because it was raining so hard it took me about 30 minutes  
10 to get there. So I would say probably 1:35, 1:40,  
11 somewhere up in there.

12 Q. And you're referring to 1:30 or 1:40 in the afternoon?

13 A. In the afternoon; yes, ma'am.

14 Q. And what other officers were present, if any, when you  
15 arrived?

16 A. When I arrived there was Officer Daubs -- and my  
17 mind's just drawing a blank. Officer Daubs, an initial  
18 officer that took the report, Officer Porter and Chris  
19 Walker when I arrived on the scene.

20 Q. What was the first thing you observed, Detective  
21 Glover, when you arrived on the scene that day?

22 A. I noticed the office area had been ransacked. I  
23 noticed stuff up all over the place. And actually -- and  
24 started to question them. They said they had a video  
25 which that's the reason why Officer Walker was there to

ANTHONY KEITH GLOVER - DIRECT

1 retrieve the video.

2 Q. And did you observe anything about the building  
3 itself?

4 A. We walked around the backside and noticed that the  
5 point of entry, up under the loading dock where they had  
6 pulled back some of the siding and made entry into the  
7 building.

8 Q. And did you -- were you able to determine a point of  
9 exit?

10 A. I'm trying to recall. I think they may have exited  
11 through a door.

12 Q. And did you observe the video at all while you were  
13 responding on the scene?

14 A. Yes. When I arrived on the scene Officer Walker  
15 pulled the video. The first part of the video which -- we  
16 couldn't really make an identification from the first part  
17 of the video, but we could tell that they had on gloves so  
18 they didn't leave anything for us to process for  
19 fingerprints or DNA.

20 So at that time I told Chris Walker to finish loading  
21 the video and give me a call if he come up with anything  
22 from the video.

23 And I end up leaving possibly 2:30, somewhere up in  
24 there. And I left Officer Walker on the scene.

25 Q. And what was the next thing you did regarding this

ANTHONY KEITH GLOVER - DIRECT

1 investigation?

2 A. I'm going to say it was approximately four or a little  
3 after four, maybe 4:30, I received a call from Officer  
4 Walker stating that --

5 MR. HAYES: Objection. Hearsay.

6 THE COURT: Well, I don't know where you're going with  
7 that testimony. He's here if you need him. Go ahead.  
8 Overruled.

9 THE WITNESS: I received a call from Officer Walker  
10 stating that he had pulled video where --

11 BY MS. YOUNG:

12 Q. Let me just ask you this. Let me narrow it down.  
13 Based on your conversation with Mr. Walker, were you aware  
14 that an identification had been made?

15 A. Yes, ma'am.

16 Q. And were you aware by whom the identification had been  
17 made?

18 A. Officer Walker stated to me that both of the owners  
19 made an identification as to the subject being Tyrik  
20 Bright.

21 MR. HAYES: Objection.

22 THE COURT: Overruled.

23 BY MS. YOUNG:

24 Q. And what was the next thing you did after you received  
25 that information from Officer Walker?

ANTHONY KEITH GLOVER - DIRECT

1 A. I advised Officer Walker to make sure that he secured  
2 that video and dropped it into evidence. I was going to  
3 take a look at it when I returned back to work. We had  
4 had a few days delay because on the 27th we ended up  
5 burying Officer Scotty Richardson. So we had a couple  
6 days delay. Then on the 28th, 29th I pulled the video of  
7 that and was able to make an identification as to the  
8 person being Tyrik Bright.

9 MR. HAYES: Objection as to cumulative.

10 THE COURT: Overruled.

11 BY MS. YOUNG:

12 Q. Without replaying videos, have you had an opportunity  
13 to observe both the long video and the short video that  
14 have already been entered into evidence?

15 A. No. The only time I observed any video at that time  
16 was at the time when I was in the store. And then the  
17 second video, the long version of the video I observed  
18 after taking it out of evidence and taking a look at it  
19 and doing a follow up on the case based on what I was  
20 told.

21 MS. YOUNG: Your Honor, may I approach?

22 BY MS. YOUNG:

23 Q. Detective Glover, I'm going to show you what's already  
24 been entered as State's Exhibit 11, 12, 13, and ask if you  
25 recognize those exhibits?

ANTHONY KEITH GLOVER - DIRECT

1 A. Yes, ma'am. That was pictures, still pictures from  
2 the video that I observed Mr. Bright in the video.

3 Q. And was that where you were able to make a  
4 determination or an identification of him?

5 A. Yes, ma'am.

6 MS. YOUNG: Your Honor, may I approach?

7 BY MS. YOUNG:

8 Q. Detective Glover, I'm going to show you what's been  
9 marked for identification purposes as State's Exhibit 15  
10 and ask you: Do you recognize that?

11 A. Yes, ma'am. I do.

12 Q. And what is it? Without saying, describing it, tell  
13 me what it is.

14 A. The mailbox is 156. That's the mailbox in front of  
15 All-Star Rental and across the street is the house where  
16 Mr. Bright live.

17 Q. How do you know that?

18 A. I just know that's where he lived at. I've seen him  
19 there numerous times riding through the neighborhood.

20 Q. And does that fairly and accurately depict that  
21 mailbox you mentioned and Mr. Bright's residence?

22 A. Yes, ma'am.

23 MS. YOUNG: Your Honor, at this time we'd offer  
24 State's Exhibit 15 into evidence.

25 MR. HAYES: No objection, Judge.

ANTHONY KEITH GLOVER - CROSS

1 THE COURT: It's admitted.

2 (Thereupon, State's Exhibit No. 15, photograph, was  
3 received into evidence.)

4 BY MS. YOUNG:

5 Q. Detective Glover, how long have you known Tyrik  
6 Bright?

7 A. Probably --

8 MR. HAYES: I'm going to object to this line as to my  
9 prior reasons that it is cumulative.

10 THE COURT: Overruled.

11 THE WITNESS: Approximately 15 years.

12 BY MS. YOUNG:

13 Q. Detective Glover, is Tyrik Bright present in the  
14 courtroom today?

15 A. Yes, he is.

16 Q. Will you identify him, please, sir?

17 A. He's sitting at the table over there with the white  
18 shirt on and the rust color-looking tie.

19 MS. YOUNG: Your Honor, we'd ask that the record  
20 reflect the witness has identified this, the Defendant.

21 THE COURT: It shall.

22 MS. YOUNG: Detective Glover, that's all I have for  
23 you. If you would, please answer any questions of  
24 Mr. Hayes.

