

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Calhoun County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

MAY 23 2013

S.C. Supreme Court

TITUS BANTAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-207130

APPENDIX

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COUNTY OF CALHOUN) FIRST JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA,) 2007-GS-09-0004
) 2007-GS-09-0218
PLAINTIFF,) 2007-GS-09-0220
))
VS.))
))
TITUS ABRAHAM BANTAN,))
))
DEFENDANT.))

THE STATE OF SOUTH CAROLINA,) 2007-GS-09-0148
) 2007-GS-09-0219
PLAINTIFF,) 2007-GS-09-0221
))
VS.))
))
PHILLIP LEE SPEARS,))
))
DEFENDANT.))

TRANSCRIPT OF RECORD

OCTOBER 1, 2, 3, 4, 8, 10, 2007
ST. MATTHEWS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE, AND A JURY

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

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WITNESS/DESCRIPTION

PAGE NO.

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MONDAY, OCTOBER 1, 2007

THE COURT: All right, we do have a number of motions, and there is a gentleman who I understand potentially is a witness in one of the motions, and there is some concern with addressing that matter so that if his testimony is needed, then we can proceed with him.

MS. FRYAR: Thank you, Your Honor. I have spoken with that officer, and he has just some time -- he has time this afternoon now, so he is fine. And I believe Ms. Hinds wanted to take up an issue first regarding her continuing to represent this gentleman before we proceed.

THE COURT: Okay, very well. Yes.

MS. HINDS: I do believe my client would have a motion. He wants to relieve us as counsel.

THE COURT: Okay, all right. Well, here's what I must do. To have that hearing, I must have that hearing ex parte to preserve the attorney-client privilege. And so I'm going to have to ask everyone except of course our clerk and the court reporter, my law clerk, court security and you, Ms. Hinds, and of course the defendant remain. Everyone else must vacate the courtroom, so we might as well handle that. So, if you would be so kind.

(A PAUSE.)

EX PARTE HEARING

THE COURT: All right, yes, sir, my gentlemen here,

1 y'all are from Calhoun County from the sheriff's
2 department. Am I correct with that?

3 DEPUTY SHERIFF: Yes, ma'am.

4 THE COURT: All right, and is the sheriff's department
5 involved in this particular case? All right. Gentlemen,
6 I've got Nevander here and out an abundance of caution, I'm
7 going to ask you all just to step out this door right here
8 since this is your agency involved, and why don't you ---

9 DEPUTY SHERIFF: Well, Your Honor, if you don't mind,
10 I've got other people ---

11 THE COURT: That will be perfect, and if y'all see me
12 doing like this, hop to now. Don't be slow.

13 (A PAUSE.)

14 THE COURT: All right, now, and this young man, I know
15 he is a lawyer with the office. Tell me your name.

16 MR. TURNBLAD: Jason Turnblad. Jason Turnblad.

17 THE COURT: I'm so excited to meet you, Mr. Turnblad,
18 I want the record to reflect who is here. We have our
19 bailiff. If you'd state your name for me.

20 BAILIFF: Clifford Whaley.

21 THE COURT: Thank you, Mr. Whaley, and of course Ms.
22 Hinds is here, and I just met the latest lawyer from the
23 office. Mr. Brown is present and the defendant is present.
24 If you would introduce him to me, please, Ms. Hinds.

25 MS. HINDS: This is Mr. Titus Bantan.

1 THE COURT: Mr. Titus Bantan is present. Nevander is
2 here, who is from the Orangeburg-Calhoun Detention Center,
3 and Claudia is here from the clerk's office. Obviously Ms.
4 Elizabeth Harris is here, who is my court reporter, Ms.
5 Harris. My law clerk is here, Ms. Burch, and of course I
6 am here, and those constitute the people who are here
7 present in the courtroom. Do I have everyone, Ms. Hinds?

8 MR. JOHNSON: Yes, ma'am.

9 THE COURT: All right. Now, with regards to you, Mr.
10 Whaley, you, Mr. Nevander, of course Claudia and everyone
11 else, Kendall, everyone else, I am placing you under an
12 order to preserve the attorney-client privilege. These
13 communications will be *ex parte*, meaning without the other
14 side present. Those of you who do not have any
15 attorney-client privilege with Mr. Bantan are not to
16 disclose these matters. If you do disclose these matters,
17 then you will suffer the contempt of the court because it
18 is important that these communications be kept privileged
19 to protect Mr. Bantan in these matters.

20 All right, yes, ma'am, Ms. Hinds, you're telling me
21 that Mr. Bantan wishes that you would be, and I gather Mr.
22 Brown would also be relieved as his lawyer?

23 MS. HINDS: Yes, ma'am, and we would like to address
24 the court.

25 THE COURT: Sure. Yes, sir, Mr. Bantan, good morning.

1 MR. BANTAN: Good morning.

2 THE COURT: And, Mr. Bantan, raise your right hand.

3 TITUS A. BANTAN IS SWORN BY THE
4 COURT:

5 THE COURT: Yes, sir, tell me what your concern is.

6 MR. BANTAN: Well, I'm -- my number one concern is
7 that officers of this county, you know, just lying, okay?
8 And I don't feel like she's going to be able to have a
9 strong defense for me due to the fact that these cops -- I
10 mean, it's, it's true they're lying, all right? That they
11 lied about a bunch of things, okay, and I just don't
12 believe that she will be able to give me a strong enough
13 defense to represent me against this. So, I would prefer
14 to have a paid lawyer.

15 THE COURT: Okay. All right, sir. Thank you, Mr.
16 Bantan. Anything else?

17 MR. BANTAN: Well, we also have some, like, some
18 alibi, alibi issues, okay? Well, she said, well ---

19 THE COURT: She, Ms. Hinds?

20 MR. BANTAN: Yeah.

21 THE COURT: Okay.

22 MR. BANTAN: She, her and the private investigator who
23 was on this case, right, they came and, well, they, they,
24 they told me what they learned, right? And then -- well,
25 he told me this one day and then he found out ---

1 THE COURT: He, the private investigator, he?

2 MR. BANTAN: Yes, ma'am.

3 THE COURT: I just want the record, Mr. Bantan, to be
4 clear.

5 MR. BANTAN: Oh, okay, yeah, the private investigator
6 came and told me that they, that they shouldn't be able to
7 use my, my alibi because he feels like they were lying,
8 which they were not lying. And, and they -- he said that
9 he -- that my alibi said that -- oh, they were, they were
10 they lying and that he don't want to use it because they're
11 lying. But then I asked them, I asked them and they was,
12 like, no, none of this -- that conversation never came
13 about. So, I mean, and I, I, at first I believed that the
14 private investigator was with the sheriff's department, you
15 know. And, as a matter of fact, he told me he was a cop
16 right before he became a private investigator.

17 THE COURT: Okay.

18 MR. BANTAN: And I just don't -- I just think that --
19 I'm just being truthful. I think they're all of them
20 trying to railroad me.

21 THE COURT: I understand. Let me ask you this
22 question. Tell me the private investigator's name.

23 MR. BROWN: Daniel.

24 THE COURT: Daniel? Daniel?

25 MR. BROWN: Danny McDaniel.

1 THE COURT: Danny McDaniel?

2 MR. BROWN: That's correct.

3 THE COURT: Okay. All right, and so based upon the
4 comments that Danny McDaniel, his editorial comments, if
5 you will, about your alibi witness ---

6 MR. BANTAN: Yes, ma'am.

7 THE COURT: --- that causes you concern?

8 MR. BANTAN: Well, another thing is all right, now,
9 he's supposed to be an investigator on this case.

10 THE COURT: Right.

11 MR. BANTAN: He's not supposed to be judging nobody.

12 THE COURT: Right.

13 MR. BANTAN: So, I'm saying we have, we have a problem
14 with, like, a photo, you know what I'm saying? Like, a
15 photo of some footage that was taken which is definitely
16 inconclusive to prove that that was anybody in there. And
17 he's the one that come and tell me, well, I, I think
18 you're lying. I don't believe that that's such and such.
19 I believe that that's you. So, and I know for a guaranteed
20 fact it wasn't me, you know? But for him to say, just tell
21 me that to my face that I'm lying and I know I'm not lying,
22 I just don't feel comfortable.