25 THE WITNESS: Okay.

ANTHONY KEITH GLOVER - CROSS

1 CROSS-EXAMINATION

2 BY MR. HAYES:

3 Q. Good afternoon. Detective Glover, you said there was  
4 no fingerprints found?

5 A. We didn't lift any fingerprints. We observed from the  
6 video that both subjects were wearing gloves.

7 Q. There was no DNA found?

8 A. There was no DNA found.

9 Q. Was any of the items that were stolen found?

10 A. We did not recover any, any of the items that were  
11 stolen on that night.

12 Q. Detective Glover, did you ever find any clothing  
13 consistent with a camo net?

14 A. We didn't find any of the clothing.

15 MR. HAYES: Thank you, sir.

16 MS. YOUNG: Beg the Court's indulgence. (Pause.)

17 No further questions, Your Honor.

18 THE COURT: You may step down.

19 MR. McCARLEY: Your Honor, the State requests to read  
20 what has previously been marked as State's Exhibit 16 into  
21 evidence.

22 THE COURT: It's an agreed-upon exhibit?

23 MR. McCARLEY: Yes, sir, it is.

24 MR. HAYES: Yes, sir. I would just ask for a limiting  
25 instruction.

1 THE COURT: Okay.

2 MR. MCCARLEY: In the case of State versus Tyrik  
3 G. Bright on the charge of burglary in the second degree,  
4 the State and the defense stipulate to the fact the  
5 Defendant has a prior record of two convictions for  
6 burglary. The Defendant Tyrik G. Bright was convicted of  
7 burglary on June 22nd, 2005, and on April 26, 2007.

8 The State moves to enter this into evidence, Your  
9 Honor.

10 THE COURT: It's admitted without objection.

11 (State's Exhibit No. 16, stipulation, was received  
12 into evidence.)

13 MR. MCCARLEY: Your Honor, the State rests.

14 THE COURT: All right. Ladies and gentlemen, we're  
15 going to stop for this afternoon. That's all the evidence  
16 the State's going to present.

17 Before we go further, I've got some matters I need to  
18 address with the lawyers anyway so this is a good chance  
19 to quit. So we'll do that.

20 Let me remind you of the caution I gave you prior to  
21 excusing you for lunch; you're to have no discussions  
22 about the case with anyone. That includes spouses,  
23 children, friends, relatives, even your fellow jurors.  
24 You can't talk about it until deliberation time begins and  
25 that's not that time yet. So no discussions. No

1 investigation. No research. No exposure to any type of  
2 media coverage.

3 Have a good evening and please return to your jury  
4 room at 9:30 in the morning, 9:30 in the morning. Have a  
5 good afternoon.

6 (Jury exits courtroom at 4:45 p.m.)

7 THE COURT: All right. Motions or other matters by  
8 the defense?

9 MR. HAYES: Judge, taking the evidence in the light  
10 most favorable to the State, the defense would move based  
11 on all previous objections and other reasons that the  
12 State has not been able to prove beyond a reasonable doubt  
13 for a reasonable jury to be able to find the Defendant  
14 guilty of burglary in the second degree.

15 THE COURT: Mr. McCarley, do you want to be heard?

16 MR. MCCARLEY: Your Honor, the State has entered  
17 evidence as to each element of the crime and thus we  
18 survive at this phase and go on to the rest of the case.

19 THE COURT: All right. Well, considering the evidence  
20 in the light most favorable to the State as I must do on  
21 your motion, I do find there is sufficient evidence  
22 tending to establish each of the essential elements of the  
23 crime including the identification of the Defendant as the  
24 perpetrator. And therefore your motion for a directed  
25 verdict is denied.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now -- thank you.

3 Any other matters we need to address before we  
4 recess?

5 MR. MCCARLEY: Nothing from the State, Your Honor.

6 MR. HAYES: Judge, we've addressed and I would renew  
7 my directed verdict if this is the appropriate time.

8 THE COURT: Well, we'll do that tomorrow. You're  
9 going to have to rest in front of the jury but remind me  
10 and we'll allow you to renew your motion rather than send  
11 the jury out again and bring them back.

12 MR. HAYES: Yes, sir.

13 THE COURT: But we'll wait and be sure that Mr. Bright  
14 didn't change his mind about his right to testify -- or  
15 about his decision to testify.

16 Do you all have any jury instruction requests?

17 MR. MCCARLEY: Your Honor, the State -- I cannot  
18 remember from the last time you were in whether or not you  
19 you charge firmly convinced as to reasonable doubt.

20 THE COURT: I don't. I use Manning's charge.

21 MR. MCCARLEY: I would like to at this time request  
22 that charge.

23 THE COURT: The Manning charge? Granted.

24 MR. MCCARLEY: Thank you, sir.

25 MR. HAYES: Judge, I do not have a specific charge.

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 ON WEDNESDAY, JUNE 13, 2013 AT 9:36 A.M.:

2 THE COURT: Any matters to address before the jury is  
3 brought in?

4 MR. MCCARLEY: Nothing from the State, Your Honor.

5 MR. HAYES: No, sir.

6 THE COURT: Okay. Bring them in, please.

7 THE BAILIFF: Okay.

8 (Jury enters courtroom at 9:37 a.m.)

9 THE COURT: Good morning, ladies and gentlemen. As  
10 you know, when we recessed yesterday all of the evidence  
11 had been received. And what remains to be done are the  
12 lawyers' final summations, I'll instruct you on the law  
13 then you can begin your jury deliberations.

14 So, please give the lawyers your attention now as they  
15 give you their final summations.

16 Mr. McCarley?

17 MR. MCCARLEY: Thank you, Your Honor. Mr. Hayes.  
18 Good morning, ladies and gentlemen.

19 First and foremost, I thank you for your time. I'll  
20 try not to take very much more of it.

21 In his opening statement, the defense said that you're  
22 going to find what you're looking for. And in this case  
23 they're exactly right. Officer Walker sat down in front  
24 of that computer on Christmas Day 2011, and he looked and  
25 he looked. And he looked for hours. And he finally found

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 a good enough video, a good enough picture that three  
2 people independently could identify the Defendant, Tyrik  
3 Bright, as the man that was inside that building  
4 committing that burglary.

5 That security video's not perfect. Okay. But nothing  
6 in this world is. But it is plenty good enough for,  
7 again, three different people, Mike Fanning, Mary Wolf,  
8 Detective Keith Glover, to identify the Defendant, Tyrik  
9 Bright as the man who committed this burglary. And that's  
10 why he's guilty beyond a reasonable doubt of burglary in  
11 the second degree.

12 Please don't forget when you go back into that jury  
13 room what you heard and what you saw. You saw the  
14 burglary in progress. You saw the entering of the  
15 building which is an element of the crime. You saw the  
16 crime being committed inside, the damage being done, the  
17 items being stolen, \$13,000 worth.

18 You heard from this witness stand from Mike and Mary  
19 that the Defendant did not have permission to be in the  
20 building that night at that time.

21 You also heard the Defendant has two prior convictions  
22 for burglary in 2005 and in 2007.

23 Those are the elements of the crime. We have to meet  
24 all of those elements beyond a reasonable doubt for you to  
25 find him guilty. And we have.