23 THE COURT: And that again is this private
24 investigator?

25 MR. BANTAN: Yes.

1 THE COURT: Mr. Danny McDaniel?

2 MR. BANTAN: Yes, ma'am.

3 THE COURT: Okay. All right now, anything else?

4 MR. BANTAN: Well, besides the fact that my alibis, I
5 mean, no.

6 THE COURT: I understand. I'm with you; I got you.
7 Okay, let me hear from Ms. Hinds. Yes, ma'am.

8 MS. HINDS: If I may respond to that?

9 THE COURT: Sure.

10 MS. HINDS: Initially we were given, I believe it was
11 four witnesses that potentially -- there were actually five
12 that potentially could help with this alibi.

13 THE COURT: Okay.

14 MS. HINDS: We interviewed, and I will tell you that I
15 was present at these interviews, so it wasn't just my
16 investigator going out. Because we were short on time, we
17 pretty much did this in tandem.

18 The first alibi witness would have supposedly put him
19 at his house, not at the Wagon Wheel where this incident
20 took place.

21 THE COURT: Right.

22 MS. HINDS: And was vouching for a certain time period
23 in our initial conversation with her. We brought her to
24 the office to try to get more details and to maybe get
25 something more concrete down.

1 THE COURT: Do you remember the name of this person?

2 MS. HINDS: It's his mother.

3 THE COURT: Oh, his mom, okay. Okay, go ahead.

4 MS. HINDS: When -- as we're going through the second
5 longer interview, she -- I had a question as to how she
6 remembered the day.

7 THE COURT: Right.

8 MS. HINDS: Because it's going to come up. It's
9 absolutely going to come up.

10 THE COURT: Right.

11 MS. HINDS: And once she realized we were talking
12 about Monday, she said oh no, I'm talking about this
13 Saturday, not Monday.

14 THE COURT: Let the record reflect that Mr. Hasty just
15 came in, who is the Clerk of Court here. Go ahead.

16 MS. HINDS: In further interviewing her, she had no
17 knowledge of what happened the morning that we needed the
18 testimony for, so that didn't work out.

19 I will tell you that we taped that conversation with
20 her consent. We actually tried to let Mr. Bantan listen to
21 it because he was telling us that he didn't believe us.

22 MR. BANTAN: No, I didn't say I didn't believe you
23 about her.

24 THE COURT: Let her speak.

25 MR. BANTAN: I'm sorry.

1 THE COURT: And then you can speak.

2 MS. HINDS: He did not want to listen to any of the
3 tapes.

4 There were two gentlemen by the name of Rob and
5 Michael ---

6 MR. BANTAN: Haigler.

7 MS. HINDS: --- Haigler that were also given to us to
8 interview as alibi witnesses. We spoke to them. Again,
9 one day we actually spoke to both Rob and Michael very
10 briefly in the yard of their trailer park.

11 THE COURT: Okay.

12 MS. HINDS: I wasn't comfortable conducting that much
13 of an interview there. I just wanted to get the basics
14 because there was just too many people around. They agreed
15 to come to my office the next day so that we could further
16 explore that alibi.

17 THE COURT: Yes.

18 MS. HINDS: When the following day Michael did come to
19 my office, we went through what he was saying. Again, it
20 was a situation where he was very specific from day one as
21 to times and what they were doing: playing video games, we
22 got there at such and such a time, and left at such and
23 such.

24 When we got to the office and started going through
25 it, again he changed his testimony to, oh, I thought you

1 meant 9, between 9 and 10 the night before. I never was
2 over there the morning of, okay? Again, we had that
3 conversation on tape with this witness's permission.

4 THE COURT: How about Rob? Did Rob come to the
5 office?

6 MS. HINDS: Rob did not come to the office that day.
7 So, I continued to try to contact Rob. I'd have to look at
8 my notes, but probably four or five times I went back there
9 to try to find out what his position was.

10 Finally -- and I can get you that exact date if you
11 need it -- I did contact Rob myself in person, and he told
12 me he didn't remember that morning. He had been in a truck
13 accident, a severe truck accident. Ever since then, his
14 memory was not what it should be.

15 THE COURT: Okay, and that was Rob?

16 MS. HINDS: That was Rob.

17 THE COURT: All right, now that's three of four folks
18 with regards to the alibi.

19 MS. HINDS: Another potential alibi witness was his
20 sister. I do have her under subpoena, and she is going to
21 testify.

22 THE COURT: Okay.

23 MS. HINDS: The final alibi witness was a young lady
24 by the name of Sheree Kiett, K.e.i.t.t. [sic]. I
25 interviewed her. In doing my interview with her, which I

1 did meet with her several times, it's just my position that
2 I can't, I cannot put her forward.

3 THE COURT: I understand. Did you record those
4 interviews?

5 MS. HINDS: I recorded the ones with his mother and
6 with Michael. The incident with Sheree came up --
7 actually, it was one of the first ones, and it was after
8 that that we saw potentially there was going to be a
9 problem. And I decided if they would allow us to interview
10 other witnesses, we were going to ask that they would allow
11 us to tape them.

12 THE COURT: And have you been over your situation
13 regarding Ms. Kiett with Mr. Bantan?

14 MS. HINDS: I have.

15 THE COURT: Were there any other alibi witnesses of
16 which you are aware?

17 MS. HINDS: No, ma'am. Nobody, excuse me, that they
18 could give me sufficient information to run down. There
19 was some, there was some talk of somebody named either B or
20 D, but nothing -- what their name was. They didn't know
21 where they lived; they didn't know who their friends were.
22 There wasn't anything else that I could pursue.

23 THE COURT: Now, are those the folks, Mr. Bantan, that
24 you had given to Ms. Hinds regarding your alibi: your mom,
25 Rob, Michael Haigler, and Sheree Kiett as well as your

1 sister?

2 MR. BANTAN: Yes, ma'am.

3 THE COURT: Okay. Okay. All right. Very well. One
4 of your concerns of course, Mr. Bantan, is that you wanted
5 your witnesses, your alibi witnesses to be discussed.

6 MR. BANTAN: Okay.

7 THE COURT: To be talked to. Am I right in that?

8 MR. BANTAN: Yes, ma'am, but now, now, when she say
9 about, like, my mom and Rob and Michael, I perfectly
10 understand, you know, because Mom, she, she was not there.
11 She didn't come by my house that morning, okay? So, and
12 she, she came by, like, like on Saturday. She was asking
13 why didn't we take the kids to the homecoming. So, I was
14 telling her why, because I was sick, you understand? So,
15 you know, I understand why she can't use her as a alibi. I
16 can understand why she can't use Rob as a alibi because he
17 sometimes, he does forget things, you know?

18 THE COURT: Yes.

19 MR. BANTAN: I mean, he was in a coma for, like, three
20 months.

21 THE COURT: Yes.

22 MR. BANTAN: So I can understand, but as far as
23 Sheree, now she, now she told her that she was, that she
24 was in and out of the house. But she also told her that
25 she was there until the maintenance guy left, you know?

1 But that's when she -- that's, that's, that's when she had
2 left out of the crib, okay? So, that's why I say I don't
3 see why that she can't use her.

4 THE COURT: In other words, your concern is that you
5 don't understand why they are unable to use Sheree. You
6 understand your sister is going to testify?

7 MR. BANTAN: Yes, ma'am.

8 THE COURT: Okay, but your concern is Sheree, why is
9 Sheree not able to testify?

10 MR. BANTAN: Yes, ma'am.

11 THE COURT: All right.

12 MR. BANTAN: Your Honor, what she, what she told them
13 now -- I personally talked to her because this is my
14 girlfriend.

15 THE COURT: Yes, I figured that.

16 MR. BANTAN: All right, now she, now when she told
17 that she, she, she was, she was -- leaving and she comes in
18 and goes out, all right, like what time was that? Like
19 early that morning, like around 7 or 8-something, and she
20 left and she went to get me some burgers. That's like
21 leaving and then coming back, right? All right, now later
22 on that day she, she left out. Well, I can't remember the
23 exact, exact time, but I know it was probably around,
24 around maybe 11:30 or 12-something, okay, and that's when
25 she went, you know what I'm saying, to Bi-lo to cash them

1 coins and stuff, but that's the leaving in and out, you
2 know.

3 But she says that she feels, she feels like those are
4 inconsistencies, why she can't be used as a alibi because
5 she had left out that morning and she had left out later on
6 that afternoon, you know, but during -- but she -- I don't
7 see why she can't use that because during that time that
8 this place got robbed, she were there. And I don't, I
9 don't know how they figured that she wasn't. But, I mean,
10 I feel like she could have used that alibi because she was
11 there. She was right there. I mean, now, she did leave
12 out a couple times, but it wasn't no -- it wasn't the time
13 that that wouldn't make her a alibi.

14 MS. HINDS: Your Honor, there's more to it than that.

15 THE COURT: I know.

16 MS. HINDS: For the record, since he did bring up the
17 maintenance man, the maintenance man was supposed to have
18 been in and out all morning, too, so he wasn't quite an
19 alibi witness, but I did interview him to make sure if I
20 could -- is there was anything there whatsoever. And
21 during the time frame that we need, needed, he was not
22 useful at all until several hours later.

23 THE COURT: Okay, Mr. Culler has just of course
24 entered the courtroom, and he is the public defender for
25 Orangeburg County. And of course I have appointed Ms.

1 Hinds and is one of the assistant public defenders in
2 Orangeburg County, which under our new system of course is
3 now a circuit-wide public defenders office, and the public
4 defender of course has just entered the courtroom.

5 Mr. Bantan, I want to be real straight with you, okay,
6 because there's some important stuff going on, and I want
7 to be real straight with you. And the reason I'm having
8 these conversations is that I want to protect you, but
9 there has got to be enough on the record so that I
10 understand where we all are. So, I'm just going to be real
11 straight with you, what's going through my mind, and then
12 we'll talk about it. Then we'll talk about what I think we
13 should do about it, okay?

14 Here's what's going on. Lawyers have many obligations
15 under the law. They have an obligation to protect their
16 clients. They have an obligation to defend their clients
17 up to the bounds of the law. They have additional
18 obligations ethically, and those ethical considerations
19 have to do with not making a misrepresentation to the
20 court.

21 MR. BANTAN: Right.

22 THE COURT: If there was to be a representation made
23 to a jury, the concern of the lawyer, that's a
24 representation to the court, too. Our law, our ethical
25 rules, I should say, our ethical rules say that a lawyer

1 has to correct that misinformation. A lawyer has to do
2 that, and that can put a lawyer in a terrible, terrible
3 circumstance of having to do something that they are afraid
4 is not in their client's best interest.

5 I am fearful that that's the horn of the dilemma upon
6 which Ms. Hinds is finding herself. I don't know that.

7 She hadn't said anything to me about it at all, but I'm
8 picking up those vibes, okay, that she doesn't, she doesn't
9 know exactly what to do at this juncture because she
10 doesn't want to tell me information that she is afraid is
11 not helpful to you. But she has to be straight with me
12 because she's an officer of the court. So, when I ask her
13 this next question, I just want you to understand that's
14 where I'm coming from, okay?

15 MR. BANTAN: Yeah.

16 THE COURT: You with me, because I want you to
17 understand exactly what we're doing here, okay? Okay,
18 thank you, Mr. Bantan, and then we've got to talk about
19 what we've got to do about it.

20 Is that where you are? Are you feeling as though
21 you're on the horns of that dilemma?

22 MS. HINDS: Yes, ma'am.

23 THE COURT: I thought you did. Does Mr. Bantan know
24 what it is you need to tell me?

25 MS. HINDS: Yes, ma'am.

1 THE COURT: Can you tell me any reason why you ought
2 not tell me under the law, and you can confer. Come on,
3 Mr. Culler. You can jump in the fray.

4 MR. CULLER: And I apologize, Your Honor. I didn't
5 see you. But for the moment, I would not have come in the
6 courtroom. I understand y'all are having a hearing, but
7 ---

8 THE COURT: Well, I think I might be real happy you're
9 here. Mr. Bantan, do you know Mr. Culler, the public
10 defender? Do you know him?

11 MR. BANTAN: Yes, ma'am.

12 MR. CULLER: We've met.

13 (COUNSELORS CONFER.)

14 THE COURT: Now, Mr. Culler, don't leave me.

15 MR. CULLER: I'm not leaving, Your Honor.

16 THE COURT: Mr. Culler, come on up here and
17 participate. I'm going to ask you guys now to tell Mr.
18 Bantan before you tell me what you all just discussed. I
19 don't want him in -- I want him to know exactly what you
20 just discussed. You don't have to do that, Mr. Culler, but
21 you might want to be within earshot.

22 MR. CULLER: I understand, Your Honor. I think...

23 (COUNSELORS CONFER WITH DEFENDANT.)

24 THE COURT: Thank you all. So, you all, everybody has
25 broken apart, so apparently you've at least had a chance to

1 tell Mr. Bantan what you all were talking about?

2 MS. HINDS: Yes, ma'am.

3 THE COURT: All right. In answer to my question then,
4 Ms. Hinds, which is can you tell me a reason why Ms. Sheree
5 Kielt wouldn't be called?

6 MS. HINDS: No, ma'am. I will tell you that I first
7 interviewed her, then did some additional investigation
8 which caused me some pause. Went back and reinterviewed
9 Ms. Kielt, and it was at that point when I asked her about
10 the things that I had come up with that she volunteered to
11 me that she had not been truthful to me.

12 THE COURT: All right. Your concern is had not been
13 truthful to you about the time line?

14 MS. HINDS: About several things, Your Honor.

15 THE COURT: About several things. Let me ask you this
16 question. Would those things, were they relevant to her
17 alibi testimony?

18 MS. HINDS: Yes, ma'am.

19 THE COURT: All right, and is your concern that if she
20 was called, that she would testify to those things that
21 she's told you now she was not being truthful?

22 MS. HINDS: Yes, ma'am.

23 THE COURT: Do you at least understand the issue
24 first of all, Mr. Bantan? Okay. The problem is is that if
25 Ms. Kielt was to testify in that regard, to matters that

1 she's also told Ms. Hinds that she was not being truthful,
2 Ms. Hinds has to clear that up, and obviously that's a real
3 problem. Go ahead. Yes, sir.

4 MR. BANTAN: You see, all right, now I also talked to
5 her and I asked her, like, for the third time about it
6 because when she told me that, I asked her why she did she
7 lie to Ms. Hinds.

8 THE COURT: Right.

9 MR. BANTAN: And she told me that she didn't tell Ms.
10 Hinds that.

11 THE COURT: I got you.

12 MR. BANTAN: You know, and I asked, asked her over
13 thirty times, over and over again in every different way I
14 could possibly think of, and she told me, say everything
15 the same. That she, she never told her that.

16 THE COURT: Okay. I'm with you. That's very tough
17 for you, Mr. Bantan; I understand how difficult that is,
18 all the concerns that you have.

19 Mr. Bantan, I must tell you I know that of course we
20 met about thirty days ago when I relieved your prior
21 counsel, Bates Felder.

22 MR. BANTAN: Yes, ma'am.

23 THE COURT: And appointed Ms. Hinds and I want you to
24 know that I absolutely understand your concern, fear that
25 if law enforcement is being untruthful, the fear that the

1 jury won't get that. I'm one hundred percent with you, and
2 I understand that concern. But I must tell you that Ms.
3 Hinds is well able to cross-examine them very effectively
4 in that regard, as is Mr. Brown, who is of course with her.

5 With regards to the situation with Ms. Kiett, if Ms.
6 Kiett was to testify based on the conversation that Ms.
7 Hinds has had with her, irrespective of the conversation
8 that she has had with you, she has an obligation to the
9 court to correct that communication with the jury. Given
10 those two issues that you raise, while I understand, I do
11 understand you're concerned, particularly if you're having
12 the same conversation with Ms. Kiett and she's telling you
13 she didn't say that, she didn't say that. I must tell you
14 that if the conversation was had with Ms. Hinds, she has
15 to, she has to correct that with the jury. So, I certainly
16 understand where she is coming from regarding her concerns
17 about calling Ms. Kiett.