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 The defense is not arguing a burglary didn't occur.  
2 That's obvious from the video that a burglary occurred.  
3 They're arguing that it wasn't Tyrik Bright.

4 But when you take that video and you combine it with  
5 the testimony that you heard from this chair under oath  
6 from these three people, that you have Tyrik Bright and  
7 you have him in that building and that, again, is burglary  
8 in the second degree.

9 Think about those witnesses when you go back into that  
10 jury room. What motivation do they have to lie? If  
11 they're going to tell lies, why not identify the other  
12 person?

13 If Mike and Mary had something against Tyrik Bright,  
14 why would they walk from their business across the street  
15 and ask him to come work with them? Once he came to work  
16 with them, you heard Mike say, sometimes we'd go across  
17 the street if we needed somebody.

18 You also heard the defense ask some about fingerprints  
19 and DNA. The video shows they were wearing gloves. It's  
20 not going to be fingerprints from that night. And Tyrik  
21 Bright worked there. His fingerprints are going to be all  
22 over the place. If there was going to be DNA, his DNA  
23 would be there because he worked there.

24 It's also not a case of mistaken identity. You've got  
25 three people who knew him. Mike Fanning knew him for

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 three months. Mary knew him for three months, saw him  
2 every day he worked. He'd come clock in, she saw him.  
3 Mike saw him out at sites building stuff and there in the  
4 warehouse, in the office. Detective Keith Glover's known  
5 him for 15 years. All three separate independent IDs of  
6 the Defendant, Tyrik Bright.

7 You heard Mike Fanning from the witness stand say when  
8 he learned it was an inside job, he actually had somebody  
9 else in mind until he saw the video.

10 You heard Mary from the stand talk about how she had a  
11 list of all the people that worked for them and went down  
12 that list and by process of elimination Tyrik Bright fit  
13 the bill. But while the process of elimination is great,  
14 it doesn't, it's nothing compared to her independent  
15 identification of him on that video.

16 Please take what you saw, what you heard, the videos,  
17 all the pictures, please take your common sense back into  
18 that jury room. Please honor your oath to render a true  
19 verdict. Take the facts that you learned here today, put  
20 them together with the law, the elements of the crime as I  
21 laid them out for you, merge them with the facts that  
22 you've heard and seen during this case. When you do,  
23 you're going to see that it's a burglary in the second  
24 degree violent.

25 Take the video, merge it with what you heard Detective

## CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Glover and Mike and Mary say. And when you merge those  
2 two together, you're going to know that it's Tyrik  
3 Bright. So now you got Tyrik Bright in a burglary second  
4 degree violent guilty beyond a reasonable doubt.

5 Reasonable doubt, again, ladies and gentlemen, is a  
6 big hole in a case. Okay. You don't have to look high  
7 and low for it. It is reasonable. But there's no hole in  
8 this case.

9 The only hole in this case, ladies and gentlemen, is  
10 the one that Tyrik Bright left when he tore back that  
11 steel siding from All-Star Rentals and crawled inside.  
12 That's the only hole in this case. And that's the reason  
13 he's guilty beyond a reasonable doubt of burglary in the  
14 second degree.

15 Again, thank you for your time. Thank you for your  
16 attention. I look forward to your verdict.

17 THE COURT: Mr. Hayes?

18 MR. HAYES: May it please the Court. Ladies and  
19 gentlemen.

20 Don't rush to judgment. I submit to you, that's what  
21 the Fannings did, and -- Ms. Wolf, as well as the officer  
22 in this case.

23 You heard from the stand and I believe the State  
24 misquoted but y'all were here, y'all decide what he said.  
25 I think he said he had somebody in mind. He didn't say it

## CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 changed when he saw the video. He said he had somebody in  
2 mind.

3 And I believe the implication for y'all was that he  
4 believed it was my client and that the video to him sealed  
5 the deal. He had a preconceived notion. Now, Ms. Wolf  
6 said, I talked to my brother. And what did they testify  
7 to? Ms. Wolf, Mr. Fanning and PSO Walker was watching the  
8 video. She was coming in and out but she was there and  
9 she was talking with her brother. That's family and  
10 that's her brother. And the officer was there and  
11 collecting information.

12 Detective Glover, what did he tell you? He was at the  
13 scene. He left probably sometime around two, 2:30-ish.  
14 Somewhere around four o'clock he got a phone call. What  
15 was that phone call about? We think we got an ID. We  
16 think it's Mr. Bright.

17 Okay. So he says he goes and pulls the video and he  
18 watches it the next day. Did he watch it the next day  
19 with fresh eyes? No. At that point he's got a  
20 preconceived notion. They told him who he's looking for.

21 So everybody's who's watched this video up until the  
22 time they see somebody, they see Mr. Bright because they  
23 told them that's who they're looking for. They're not  
24 looking at it in fresh eyes and say, okay, can I ID this  
25 person?

## CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1       There's no fingerprints. There's no DNA. All we have  
2 is the video and three other people saying, I've watched  
3 that video, and this is who I believe it is. But those  
4 three people have a preconceived notion, potentially rush  
5 to judgment. Okay.

6       Ladies and gentlemen, you are the jury. You are the  
7 finders of the facts. Y'all get to watch this video and  
8 you get to decide: Is the video sufficient that you  
9 believe, you individually, that that is Tyrik Bright?

10       That's the best evidence of this whole case is the  
11 video.

12       The State's talking about reasonable doubt is a big  
13 hole in a case. That's not a hole in the case. A hole in  
14 the case is when the State doesn't do their job, being  
15 either the State or the investigation coming up to it and  
16 there's something they can't explain. That's a hole in  
17 the case.

18       Reasonable doubt is the presumption of innocence that  
19 is guaranteed to you by our forefathers through our  
20 Constitution. That's not a hole in the case. That is  
21 your rights. And that is what we're here to determine  
22 today. Is this video sufficient enough to take away  
23 somebody's right to freedom? It's not a hole in the case.

24       Okay. That's what we talked about in the beginning.  
25 He's got a cloak sitting over him, a presumption of

## CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 innocence. And until you find that that is sufficient to  
2 take it away from him, he is innocent. That is a  
3 constitutional right. Everybody, everybody is entitled to  
4 that right.

5 Y'all have heard from three people saying that that's  
6 him. Ladies and gentlemen, I submit to you that they got  
7 what they were looking for.

8 Can everybody see this? I'm going to give y'all a few  
9 minutes to read it. If y'all are done, let me know when  
10 you're done.

11 (Poster displayed to the jury.)

12 Ladies and gentlemen, there is very, very few actual  
13 words on here. But most people can read. And it's  
14 because the brain is able to un-jumble it and create the  
15 actual sentences that you're trying to read.

16 And if you have a preconceived notion which is --  
17 everyone of you, I presume, can read, because that was a  
18 question that was asked of you when y'all were qualified,  
19 you know what you're looking for when you're looking at it  
20 and your brain can fill in the gaps.