18 So, bottom line, Mr. Bantan, neither one of those
19 grounds, while I understand your concern, are grounds upon
20 which I would relieve Ms. Hinds representing you. I know
21 her to be an excellent lawyer, an honorable lawyer, and I
22 know that she is well capable of cross-examining law
23 enforcement because I have seen it and I know it to be
24 true.

25 You know, it always troubles me, it always troubles me

1 when people going into trial say that they have a fear of
2 being railroaded because I absolutely don't want that ever
3 to happen -- record to reflect that our Clerk of Court, Mr.
4 Hasty, has just joined us -- because I certainly never want
5 to participate in that happening to anyone. And I would
6 want you to know what I know is that you have able and
7 capable representation, and these people got no interest in
8 that happening to you.

9 But I understand that fear and anybody standing trial
10 for serious charges has got to have that as a concern.
11 They want to be sure as sure as humanly possible that the
12 people who are there to help are advocating for them to the
13 bounds of the law, and I certainly understand that concern,
14 Mr. Bantan. I truly do.

15 Obviously if something else should occur during the
16 course of this trial, your lawyers will let me know and we
17 will address it at that point. At this point, I would not
18 be inclined to relieve her from representing you. I want
19 you to have fine representation.

20 Having said that, Mr. Bantan, you said you'd rather
21 have a paid lawyer, and I heard that. Have you retained a
22 lawyer? I should ask that question of you.

23 MR. BANTAN: My momma.

24 THE COURT: I'm sorry?

25 MR. BANTAN: My momma.

1 THE COURT: Your mother did? Now, who is that?

2 MR. BANTAN: She didn't tell me.

3 THE COURT: She didn't tell you?

4 MR. BANTAN: No. Last time I talked to her, she told
5 me she was going to do it for me. When I called her, I
6 couldn't get through. She was going to phone me.

7 MS. HINDS: She's back there; she's here today.

8 THE COURT: Shall I invite her in and ask her? That
9 way you will know.

10 All right, very well, can you bring in Ms. Bantan?
11 She's that very, very lovely lady who's been with us.

12 (MS. BANTAN ENTERS THE COURTROOM.)

13 THE COURT: Good morning. Oh, good afternoon. We've
14 made it to 1:00. Come on forward. Yes, ma'am, I know
15 that's like okay, what do they want with me? Good morning.

16 MS. BANTAN: Good morning.

17 THE COURT: Or good afternoon, I should say. I know
18 that you are Mr. Bantan's mom, but the minute I say Ms.
19 Bantan, you'll say no, I have remarried and I am Ms. So and
20 So. Tell me your last name.

21 MS. BANTAN: Bantan.

22 THE COURT: Bantan, thank you, Ms. Bantan, and you are
23 Mr. Bantan's mother?

24 MS. Bantan: Yes.

25 THE COURT: Ms. Bantan, Mr. Bantan has, if I may, has

1 shared with me that he believes that you have retained a
2 lawyer to help him, and I simply ask you if that is correct
3 and who that person is, Ms. Bantan.

4 MS. BANTAN: Yes, I'm waiting on my son to call me,
5 but he do have another lawyer. He was employed, and we are
6 talking now, and he said he will have another lawyer.

7 THE COURT: Tell me what you mean. Tell me what that
8 means.

9 MS. BANTAN: My son is really handling it, okay?

10 THE COURT: Yes, ma'am.

11 MS. BANTAN: Okay, and he will call me and give me all
12 the information.

13 THE COURT: All the details?

14 MS. BANTAN: All the details and everything.

15 THE COURT: And if that should happen between now and
16 tomorrow at 2:00, you will let me know?

17 MS. BANTAN: Yes, I will.

18 THE COURT: Thank you so much, Ms. Bantan. Very well.
19 Ms. Bantan, I need to conclude just these proceedings. And
20 I hope you understand the reason that you are excluded is
21 because I need to be sure I have preserved Mr. Bantan's
22 attorney-client privilege, and that's the reason I've asked
23 everyone to leave because I need to be sure have that I
24 secured that for him, and that's the reason that I needed
25 to ask everyone to leave. I'm going to ask you to leave

1 but just for a moment because we've concluded.

2 MS. BANTAN: Okay.

3 THE COURT: And I will conclude and everyone will be
4 able to come back in, okay?

5 MS. BANTAN: Okay. Okay.

6 THE COURT: Thank you, Ms. Bantan.

7 (MS. BANTAN EXITS THE COURTROOM.)

8 THE COURT: Mr. Bantan, was that the information that
9 you were hoping to receive from your mom?

10 MR. BANTAN: Yes, ma'am.

11 THE COURT: Okay, and I believe that in the event that
12 she needs to update that information between now and
13 tomorrow, she would do that. I think she would do that.
14 So, if she does update that and she happens to update that
15 to you, I'm sure you will let your lawyers and you will let
16 me know, okay?

17 MR. BANTAN: Yes, ma'am.

18 THE COURT: Thank you. Thank you, Mr. Bantan.

19 All right, I am ready to proceed now by inviting the
20 solicitor in, and we'll proceed with our motions. Anything
21 further from you, Ms. Hinds or Mr. Brown or Mr. Bantan in
22 this regard?

23 MS. HINDS: No.

24 THE COURT: Okay, very well. All right, thank you.

25 As far as I'm concerned, that would conclude this ex parte

1 hearing. We need to invite everyone back in. Thank you.

2 END OF EX PARTE HEARING

3 (OFF THE RECORD.)

4 THE COURT: Now, I think that -- y'all tell me. I
5 don't know that I am clear about the people who are not
6 going to be here that we are going to need here for our
7 motion hearing. I know there's the DEA fellow, person.

8 I don't know that you were present. I think we have
9 air conditioning now.

10 MS. FRYAR: Yes, ma'am.

11 MR. JEFFRIES: Your Honor, the main witness we are
12 concerned about is Lieutenant, formerly Lieutenant Todd
13 Williams of the Orangeburg County Sheriff's Office.

14 THE COURT: Okay.

15 MR. JEFFRIES: So, we want to take up the suppression
16 motion first.

17 THE COURT: Okay.

18 MR. JEFFRIES: As it pertains to a search warrant at
19 [REDACTED]

20 Judge, I would first want to turn your attention to
21 the case of State vs. Patton where it indicates that their
22 allegation that the evidence was obtained in violation of
23 the Fourth Amendment is not sufficient to entitle the
24 defendant to a suppression hearing. And with that in mind,
25 I would just want to state what I believe to be the

1 uncontested issues with regards to the search warrant, and
2 then Ms. Hinds and Mr. Brown can take it upon themselves to
3 articulate if that's not correct.

4 THE COURT: Okay.

5 MR. JEFFRIES: It's my understanding that -- and,
6 Judge, I would hand up a copy of the search warrant.

7 THE COURT: Okay.

8 MR. JEFFRIES: For the court. May I approach, Your
9 Honor?

10 THE COURT: Yes.

11 MR. JEFFRIES: Your Honor, it's my understanding that
12 the uncontested facts with regard to the search warrant are
13 as follows. The search warrant was executed at 140
14 Charlotte Circle, which is in Orangeburg County. There was
15 an affidavit done to support probable cause for the search
16 warrant. That affidavit was done by Calhoun County Deputy
17 or Officer Chris Golden. The actual search warrant was
18 issued by an Orangeburg city judge, Judge Barney Houser.
19 It was issued to any Orangeburg -- if you'll look at the
20 top of the actual search warrant, it says issued to any
21 law-enforcement officer of Orangeburg.

22 Now, it's my understanding that search warrant was
23 given to Lieutenant Golden, who was with Calhoun County,
24 who then took that search warrant to Deputy or Lieutenant
25 Todd Williams of the sheriff's office to execute it, and

1 Todd Williams executes the search warrant. By execute, I
2 mean leaves a copy for the homeowner, does the return, is
3 involved in the entire search of the home, does the return
4 which indicates what was retrieved from the home. And he
5 was assisted and the search was conducted by him, Todd
6 Williams of the Orangeburg County Sheriff's Office, at an
7 Orangeburg County address, but also by Chris Golden and
8 Shawn, Shawn Murphree of the Calhoun County Sheriff's
9 Office. So, it's my understanding the search warrant was
10 issued to a law-enforcement officer to serve in Orangeburg
11 County, someone who had jurisdiction to serve it in
12 Orangeburg County, and it was executed by an Orangeburg
13 County deputy, Lieutenant Williams. He was assisted and
14 did this. Along side Orangeburg were Calhoun County
15 deputies. It was issued by a city judge.

16 It was given to, it was given to -- I think this might
17 be where the issue is. It was given to a Calhoun County
18 deputy. That Calhoun County deputy then gives that search
19 warrant to the Orangeburg County deputies to execute it
20 because they are going in Orangeburg County.

21 With that in mind, I do not see where there is a
22 contested legal, factual allegation for which a suppression
23 hearing is required. There is -- we have people here to
24 testify.

25 THE COURT: Okay.

1 MR. JEFFRIES: But unless that somehow is contested, I
2 don't see why we would have a suppression hearing.

3 THE COURT: I understand. Yes, ma'am.

4 MS. HINDS: Your Honor, I think that that's the crux
5 of the argument. I think that needs to be issued to
6 someone that has jurisdiction within the jurisdiction
7 that's issued it.

8 Here's the situation. We have a Calhoun County
9 officer, an Orangeburg municipal judge, and getting the
10 search warrant. We do not contest the fact that Todd
11 Williams with the county helped in the execution of that
12 warrant, but the warrant was issued to Chris Golden of the
13 Calhoun County police.

14 In 17-13-140 in the case of a warrant issued by the
15 magistrate or a judge in a court of record, it shall be
16 directed to any police officer having jurisdiction in the
17 county where issued, including members of SLED. Clearly
18 the two Calhoun officers did not have jurisdiction in
19 Orangeburg County.

20 THE COURT: Let me see if I understand your position.
21 Your concern is that Chris Golden, who at the time was a
22 Calhoun County sheriff's deputy---

23 MS. HINDS: Yes, ma'am.

24 THE COURT: --- delivered, delivered to -- went to,
25 went to. Let's use that. Went to a municipal court judge

1 in Orangeburg County.

2 MS. HINDS: Correct.

3 THE COURT: With an affidavit from law enforcement and
4 then received the search warrant. Now, I note two things
5 on the search warrant itself. First of all, the search
6 warrant is directed to any bonded law-enforcement officer
7 of this state or county or of the municipality of
8 Orangeburg. And the affiant obviously is Chris Golden, and
9 the jacket or the outside of the search warrant says that
10 this is a search warrant dated 11/6/2006. And it says:
11 Officer something, something, parentheses, Chris Golden.
12 Can you read the first two words? Do you know what that
13 says?

14 MR. BROWN: I always took it as the signature, Your
15 Honor, but I could be wrong.

16 MR. JEFFRIES: It is his signature.

17 THE COURT: Okay.

18 MR. JEFFRIES: He prints it in parentheses.

19 THE COURT: Oh, okay. Now, tell me now what your
20 concern is about the search warrant.

21 MS. HINDS: Your Honor, my position would still be
22 that the Calhoun County officer did not have jurisdiction
23 to come into Orangeburg County and get, get that warrant.
24 I think he certainly could have helped drive out to the, to
25 the residence and helped, but I think the statute's clear

1 it shall be someone in the jurisdiction. Calhoun, a
2 Calhoun officer clearly did not have jurisdiction in
3 Orangeburg.

4 THE COURT: Let me ask you this question. Do you
5 object or do you maintain that the search warrant is
6 invalid because Deputy Golden was the affiant?

7 MS. HINDS: Yes, ma'am.

8 THE COURT: Okay.

9 MS. HINDS: That and the fact that it was directed to
10 him also.

11 THE COURT: Tell me why you object to Deputy Golden,
12 and I know that's probably not his correct title at the
13 time, Chris Golden, Officer Golden, being the affiant.

14 MS. HINDS: Because I don't think he had the
15 jurisdiction. There were county cops involved in this at
16 that point. I think clearly through the investigation when
17 they were out there talking to the Calhoun County cops, I
18 think that they could have gone and gotten the affiants on
19 the warrant. I just don't, clearly don't think that
20 Kristin Golden -- excuse me, Chris Golden had jurisdiction
21 to go over there and do that. I think he potentially could
22 have supplemented it if the magistrate had a, any problem
23 or question. But I just don't think he had jurisdiction to
24 go in there and get a search warrant.

25 THE COURT: Do you have any authority that you can

1 help me with?

2 MR. BROWN: Your Honor, besides 17-31-40 --
3 17-13-140, which is the -- says it shall be directed to
4 someone in the jurisdiction.

5 THE COURT: Let me see that.

6 MR. BROWN: And, Your Honor, looking at the
7 annotations after that in the back of that code section, I
8 really didn't see anything pertinent. So, what we did, we
9 went through the Sentinel Digest. We'd find what other
10 courts do. So, that -- I don't know if this has actually
11 been figured out yet here in South Carolina.

12 THE COURT: Okay, here's what I think I would like to
13 have established along these lines because I think I would
14 like to have established, and I'm a little bit mindful of
15 the fact that if we are going to call ---

16 MS. HINDS: Our witness.

17 THE COURT: --- right. If we're going to call them,
18 we need to do that now. I think that, understanding your
19 position, I'm concerned that at this juncture it is
20 appropriate that I received the testimony of Mr. Williams
21 because I think that the record does need to establish that
22 was Chris Golden acting as a courier, or was he acting in
23 some other capacity, and I think that's important. So, I
24 think that he is here, and we're going to lose him. I
25 think it's appropriate that we take that testimony. And

1 then we will fill in around it, if you will.

2 Very well, Mr. Johnson.

3 MR. JOHNSON: Your Honor, if I may? Co-counsel made a
4 motion as related to the search warrant that related to her
5 client. However, the search warrant were actually search
6 warrant for my, for my client. They thought that he was
7 there at the location. We have some issues concerning that
8 warrant as well. They, they kind of go back to the
9 Neil vs. Biggers hearing as well.

10 If you look at the affidavit, Your Honor, on the
11 warrant is a return on it. And the return has that the
12 warrant were issued at 1:00 p.m. on the 6th. And at that
13 time the officer, Chris Golden, went to the magistrate,
14 said that we were going to get the warrant for my client.

15 THE COURT: The magistrate or municipal?

16 MR. JOHNSON: The municipal judge.

17 THE COURT: Okay.

18 MR. JOHNSON: And said that they were looking for my
19 client, Mr. Spears. So, some time no later than 1:00 or
20 before, he was at the municipal judge saying he was looking
21 for Mr. Spears. There's a photo ID which identified Mr.
22 Spears as being the suspect was done at 2:15 that
23 afternoon. My client was not even a suspect at 1:00.

24 MR. JEFFRIES: Your Honor, can I, can I address that?
25 I think I can kind of clear that up. The copy Mr. Johnson

1 has is probably kind of light, as mine is. The time search
2 warrant return reads in part: I received the search warrant
3 from Lieutenant Todd Williams and have executed as followed
4 on 11/6/2006 at 9 p.m. at [REDACTED] It's not 1
5 p.m. It's 9 p.m., and I can understand why Mr. Johnson
6 would think it was 1 p.m. because my copy and probably the
7 copy the court has is faint also. This is at the top of
8 the return.

9 THE COURT: It's faint. It's like not there. Yes, I
10 do see it's so faint, it's barely there.

11 MR. JEFFRIES: I'll give you the original copy now; I
12 think that will clear it up. I think it indicates, I know
13 it indicates 9:00 p.m. because mine, you can see the 9.
14 It's faint.

15 MR. JOHNSON: I need to see yours.

16 THE COURT: Where is the original?

17 MS. FRYAR: Your Honor, I'll get it now.

18 THE COURT: Lovely. I think we probably need it.

19 (COUNSELORS CONFER.)

20 THE COURT: Now, is there any objection to us taking
21 the testimony of Mr. Williams at this point, Williams?

22 MR. JEFFRIES: None from the state.

23 MS. HINDS: No, Your Honor.

24 THE COURT: Let's go ahead and get him.

25 MR. JEFFRIES: May it please the court, Your Honor?

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1 THE COURT: Yes.