21 I present to you that the same thing's happened in  
22 this case. If you perceived that somebody had done this  
23 and that's who you're looking for immediately, and then  
24 you turn around and you watch the video, even though it's  
25 not crystal clear, you get the answer that you're looking

## JUDGE'S CHARGE TO THE JURY

1 for.

2 Now it's also said a picture's worth a thousand  
3 words. That's something we always hear. And in this case  
4 case though, ladies and gentlemen, that picture's worth  
5 two words; not guilty.

6 JUDGE'S CHARGE TO THE JURY

7 THE COURT: Ladies and gentlemen, you've heard and  
8 seen all the evidence. You've now heard the final  
9 summations of the lawyers. And therefore it now becomes  
10 my duty and obligation to instruct you on the law that's  
11 applicable in the case.

12 Then you'll be asked to go back and to begin with your  
13 deliberations and through that process, through the  
14 exercise of good judgment and common sense, you will  
15 examine all of the testimony, examine all of the  
16 evidence. From that evidence you will determine what you  
17 believe to be the true facts. After deciding those facts,  
18 you apply the law that I will have provided you and you  
19 will determine whether or not the Defendant has been  
20 proven guilty of the crime of burglary in the second  
21 degree.

22 It is your exclusive duty to determine what the facts  
23 are. And you do that, as I say, through your own  
24 common-sense examination of all the testimony and the  
25 other evidence received during the course of the trial.

## JUDGE'S CHARGE TO THE JURY

1       You 12 jurors alone will decide what weight, value and  
2 effect to give any particular testimony or other evidence  
3 in the case. Your sole objective is to simply be fair and  
4 impartial and render a verdict based solely upon the  
5 evidence presented and the law that's applicable as I will  
6 have provided it to you.

7       Now in this case, as you know, the State through the  
8 prosecutor has accused the Defendant, Tyrik Gerard Bright,  
9 with the crime of burglary in the second degree.

10       That charge is set forth in the indictment that I  
11 referred to prior to and after your selection as jurors.  
12 The indictment itself however, as I've stated, is not  
13 evidence in the case. It's not proof of anything. It  
14 does not establish anything. It's simply the charging  
15 paper. It puts the Defendant on notice as to what crime  
16 the State claims he has committed, but it's not evidence.

17       It will be in the jury room because it is on the back  
18 of this indictment, Mr. Foreman, that you're going to be  
19 asked to indicate the jury's unanimous decision. And  
20 you'll see on the back, you'll see the word verdict. It's  
21 beneath that word that you'll indicate the jury's  
22 unanimous decision. You'll sign your name as the  
23 foreperson. You're the only juror that needs to sign the  
24 verdict form. But other than serving as the verdict form,  
25 the indictment serves no purpose so far as you jurors are

## JUDGE'S CHARGE TO THE JURY

1 concerned.

2 Now as to the charge contained in that indictment, the  
3 Defendant has entered a plea of not guilty. And as I've  
4 told you, that plea of not guilty has placed upon the  
5 State the burden of proving the allegations that they've  
6 made against the Defendant, the burden of proving each of  
7 the essential elements that constitute the crime of  
8 burglary in the second degree.

9 And therefore the burden is upon the State to  
10 establish the Defendant's guilt to the satisfaction of you  
11 12 jurors beyond a reasonable doubt before any verdict of  
12 guilty could be returned.

13 It is a vital important and cardinal rule of law that  
14 every defendant in a criminal trial, it doesn't matter how  
15 serious the offense might be for which that person stands  
16 charged, a person charged with a crime is always presumed  
17 innocent of that charge.

18 That presumption of innocence, as I've told you,  
19 remains with this Defendant from the time that he is  
20 arrested and throughout the course of the criminal process  
21 and even throughout the course of this trial. That  
22 presumption of innocence will be with him as you go back  
23 to begin with your deliberations in this case. And that  
24 presumption of innocence will be with him in that jury  
25 room and it will be with him forever unless you 12 jurors

## JUDGE'S CHARGE TO THE JURY

1 determine that he's no longer entitled to the presumption  
2 of innocence.

3 In other words, after you have carefully considered  
4 all of the evidence in the case and from that evidence you  
5 have determined what you believe to be the true facts as  
6 they relate to these allegations, and upon deciding those  
7 facts you apply the law that I will have provided you. If  
8 you 12 jurors unanimously determine that his guilt has  
9 been proven beyond a reasonable doubt, then he would no  
10 longer be entitled to that presumption of innocence. But  
11 it is only if, unless and until you are satisfied of his  
12 guilt beyond a reasonable doubt that the presumption of  
13 innocence would no longer be applicable.

14 Now while the State does have the burden of proving  
15 the Defendant's guilt beyond a reasonable doubt, that  
16 doesn't mean that the State has to prove his guilt beyond  
17 all doubt or beyond any possible doesn't, but it does  
18 require the State to prove his guilt to your satisfaction  
19 beyond a reasonable doubt.

20 And the term reasonable doubt should be given its  
21 plain and ordinary meaning. A reasonable doubt is the  
22 kind of doubt that would cause a reasonable person to  
23 hesitate to act upon the information provided.

24 And a Defendant is entitled to any reasonable doubt  
25 that arises from the evidence or lack of evidence in the

## JUDGE'S CHARGE TO THE JURY

1 case. And if upon any factual issue essential to a  
2 finding of a verdict of guilty you have some reasonable  
3 doubt as to how that issue should be resolved, it would be  
4 your duty to resolve that reasonable doubt in favor of the  
5 Defendant. And therefore, if upon your consideration of  
6 the whole case you have a reasonable doubt as to his guilt  
7 it is your duty to return a verdict of not guilty.

8 And at the same time, after you've considered all of  
9 the evidence and decided the facts and applied the law, if  
10 you have no reasonable doubt as to his guilt, it would be  
11 your corresponding duty to find him guilty of the crime  
12 where it has been proven to your satisfaction beyond a  
13 reasonable doubt.

14 Now the same law that provides that you are the judges  
15 of the facts also provides that I'm the judge of the law.  
16 That simply means that nobody's going to tell you how to  
17 arrive at your determination of fact in this case. You do  
18 that, as I've already stated, through the exercise of good  
19 judgment and common sense, conscientiously applied to the  
20 testimony and evidence received during the course of the  
21 trial.

22 You must, however, under your oath as a juror accept  
23 the law as I provide it to you as being the law that you  
24 are to apply in the case. In other words, you're not to  
25 concern yourself with what you thought the law was before

## JUDGE'S CHARGE TO THE JURY

1 you came to serve as a juror this week, or what you think  
2 the law ought to be.

3 Under your oath as a juror you must simply accept the  
4 law as I provide it to you as being the law that you are  
5 to apply in the case. And then you simply take that law  
6 and you apply it to the facts as you 12 jurors determine  
7 those facts to be based upon your common sense and  
8 examination of the evidence received during the trial.