2 MR. JEFFRIES: The state calls Todd Williams.

3 THE COURT: Come on around, please, sir.

4 TODD F. WILLIAMS, BEING DULY

5 SWORN, TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please state your full name for the
7 record.

8 WITNESS: Todd F. Williams.

9 CLERK OF COURT: Be seated.

10 MR. JEFFRIES: May it please the court, Your Honor?

11 THE COURT: Yes, sir. Thank you.

12 DIRECT EXAMINATION BY MR. JEFFRIES:

13 Q. Mr. Williams, where are you currently employed?

14 A. I'm currently employed as a state law-enforcement
15 officer with the Department of Natural Resources.

16 Q. And how long have you been there?

17 A. Approximately a year.

18 Q. And where were you employed immediately before that?

19 A. Prior to that, I was employed for seven years with
20 Orangeburg County Sheriff's Office, lastly as a lieutenant
21 in narcotics.

22 Q. Okay, and let me take your attention to October 6 --
23 November 6, 2006, and ask you if you recall assisting in
24 the investigation of an armed robbery in Elloree, South
25 Carolina.

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1 A. Yes, sir. I did assist on that with the Calhoun
2 County Sheriff's Office.

3 Q. I'm sorry, what agency were you assisting?

4 A. I was assisting the Calhoun County Sheriff's Office.

5 Q. And did you actually respond to an incident location?

6 A. No, sir, I did not.

7 Q. Where did you to respond to?

8 A. I responded to the hospital, TRMC, there at the
9 Orangeburg-Calhoun County line, and I met with some other
10 officers with Orangeburg and some Calhoun officers there.

11 Q. Okay, and after you left the hospital area, where did
12 you then respond to?

13 A. Once I left the hospital, Calhoun County was already
14 at Charlotte Circle, and I proceeded from TRMCO to
15 Charlotte Circle, which is in the City of Orangeburg. 140
16 Charlotte Circle to be exact.

17 Q. What information did you have about the investigation
18 at that point when you were at Charlotte Circle?

19 A. It was very limited at that -- we were briefed at the
20 hospital that we were looking for two individuals involved
21 in a armed robbery at that time, and I was, I was not the
22 lead investigator. Captain Williams was actually the lead
23 investigator at the hospital at the time. So, I was just
24 taking a back seat until Calhoun County requested
25 assistance at Charlotte Circle.

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1 Q. Now, let me ask you this. Why were you involved in
2 this case at all since it was Orangeburg -- or Calhoun
3 County investigating?

4 A. Calhoun County and the State Law Enforcement Division
5 were both conducting an investigation with reference to an
6 armed robbery. They had some information that they
7 believed that the suspects were actually in Orangeburg
8 County. So, that's -- at that time they called us,
9 notified us to meet them at the hospital there.

10 Q. Okay, did the location, [REDACTED] where is
11 that? What county?

12 A. [REDACTED] lot 2, is in the County of
13 Orangeburg, City of Orangeburg.

14 Q. And why did you go to that location? Again, this is a
15 Calhoun County investigation.

16 A. Calhoun County actually went over there. They
17 requested an Orangeburg unit meet them there since this it
18 is in the County of Orangeburg.

19 Q. Okay, and when you got to the location, 140 Charlotte
20 Circle, were you involved with the search of the location?

21 A. That is correct.

22 Q. And first tell me what efforts were taken to search
23 that location.

24 A. When I arrived there, Calhoun County was already
25 there; they were speaking with two individuals and some

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1 children out at, at the residence. I identified myself to
2 Mr. Bantan as Lieutenant Williams, Todd Williams with the
3 Orangeburg County Sheriff's Office, Narcotics Division. I
4 advised him Calhoun County had briefed me about, you know,
5 things that they talked about at the house.

6 I attempted to get a consent to search of the
7 residence from Mr. Bantan, a written consent. Mr. Bantan
8 would not sign anything. He did give a verbal consent to
9 search.

10 MR. JEFFRIES: If I could this marked as state's
11 exhibit for identification? Your Honor, would it be more
12 appropriate to make that a court's exhibit?

13 THE COURT: It would be at this point.

14 MR. JEFFRIES: I apologize.

15 (PERMISSION TO SEARCH FORM MARKED AS COURT'S EXHIBIT
16 NUMBER 1.)

17 BY MR. JOHNSON:

18 Q. Let me ask you if you recognize what's been labeled
19 Court's Exhibit Number 1?

20 A. Yes, sir, I do.

21 Q. What do you recognize that as?

22 A. This is a Permission to Search form utilized by the
23 Orangeburg County Sheriff's Office.

24 Q. And who actually filled out that form?

25 A. I did. It's got my signature down at the bottom in my

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1 handwriting.

2 Q. And generally what does that indicate?

3 A. This indicates that voluntary -- wanted permission to
4 search the actual residence there that I have located
5 there, [REDACTED] Mr. Bantan did not sign it
6 down at the bottom. I put verbal down there below the
7 signature, and in quotation marks I wrote: I don't care if
8 you search, but I'm not signing anything.

9 MR. JEFFRIES: Your Honor, at this time I'd ask to
10 move Court's Exhibit 1 into evidence for purposes of this
11 hearing.

12 THE COURT: If you show it to Ms. Hinds, please, and
13 Mr. Johnson.

14 (A PAUSE.)

15 (PERMISSION TO SEARCH FORM MARKED AS STATE'S EXHIBIT
16 NUMBER 1 FOR ID.)

17 BY MR. JEFFRIES:

18 Q. Now, if you could, Mr. Williams, tell the court what
19 was told to you both orally and in writing as to the search
20 in the home at that time.

21 A. Mr. Bantan agreed to a consent to search of the
22 bedroom that he was in when the Calhoun County officers, I
23 guess, found him walking from the back. I'm not sure if
24 they found him in the bedroom or walking from the bedroom,
25 but a consent to search of that bedroom he'd been in.

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1 Q. So, he did consent to search at that time?

2 A. He gave a verbal consent, not a written consent, yes,
3 sir.

4 Q. And on his -- what did you indicate on the Permission
5 to Search as his response?

6 A. His response to me was that I don't care if you
7 search, but he was not signing anything.

8 Q. Okay, so at this point when you have verbal consent to
9 search, do y'all start searching?

10 A. Yes, sir, that is correct.

11 Q. And are the Calhoun County deputies also searching?

12 A. That is correct.

13 Q. And at some point, did you stop searching?

14 A. Yes, sir, we did.

15 Q. And why was that?

16 A. We were searching, and we started finding some, some
17 items in the back bedroom that was -- would be consistent,
18 we believed, with the armed robbery. We started
19 questioning Mr. Bantan about that, and he stated that he
20 did not want us to search anymore, and he withdrew his
21 consent. That's what I believed at that time. My
22 understanding of him, that he wanted to withdraw that
23 consent. At that time, we didn't search any more. We held
24 what we had and got a search warrant.

25 Q. Okay, when you say you got a search warrant, who

1 actually went to go retrieve the search warrant?

2 A. I called Lieutenant Romanstein with the Orangeburg
3 City Police Department, advised him of what we had since we
4 were in the city limits of Orangeburg in the County of
5 Orangeburg. And Officer Chris Golden and Sean Murphree
6 went and met Lieutenant Romanstein at the City of
7 Orangeburg Municipal Building and met with Judge Houser.

8 Q. What were you doing while they left?

9 A. I was at the residence.

10 Q. Okay. Did you at any time leave the residence before
11 they came back?

12 A. No, sir. I did not.

13 Q. Okay, and are you aware of actually who would have
14 done the Affidavit in Support of Probable Cause to obtain
15 the search warrant?

16 A. Yes, sir. The affidavit I believe was done by Chris
17 Golden.

18 Q. And at some point, did they return with the search
19 warrant?

20 A. That is correct, yes, sir.

21 Q. And who actually executed that search warrant?

22 A. I executed the search warrant, hence my signature on
23 the execution line.

24 Q. And who actually conducted the search?

25 A. I conducted the search, along with the Calhoun County

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1 investigators.

2 Q. And who would have done the inventory following the
3 search as to what property was taken from the residence?

4 A. I was the executing officer for the actual search
5 warrant itself, so I did the inventory return. And also I
6 went and had Judge Houser sign the actual return.

7 Q. Let me show you ---

8 MR. JEFFRIES: I'll have this marked as State's
9 Exhibit Number 2 -- I'm sorry, Court's Exhibit. I'm sorry,
10 Court's Exhibit Number 2.