9 Now because you are the sole finders of the fact in  
10 this case, you are therefore necessarily the sole judges  
11 of the credibility, that is, the believability of each  
12 witness that has testified during the course of this  
13 trial.

14 And you 12 jurors alone will decide what weight, value  
15 and effect you give to any particular witness's testimony  
16 or even portions of that testimony. But there are several  
17 factors which you should take into consideration in  
18 arriving at your assessment as to a particular witness's  
19 credibility and I'm going to list those factors for you.

20 You should consider the demeanor of the witness. That  
21 is, how the witness appeared to you as the witness  
22 testified from that witness stand. Was the witness  
23 straight forward in responding to questions or was the  
24 witness hesitant or evasive in responding to questions  
25 that were asked of that witness. Simply put, did the

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1 witness appear to you to be telling the truth and to have  
2 knowledge of the facts to which that witness has  
3 testified.

4 You should also consider whether or not the testimony  
5 of a witness is consistent or is it inconsistent with that  
6 witness's own testimony or with other testimony or other  
7 evidence received during the course of the trial. You  
8 should also consider how the witness came to know the  
9 facts to which a witness has testified.

10 In other words, what was that particular witness's  
11 opportunity and ability to be able to perceive the  
12 existence of those facts to which that witness has  
13 testified that they have previously perceived. And then,  
14 what is that witness's ability to be able to come into  
15 court and to accurately recollect to you as to what they  
16 have previously seen or heard.

17 You should also consider any bias or prejudice or  
18 interest that a witness might have with regard to a case.  
19 In other words, do you find some reason that a particular  
20 witness would come into court and would testify one way or  
21 another to help or hurt one side or the other. And you  
22 may consider any interest that a witness might have in the  
23 outcome of the case if you determine that a witness does  
24 have such an interest and you further find that that  
25 interest would bear upon that particular witness's

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1 credibility.

2       You should also consider whether or not the testimony  
3 of a witness is strengthened or is it weakened by other  
4 testimony or other evidence received during the course of  
5 the trial.

6       Now because you are the judges of the facts and  
7 because you are the judges of the credibility of each  
8 witness that has testified, you are permitted to believe  
9 as much or as little of what a witness has testified to as  
10 you deem is appropriate. And therefore you may believe  
11 everything that a witness testified to. You may choose to  
12 believe none of it. You could believe one witness as  
13 opposed to several or several as opposed to one in a given  
14 case, but whatever your good judgment and common sense  
15 tells you is the most believable and credible testimony is  
16 the testimony you should accept. And you should reject  
17 any testimony or other evidence that you find not to be  
18 credible or believable.

19       Again your sole objective is to simply reach a fair  
20 and impartial verdict in the case based solely upon the  
21 evidence and the law that's applicable.

22       While there are various forms of evidence such as  
23 testimony, photographs, documents, charts, videos, and  
24 other types of physical exhibits, there are really only  
25 two types of evidence. Either or both of those types of

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1 evidence may be used to prove any fact in issue but the  
2 two types of evidence are direct evidence and  
3 circumstantial evidence.

4 Now direct evidence is the testimony of a person who  
5 testifies from actual knowledge of the fact. It is  
6 testimony by a person who has perceived the existence of  
7 some fact by means of his or her senses and then they come  
8 into court and they testify as to what they have  
9 previously perceived.

10 Circumstantial evidence on the other hand is the proof  
11 of some other fact or set of facts which taken either  
12 singly or collectively may prove the existence of a fact  
13 in question as the necessary consequence. That is,  
14 through an inference.

15 And an inference is simply a deduction of fact that  
16 may logically and reasonably be drawn from proof of some  
17 other fact or set of facts. In other words, it's not a  
18 fact which is proven by the direct testimony of a witness  
19 based upon their personal perception but it is a  
20 conclusion which might reasonably be drawn from the proof  
21 of other facts.

22 In other words, you may infer that a particular event  
23 occurred or that a particular fact exists based upon the  
24 proof of sufficient factual circumstances which would  
25 reasonably warrant your arriving at a particular

## JUDGE'S CHARGE TO THE JURY

1 conclusion.

2       The law however makes no distinction between the  
3 weight or value to be given to direct evidence as opposed  
4 to circumstantial evidence, nor is a greater degree of  
5 certainty required of circumstantial evidence as opposed  
6 to direct evidence.

7       Whatever the type of evidence used to prove any fact  
8 in issue, you should consider all of the evidence  
9 presented during the trial of this case and after  
10 carefully considering that evidence and weighing it in  
11 your minds, if you are not convinced of the guilt of the  
12 Defendant beyond a reasonable doubt, then you must resolve  
13 that doubt in his favor and return a verdict of not  
14 guilty.

15       Now, as you know, the Defendant is charged with  
16 burglary in the second degree. Burglary in the second  
17 degree is a statutory offense and that just means that the  
18 offense is contained in one of these blue books, the Code  
19 of Laws of South Carolina. And every year the legislature  
20 meets from January till June. In fact, they'll finish  
21 tomorrow -- oh no, they finished last Thursday. Excuse  
22 me.

23       But while they are in session they pass a number of  
24 laws and rules and regulations that govern our conduct in  
25 a variety of ways. And some of those statutes are

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1 criminal penalty statutes. And that just means that they  
2 define a crime, they prohibit us engaging in certain types  
3 of conduct and when we are found to have engaged in that  
4 conduct in violation of that particular statute, then it  
5 results in the imposition of some type of punishment or  
6 penalty for a violation of the statute.

7 Please keep in mind however that you are never to be  
8 concerned with punishment or penalty. That's not  
9 something that you decide. Your sole obligation and duty  
10 in this case is to determine whether or not the Defendant  
11 has been proven guilty of a crime beyond a reasonable  
12 doubt. And you are to make that determination without any  
13 consideration to any punishment or other consequence of  
14 your verdict.

15 But Section 16-11-312 is the statute that defines what  
16 constitutes burglary in the second degree. And that  
17 statute in its relevant parts provides that a person is  
18 guilty of burglary in the second degree if the person  
19 enters a building without consent and with the intent to  
20 commit a crime therein and the burglary is committed by a  
21 person with a prior record of two or more convictions for  
22 burglary.

23 So based upon this particular statute, before you can  
24 return a verdict of guilty in this case it would be  
25 necessary that the evidence in this case has established

## JUDGE'S CHARGE TO THE JURY

1 to your satisfaction beyond a reasonable doubt four  
2 essential elements.

3 First of all, the evidence must establish that the  
4 Defendant did enter a building. Entry is an indispensable  
5 element in the crime of burglary and the entry is the act  
6 of going into the building.

7 Secondly -- well, let me tell you the definition of  
8 building. Building is defined as any structure where  
9 people assemble for the purposes of business or where  
10 goods are stored.

11 Secondly, it must be proven that the entry of the  
12 building was without consent. Entering without consent.  
13 means to enter the building without the consent of the  
14 owner or other person in lawful possession of the  
15 premises.

16 Thirdly, it must be an entry of a building without  
17 consent and with the intent to commit a crime therein.  
18 There must be an intent to commit a crime whether or not  
19 the crime is actually committed, accomplished or completed  
20 or not. But the mere entry of a building without an  
21 intent to commit a crime does not constitute the crime of  
22 burglary. It is only when there is an entering of a  
23 building accompanied with an intent to commit a crime that  
24 the crime of burglary is complete. And a crime of any  
25 grade or severity is sufficient to satisfy this particular

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1 element of the crime of burglary. The entry of a building  
2 without consent and with the intent to commit a crime  
3 therein completes the crime of burglary.

4 The fourth element that the evidence must prove to  
5 your satisfaction beyond a reasonable doubt in order for  
6 the crime of burglary in the second degree to be proven is  
7 that the evidence must show that when -- well, in this  
8 particular case the evidence must show that the burglary  
9 was committed by a person with a prior record of two or  
10 more convictions for burglary.

11 Now in this case you know that the State is alleging  
12 that the crime of burglary in the second degree or that it  
13 is a burglary in the second degree because a burglary was  
14 committed by a person with a prior record of two or more  
15 convictions for the crime of burglary. And therefore you  
16 have heard testimony or perhaps seen other evidence  
17 regarding the Defendant having prior convictions for the  
18 crime of burglary.

19 You are instructed that such evidence is offered for  
20 and you may only consider it for a very limited purpose.  
21 The purpose for which it is offered is to establish a  
22 particular degree of burglary in the event that you  
23 determine that the evidence in this case has proven the  
24 Defendant to be guilty of the crime of burglary.

25 It is not being offered as proof of the Defendant's

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1 commission of the crime of burglary for which he now  
2 stands trial nor may it be considered by you as evidence  
3 that the Defendant did commit the crime of burglary.

4 If you determine that the State has proven beyond a  
5 reasonable doubt that the Defendant did commit the crime  
6 of burglary, then you may consider any evidence of prior  
7 convictions for the crime of burglary as it relates to the  
8 degree of any burglary proven to have been committed by  
9 the Defendant.

10 You are not permitted to consider evidence of any  
11 prior burglary convictions for any other purpose. You may  
12 not consider such evidence as evidence of bad character  
13 nor may you consider it as evidence that the Defendant may  
14 have acted in accordance with prior conduct. It may only  
15 be considered by you in determining the degree of burglary  
16 if you find beyond a reasonable doubt that the Defendant  
17 has been proven guilty of the crime of burglary as I have  
18 already defined it for you.

19 As I have stated, the State has the burden of proving  
20 every essential element of any crime alleged against the  
21 Defendant beyond a reasonable doubt. And therefore not  
22 only must the State prove beyond a reasonable doubt that  
23 the Defendant committed the crime of burglary in the  
24 second degree, the State must also prove beyond a  
25 reasonable doubt that it was the Defendant who was the

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1 perpetrator of that particular crime.

2       If after a careful consideration and examination of  
3 all the evidence in this case relating to the issue of the  
4 identification of the perpetrator of any crime or burglary  
5 that has been proven to have been committed, should you  
6 have a reasonable doubt as to the accuracy of the  
7 identification of the Defendant as a perpetrator of that  
8 crime, then you must resolve that reasonable doubt in  
9 favor of the Defendant and return a verdict of not guilty.

10       Now, ladies and gentlemen, I further instruct you and  
11 I emphasize to you that a fact that a defendant does not  
12 testify during the course of a trial is not a circumstance  
13 that may be considered by you jurors during your  
14 deliberations or in your determination as to whether or  
15 not his guilt has been proven beyond a reasonable doubt.

16       As I have already stated more than once, the burden is  
17 on the State to prove the Defendant guilty beyond a  
18 reasonable doubt. The burden is never upon a defendant to  
19 prove that he or she is not guilty or to prove that he or  
20 she is innocent because in some cases that might not be  
21 possible.

22       And, therefore, you are never to draw any conclusion  
23 nor may you draw an inference from the fact that a  
24 defendant does not testify during the course of a trial,  
25 nor may that fact even be discussed by you while you are

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1 engaged in your deliberations in this case and you may not  
2 allow such a fact to weigh in the slightest degree against  
3 the Defendant.

4 Mr. Foreman and ladies and gentlemen, I am not in any  
5 way concerned with what your decision is but, as I've  
6 stated, it must be unanimous. All 12 of you must be in  
7 agreement.

8 Mr. Foreman, as I told you, in addition to the  
9 evidence which has been introduced you will also have the  
10 indictment which will serve as the verdict form. In this  
11 particular case there are two potential verdict forms;  
12 those two forms are guilty and not guilty.

13 So whatever your decision is, Mr. Foreman, I'll ask  
14 that you indicate that decision in the space provided on  
15 the back of the indictment, sign your name as the  
16 foreperson, place the appropriate date on it. Once you've  
17 arrived at your decision and you've indicated it on the  
18 indictment, knock on the jury room door, let the bailiffs  
19 know that you've reached a decision, we'll bring you back  
20 to receive that verdict.

21 While you may turn over the evidence to the bailiff to  
22 bring back to the courtroom, Mr. Foreman, you will hold  
23 onto the verdict form and I'll receive that from you after  
24 you and your fellow jurors have arrived in the courtroom  
25 and been seated.

## JUDGE'S CHARGE TO THE JURY

1        Now during your deliberations there may come a time  
2 where you have some question about evidence or the facts  
3 of the case. Please understand that I am never permitted  
4 to answer any questions that relate to evidence or  
5 questions of fact. You simply have to resolve those  
6 questions based upon your collective examination of all  
7 the evidence in the case and any reasonable inferences  
8 that might be drawn from that evidence.

9        Also, no additional evidence may be received now that  
10 you're going back to begin your deliberations. And  
11 sometimes a jury panel will wonder if something is  
12 available for them and you don't have it in the jury room  
13 and so you wonder if you can get it.

14        What I'm saying is, no additional evidence can be  
15 introduced now that you're going back to begin with your  
16 deliberations. So if it has not been introduced during  
17 the trial of this case it cannot be introduced now. So  
18 don't inquire about it because you can't have it even if  
19 it exists.

20        If you have a question about testimony of a witness,  
21 while I do not have transcripts of that testimony, if you  
22 need a witness's testimony replied in whole or in part we  
23 can bring you back into the courtroom to have a witness's  
24 testimony reheard. You will simply need to let me know  
25 that you wish to hear a particular witness's testimony and

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1 we'll bring you back to play it in its entirety or only  
2 some portion of it if that's all you need.