11 Q. Let me ask you if you recognize Court's Exhibit Number
12 2.

13 A. Yes, sir, I do. That is a part of the actual search
14 warrant that was obtained from Judge Houser by Chris Golden
15 and which I executed.

16 MR. JEFFRIES: Okay, all right, at this time I'd move
17 to admit upon showing it to defense counsel.

18 THE COURT: All right, it's a court's exhibit.

19 MR. JEFFRIES: Court's Exhibit Number 2.

20 (A PAUSE.)

21 MR. JEFFRIES: At this time, I'd move to admit Court's
22 Exhibit Number 2 in for identification for the purposes of
23 this hearing.

24 THE COURT: So admitted. Any objection? I should
25 ask. I didn't hear any objection.

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1 MS. HINDS: None.

2 MR. JOHNSON: Nothing.

3 THE COURT: Okay.

4 (COPY OF AFFIDAVIT FROM SEARCH WARRANT MARKED AS
5 COURT'S EXHIBIT NUMBER 2.)

6 MR. JEFFRIES: Beg the court's indulgence.

7 (A PAUSE.)

8 BY MR. JEFFRIES:

9 Q. And as to Court's Exhibit Number 2, would you read the
10 top? I'm sorry, strike that. Who is listed as the affiant
11 on that court's exhibit?

12 A. The affiant is listed as Chris Golden.

13 Q. Okay, and let me show you what's going to be labeled
14 State's Exhibit Number 3 for identification -- I'm sorry,
15 Court Exhibit Number 3. Let me ask if you recognize
16 Court's Exhibit Number 3.

17 A. Yes, sir, I do.

18 Q. And what do you recognize that as?

19 A. This is the actual Execution Return for the search
20 warrant.

21 Q. And is that pertaining to this same chain of events
22 we're talking about, the search warrant at ---

23 A. That's correct.

24 Q. --- 140 Circle?

25 A. Yes, sir, I'm sorry. That is correct. This is the

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1 return of the search warrant, and it's got a itemized list
2 of what was taken from the residence at 140 Charlotte
3 Circle, lot #2, by myself, and it's got myself signed at
4 the bottom, signature of officer executing the warrant.

5 Q. Okay.

6 MR. JEFFRIES: At this time, Your Honor, I'd move to
7 enter Court's Exhibit Number 3 into evidence for
8 identification purposes of this hearing.

9 THE COURT: Any objection?

10 MS. HINDS: No objection.

11 MR. JOHNSON: No objection.

12 (COPY OF EXECUTION OF RETURN MARKED AS COURT'S EXHIBIT
13 NUMBER 3.)

14 BY MR. JEFFRIES:

15 Q. And, Agent Williams, let me ask you first. Court's
16 Exhibit Number 3, does it indicate what time the return was
17 done?

18 A. Yes, sir.

19 Q. What time? I'm sorry, what time the search warrant
20 was executed?

21 A. Yes, sir. The search warrant was executed on November
22 the 6th, 2006, at 9 p.m.

23 Q. And does it indicate again the signature of the
24 executing officer?

25 A. Yes, sir. Down at the bottom it's got a place for the

1 signature of the executing officer, and that is my
2 signature down at the bottom.

3 Q. Does it reflect who the judge was that issued it?

4 A. Yes, sir. The following day I went to Judge Houser's
5 office at the municipal building there in Orangeburg, and
6 he signed and I -- well, I signed this executing the
7 return, the return, and he signed the actual --

8 Q. And what ---

9 A. --- search warrant there.

10 Q. And what all, what's generally reflected on a search
11 warrant return such as this one?

12 A. All the items that we deemed as evidence taken from
13 the residence, everything that we took from the residence
14 would be listed here on this return.

15 Q. And were you present during the recovery of all these
16 items from the home?

17 A. That is correct, yes, sir.

18 Q. And did you also actually actively participate in the
19 search of the home?

20 A. Yes, sir. That's correct.

21 Q. And does it indicate what other officers recovered
22 items from the home?

23 A. Yes, sir. It also indicates the other officers that
24 were present during the search: Bill Cartwright, Chris
25 Golden, Sean Murphree, and myself, Todd Williams.

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1 Q. And they're all, other than yourself, Calhoun County
2 employees?

3 A. Yes, sir, that's correct.

4 Q. Law-enforcement officers from Calhoun County?

5 A. That is correct, sir.

6 THE COURT: Counsel, I've had two communications
7 brought to me by note. Let me just share with you. One of
8 them said Judge Houser wanted to know if he needs to come
9 to court. So far as I am concerned at this point, given
10 our time considerations today, I said no. And then it said
11 Judge Houser can come now, but he won't be able for the
12 rest of the week.

13 I share that with you. I don't know if you need him
14 or not; I don't know if it's appropriate. We haven't
15 addressed that issue at all. Do you wish me to communicate
16 with him anything other than ---

17 MS. HINDS: We were trying to get a message to him.
18 We would ask him to come. When we realized we were running
19 out of time, we tried to get a message to him that not
20 today. We would get in touch with him this afternoon.

21 THE COURT: He's concerned about the rest of his week.
22 This is highly unusual.

23 MR. JEFFRIES: I don't think this -- you know, I don't
24 think we're going to call him. One thing that did come to
25 our attention is the original search warrant, we're talking

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1 about how light the copy is, it's kept with the magistrate.

2 THE COURT: Right.

3 MR. JEFFRIES: If that were to become an issue, we
4 might need him to bring the original search warrant. That's
5 not kept by investigating officer, investigating agency.
6 It's kept by the magistrate.

7 THE COURT: Well, I think we do ---

8 MR. JEFFRIES: The copy that's now in evidence I think
9 is a little darker than the one we have.

10 THE COURT: Mr. Johnson, I think you wish to see the
11 original?

12 MR. JOHNSON: Yes, need to see the original, Your
13 Honor.

14 MR. JEFFRIES: If we could somehow relate that message
15 to the judge.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 THE COURT: You may proceed.

18 MR. JEFFRIES: May I inquire as to the last line, my
19 last line of questioning?

20 THE COURT: Sure you can, for both of us, all of us.

21 (REQUESTED PORTION IS READ BACK.)

22 BY MR. JEFFRIES:

23 Q. Agent Williams, I want you to look at Court's Exhibit
24 Number 3 and tell the court if there is any indication of
25 any property that you personally recovered notated on the

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1 search warrant return.

2 A. Yes, sir, it is.

3 Q. What did you personally recover from the home?

4 A. \$260 in US currency, all \$20 bills found in a black
5 shoe; and a white, plastic shoe rack hanging in the master
6 bedroom closet.

7 Q. Okay, and again, you were present for the entire
8 search?

9 A. That is correct, sir. I was there when they executed;
10 I was present during all the search.

11 Q. And you would have done the return?

12 A. Yes, sir. That is correct.

13 Q. All right, I'm going to show you one more document.

14 Let me show you Court's Exhibit Number 4 and ask you if you
15 recognize this document.

16 A. Yes, sir, I do.

17 Q. And what do you recognize it as?

18 A. That is another part of the search warrant that was
19 obtained by Chris Golden signed as the affiant, signed by
20 Judge Houser. Part of the search warrant from 140
21 Charlotte Circle, lot 2.

22 Q. Okay, and again you indicated ---

23 MR. JEFFRIES: Well, at this time, Your Honor, I would
24 move to admit Court's Exhibit Number 4 into evidence for
25 purposes of this hearing.

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1 THE COURT: Sure. Any objection?

2 MS. HINDS: No objection.

3 MR. JOHNSON: No objection.

4 THE COURT: All right, thank you.

5 (COPY OF AFFIDAVIT FROM SEARCH WARRANT MARKED AS
6 COURT'S EXHIBIT NUMBER 4.)

7 BY MR. JEFFRIES:

8 Q. All right, and what in general does this affidavit
9 represent? What does it represent?

10 A. This affidavit represents who personally appeared
11 before Judge Houser to swear and affirm to the actual
12 probable cause for establishing a search warrant. At the
13 top it's got: Description of property sought, description
14 of premises, person, place or thing to be searched, and
15 reason for the affiant's belief that the property sought is
16 on the subject's premises.