3 If you ever have a question about the law that is  
4 applicable, I am permitted to answer those questions. So  
5 should you need a re-instruction or an explanation or a  
6 clarification of some point of law, I'll be happy to  
7 respond to that question and provide you with that  
8 information accordingly.

9 Mr. Foreman, when you go back if you or your fellow  
10 jurors ever have a question or an issue that needs to be  
11 addressed to me, if you'll write it on a piece of paper,  
12 give it to the bailiff, he'll provide that to me and then  
13 I'll respond to that question or address that issue should  
14 one arise.

15 I think that covers everything but in the event it  
16 does not, I'm sure one of these lawyers will remind me  
17 that I neglected to tell you something. And if that's the  
18 case, I'll bring you back and provide you with additional  
19 information.

20 If that's not the case, then I'll simply send word by  
21 way of a bailiff that you may begin your deliberations.  
22 And in that event, he'll bring to the jury room all of the  
23 exhibits which have been introduced and to you,  
24 Mr. Foreman, he'll also bring the indictment which will  
25 serve as the verdict form.

1 We'll have the videos, we'll have to provide you with  
2 a computer or something that you can play the videos on.  
3 And so we'll have that sent back also. And if for some  
4 reason you have an issue with the video or you can't get  
5 the thing to work, just let us know and we'll try to  
6 assist you in that regard.

7 So with the exception of Ms. Walker -- Ms. Walker, I'm  
8 going to ask you to stay with me. If the 12 original  
9 jurors will please retire to your jury room but await my  
10 instruction as to when to begin.

11 (Jury exits courtroom at 10:16 a.m.)

12 THE COURT: Mrs. Walker, as you know you're the  
13 alternate juror and you can't participate in deliberations  
14 if the original 12 are able to do that, and they  
15 apparently are. So that's going to conclude your service  
16 in the trial of this case.

17 And because you had participated in this case, I'm  
18 going to give you an option. The remaining jury panel is  
19 coming back at 11:30. I anticipate that we're going to  
20 select another jury at that time. It might be that you  
21 will be called upon again to serve as a juror. But  
22 because you've already served in the case and we have  
23 plenty jurors, I'm going to give you the choice of whether  
24 you want to stay or you want to leave and then just call  
25 back tonight and see if you need to come back any

1 do it.

2 (Jury enters courtroom at 10:19 a.m.)

3 THE COURT: Ladies and gentlemen, as I told you, they  
4 would remind me if I forgot something. And I did neglect  
5 one thing.

6 And that is, introduced during the trial was a  
7 stipulation. A stipulation is an agreement as to a fact  
8 between the sides to a lawsuit, in this case a criminal  
9 case.

10 The solicitor and the defense counsel have agreed to a  
11 particular fact. So you don't have to worry about whether  
12 or not there's evidence in the record to prove that fact.  
13 They've agreed that it is a fact and therefore other  
14 evidence of it was not introduced.

15 But the stipulation is in evidence and you'll have it  
16 in the jury room. And what the stipulation provides is  
17 that the State and the defense agree that the Defendant,  
18 Tyrik Bright, does have a prior criminal record for two  
19 convictions of burglary.

20 And, again, the purpose of that evidence is to  
21 establish a degree of burglary. It is not introduced to  
22 establish whether or not the Defendant has committed the  
23 crime of burglary and you cannot consider it for that  
24 purpose. But you can consider it in determining any  
25 degree of burglary that has been proven, if such has.

1 Okay.

2 You may retire to your jury room and begin with your  
3 deliberations. Notify us when you've concluded.

4 (Jury exits courtroom at 10:21 a.m.)

5 THE COURT: Any other requests?

6 MR. McCARLEY: Nothing from the State, Your Honor.

7 MR. HAYES: No, sir.

8 THE COURT: Let me ask y'all to verify the exhibits,  
9 please.

10 And what about the player for the video?

11 MR. McCARLEY: It's my understanding we can take this  
12 computer back to the jury room; is that correct?

13 UNIDENTIFIED SPEAKER: Yeah. I'm getting information  
14 on that now to see if we have another laptop.

15 MS. YOUNG: We do have a screen in there, Your Honor

16 THE COURT: In the jury room?

17 MS. YOUNG: Yes, sir. It's just a matter of  
18 confirming if it needs to be played if they request it.

19 (Attorneys reviewing evidence.)

20 THE COURT: All right. We're still in session. Have  
21 all the exhibits been accounted for?

22 MR. HAYES: Yes, sir.

23 THE COURT: Send them back, tell the jury to begin  
24 deliberations. Notify us when they've concluded. Have  
25 they all got the computer to send back?

## VERDICT &amp; SENTENCING

1 FOREPERSON OF THE JURY: Yes, sir.

2 THE COURT: Did you sign it and date it as the  
3 foreperson?

4 FOREPERSON OF THE JURY: Yes, sir.

5 THE COURT: If you'll please hand that verdict form  
6 up.

7 FOREPERSON OF THE JURY: (Complies.)

8 THE COURT: You may publish the verdict.

9 THE CLERK: Your Honor, we have Case Number 2012-GS-  
10 02-00423, the State of South Carolina versus Tyrik Gerard  
11 Bright, indictment for burglary second degree, verdict of  
12 the petit jury is guilty.

13 Signed, Douglas R. Melton, Foreman, June 12th, 2013.

14 Ladies and gentlemen of the petit jury, if is your  
15 verdict, please indicate by the raising of your right  
16 hand.

17 THE JURY (COLLECTIVELY): (Complies.)

18 THE CLERK: Judge, all hands are raised.

19 THE COURT: Are all hands raised? Okay.

20 Are there any other matters we need to address with  
21 the jury present?

22 MR. McCARLEY: Nothing from the State, Your Honor.

23 MR. HAYES: No, Your Honor.

24 THE COURT: Does the Defendant wish to have the jury  
25 polled?

## VERDICT &amp; SENTENCING

1 MR. HAYES: No, sir. I believe all hands were raised.

2 THE COURT: Okay. All right.

3 Thank you, ladies and gentlemen. That's going to  
4 conclude your service for the trial of this case.

5 The jury panel is in the jury assembly room. We  
6 expect to -- as soon as everybody gets here, we expect to  
7 select another jury. But because you have already served  
8 in a case and we have plenty of jurors I'll leave it up to  
9 you, if you want to be excused for the rest of today or if  
10 you want to go back to the jury assembly room. You might  
11 be called upon to serve again. If you prefer to be  
12 excused for the balance of the day, as I say, we have  
13 plenty of jurors. So I'm going to let you have that  
14 option.

15 Is there anybody that wants to go back to the jury  
16 assembly room in the hopes of being selected again?  
17 Nobody? No hands on that one. All right.

18 You are excused for the balance of the afternoon.  
19 Thank you for your participation. Please call back to the  
20 number that you have after six o'clock this evening to  
21 receive further reporting information.

22 Have a good afternoon.

23 THE BAILIFF: Need your badges, please.

24 (Jury exits courtroom at 11:47 a.m.)

25 THE COURT: All right. Any matters we need to address

1 initiated, and any consideration of that is, I believe is  
2 improper. And I object to it being used in consideration  
3 of his sentence.

4 THE COURT: Okay.

5 ON INDICTMENT 2012-423, AN INDICTMENT FOR BURGLARY IN  
6 THE SECOND DEGREE WHEREIN YOU HAVE BEEN FOUND GUILTY BY A  
7 JURY OF THAT OFFENSE, THE SENTENCE OF THE COURT IS YOU,  
8 TYRIK GERARD BRIGHT, BE CONFINED TO THE SOUTH CAROLINA  
9 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 12 YEARS.

10 Mr. Bright, you have a right to appeal the verdict of  
11 the jury and the sentence of the Court. You must file any  
12 notice of your intention to appeal those decisions within  
13 ten days of today's date.

14 MR. HAYES: Thank you, Your Honor.

15 MR. ROUTZONG: Thank you, Your Honor.

16 MR. McCARLEY: Thank you sir.

17 THE COURT: Okay.

18 END OF CASE: 11:54 A.M.

19 \*\* \* \*\*

20 CERTIFICATE OF REPORTER

21 STATE OF SOUTH CAROLINA )

22 COUNTY OF AIKEN )

23 I, Cheri L. Young, Registered Professional Reporter  
24 and Official Court Reporter for the State of South  
25 Carolina, Second Circuit-At Large, do hereby certify that

141 WITNESSES

Aiken Department Of Public Safety

Anthony K Glover

Law Enforcement Case #: 12-20131

DOCKET NO. 2012GS0200423

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

*March 8, 2012*

MARCH TERM 2012

1093853

*Liz Godard*  
C.C.P. & G.S.  
*Pauline Spring PE*  
Deputy Clerk

THE STATE

VS.

TYRIK GERARD BRIGHT

ACTION OF GRAND JURY

*True Bill*

CDR #: 0086

Indictment for

BURGLARY SECOND DEGREE

§ 16-11-0312(B)

VERDICT

*GUILTY*

J. STROM THURMOND, SOLICITOR

*Wesley Eubank*  
Foreperson of Grand Jury  
Date: March 8, 2012

*Joseph R. Mills*  
Foreperson of Petit Jury  
Date: 6/12/13

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUN 14 2013

*Liz Godard*  
C.C.P. & G.S., Aiken County, S.C.

*Ann Sanders*  
Deputy Clerk

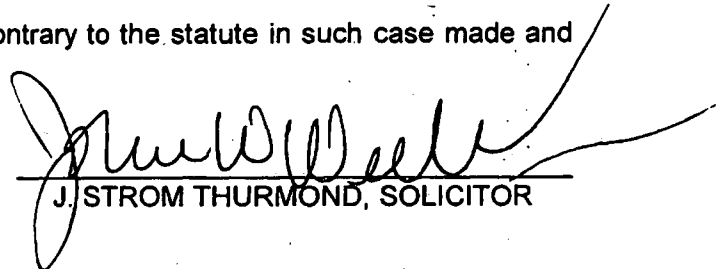
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

INDICTMENT FOR  
BURGLARY SECOND DEGREE  
  
§ 16-11-0312(B)

At a Court of General Sessions, convened on March 12, 2012, the Grand Jurors of Aiken County present upon their oath:

That TYRIK GERARD BRIGHT did in Aiken County on or about December 24, 2011, wilfully and unlawfully enter without consent and with the intent to commit a crime therein, a building, to wit: All Star Rentals located at 156 Williamsburg Street N.E., Aiken, South Carolina and the defendant having two prior Burglary convictions. All in violation of §16-11-312 of the Code of Laws of South Carolina (1976), as amended.

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

  
\_\_\_\_\_  
J. STROM THURMOND, SOLICITOR

COUNTY OF Aiken VS. STATE

INDICTMENT/CASE#: 2012GS0200423 A/W#: 1093853 Date of Offense: 12/29/2011 S.C. Code §: 16-11-0312(B) CDR Code #: 0086

Tyrik Gerard Bright

AKA:

Race: Sex: M Age: 32

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Aiken, SC 29801-4416

DL#: SID#: SC01240271

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Burglary/ Burglary (Violent) (After 06/20/85) - Second degree

SENTENCE SHEET

0-15 years

CONVICTED OF or PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted. Lesser-Included Offense. Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: McCarley, Nicholas Randolp SC Bar# 76930 Defendant Attorney for Defendant SC Bar# 77834

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*, the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

Table with columns for PTUP, days/hours Public Service, Obtain GED, Attend Voc. Rehab. or Job Corp., May serve W/E beginning, Substance Abuse Counseling, Random Drug/Alcohol testing, Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning, \$ paid to Public Defender Fund, Other.

Table with columns for Recipient, \*Fine, § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$ 133.90

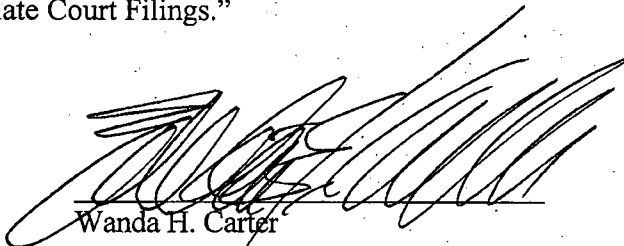
Clerk of Court/ Deputy Clerk: Judge Code: 2053 Court Reporter: Sentence Date: June 12, 2013

Presiding Judge: Judge Code: 2053 Sentence Date: June 12, 2013

## 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."

June 23rd, 2014



Wanda H. Carter  
Deputy Chief Appellate Defender

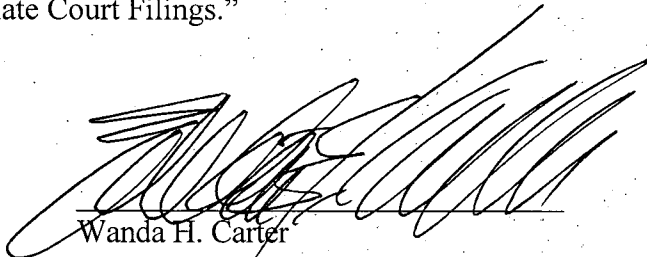
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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June 23rd, 2014

A large, stylized handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

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

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Aiken County

J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,


V.

TYRIK GERARD BRIGHT,

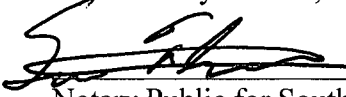
APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of June, 2014.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 23rd day of June, 2014.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022

**RECEIVED**

JUN 23 2014

**SC Court of Appeals**