17 Q. All right, and who was it issued -- or who was listed
18 as the affiant again?

19 A. Officer Chris Golden.

20 Q. And who was listed as the judge that's issuing it?

21 A. Municipal Judge Barney Houser.

22 Q. And does it indicate what location is to be searched?

23 A. Yes, sir, it does: White single-wide mobile home with
24 a wooden porch located at [REDACTED] in the City
25 of Orangeburg, South Carolina. The mobile home has the

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1 numeric, numerical number 140 on the west end of the mobile
2 home.

3 Q. Okay. I apologize. I need to show you one more
4 document and ask you if you recognize this, this document.

5 A. Yes, sir, I do.

6 Q. What do you recognize that to be?

7 A. This is another part of the search warrant for 140
8 Charlotte Circle.

9 Q. And what part is that?

10 A. This is the part that describes at the top, it says:
11 To any bonded law-enforcement officer at the state or
12 county or of the Municipality of Orangeburg. It's got a
13 description of the premises, person, place or thing to be
14 searched, and it's ---

15 Q. Let me stop you there.

16 A. --- got a description of the property.

17 Q. Thank you. Let me stop you there.

18 MR. JEFFRIES: I'm going to ask to have Court's
19 Exhibit Number 5 admitted into evidence for purposes of
20 this hearing.

21 MS. HINDS: No objection.

22 MR. JOHNSON: No objection.

23 THE COURT: Very well, so admitted.

24 (COPY OF PORTION OF SEARCH WARRANT MARKED AS COURT'S
25 EXHIBIT NUMBER 5.)

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1 BY MR. JEFFRIES:

2 Q. And let me just turn your attention. Again, you were
3 kind of going over this before. Very top portion, who was
4 the search warrant issued to?

5 A. To any bonded law-enforcement officer of this state or
6 county or of the Municipality of Orangeburg.

7 Q. And again, why were you involved with the search
8 warrant at 140 Circle?

9 A. I was involved because the search warrant at 140
10 Charlotte Circle, because it was in the County of
11 Orangeburg, City of Orangeburg, and I was at that time a
12 Orangeburg County sheriff's officer, deputy.

13 Q. And were you the one that executed the search warrant?

14 A. Yes, sir. That is correct.

15 Q. And when you did the inventory for the return, who was
16 present?

17 A. Officer Chris Golden and Officer Sean Murphree with
18 the Calhoun County Sheriff's Office.

19 Q. And did you leave a copy of the search warrant with
20 the homeowner, residents?

21 A. Yes, sir, at the residence I left a copy.

22 MR. JEFFRIES: That's all the questions I have.
23 Please answer any questions Ms. Hinds might have.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION BY MS. HINDS:

T. WILLIAMS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. When did you get the initial call for assistance?

2 A. On that afternoon on the 6th. I'm not sure the exact
3 time, but it was daylight. That afternoon of the 6th,
4 November.

5 Q. It was daylight?

6 A. Yes, ma'am.

7 Q. Who all was there when you arrived?

8 A. To where?

9 Q. At, at the, at the hospital.

10 A. There was a good many Orangeburg County officers there
11 at the hospital. I'm not sure. I know Captain Williams
12 was the actual commander there, and it was Orangeburg
13 County officers there. And I don't remember if that's
14 where we met SLED. There was constant cell phone
15 communications, but our Captain Williams had us all go to
16 the hospital.

17 Q. And again, I understand you didn't -- you don't know
18 exactly what time it was, but can you give me some
19 indication? Was it early afternoon, late afternoon? Some
20 kind of time frame.

21 A. I would say probably late afternoon.

22 Q. About how long were you at the hospital?

23 A. I'm not sure. I know it, it -- that whole thing
24 probably was a couple of hours because we waited a long
25 time there at the hospital for word, what they needed us to

1 do.

2 Q. And who contacted you to give up on the hospital?

3 A. Ma'am?

4 Q. To go someplace else. Who contacted you to give up on
5 -- leave the hospital and to go someplace else,

6 specifically [REDACTED]

7 A. Captain Williams. He, he was on the phone with -- I'm
8 not sure exactly who he was on the phone with, and also

9 Calhoun County called for assistance on the 800 radio
10 saying that they were at Charlotte Circle, and I was right
11 beside Captain and he made sure I was going.

12 Q. Any idea what time you arrived at 140 Charlotte
13 Circle?

14 A. Based on the Permission to Search, I asked for
15 permission to search from Mr. Bantan at 5:30 p.m. So,
16 obviously it would be prior to 5:30 p.m.

17 Q. When you got to [REDACTED] who exactly was
18 there?

19 A. Calhoun County officers.

20 Q. Specifically?

21 A. Officer Golden, Officer Murphree, and I believe that's
22 it. I'm not -- I don't think that Officer Cartwright was
23 there.

24 Q. Did you have kind any idea how long they'd been there
25 before you got there?

T. WILLIAMS - CROSS-EXAMINATION BY MS. HINDS

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1 A. No, ma'am. Obviously long enough to make contact with
2 somebody, and they knew that they needed some more
3 assistance there at the residence.

4 Q. So, the only officers that went from the hospital to
5 [REDACTED] was that group of people?

6 A. No, ma'am. It was myself, Investigator Antoine
7 Robinson. I believe Captain Williams came over there. And
8 I believe we had some, some uniform patrol cars that
9 initially responded.

10 Q. Where did they -- where were they while you went
11 inside?

12 A. Outside.

13 Q. They were outside?

14 A. Yes, ma'am.

15 Q. All, all of them, all of them remained outside?

16 A. I believe Investigator Robinson I'm sure went in.

17 Q. Was Robinson in there when you got consent to search?

18 A. I'm not sure. I -- we were in the den, and Mr. Bantan
19 was sitting on the couch. Officer Golden and Officer
20 Murphree were talking to him, and so was I.

21 Q. There was no arrest warrant for Mr. Bantan that day?

22 A. I did not have a warrant.

23 Q. But they weren't even looking for Mr. Bantan at that
24 time. Isn't that not correct?

25 A. I'm not sure. I'm not sure of all the details of the

1 armed robbery. I was -- unfortunately, I was -- I didn't
2 have all the information of the whole case and everything.
3 That was going through Captain Williams.

4 Q. When he was sitting on the couch, can you tell if he
5 was handcuffed or not?

6 A. Initially he was handcuffed. Once we believed that he
7 was going to sign the Permission to Search, of course he
8 was unhandcuffed after talking with him.

9 Q. About how long did you talk to him before you uncuffed
10 him?

11 A. I'm not sure. About -- I'd have to guesstimate on
12 that.

13 Q. Give me some kind of guess.

14 A. I'm sure it wasn't probably fifteen, twenty minutes.
15 I'm not sure. Long enough to carry out a conversation.

16 Q. At any point, did he ask you to leave?

17 A. Ma'am?

18 Q. At any point during -- at that time, did he ask you to
19 leave?

20 A. Oh, no.

21 Q. So, he remained in cuffs from the time you got there
22 until about fifteen or twenty minutes later when he gave
23 the consent to search? Is that what you're saying?

24 A. I would say that would probably be correct, yes,
25 ma'am.

T. WILLIAMS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. And when did he rescind that consent to search?

2 A. He rescinded his consent to search. He, he actually
3 went to the back bedroom with us when we were searching,
4 and I started asking him about the items that, that we were
5 -- that we found.

6 Q. What items specifically?

7 A. Tan Timberland boots, black BDUs. I found a receipt
8 I believe from a Bi-lo coin tender, and we found some
9 Newport cigarettes. I -- well, I saw the Newport
10 cigarettes beside the bed and some, some money rolls.
11 Started asking him about that stuff, and I believe I asked
12 him about a black hat also. And at that time, he withdrew
13 his consent, so of course we stopped and came out. And we
14 told him that was fine, we'd get a search warrant. We went
15 back to the judge and presented probable cause to get a
16 search warrant.

17 Q. Okay, I just want to make sure I understand. You, you
18 all found -- you went to the back bedroom, and you think he
19 went along with you.

20 A. No, I know he went with us, yes.

21 Q. Okay.

22 A. Because that was one of the stipulations: he wanted to
23 go with us of course.

24 A. And you found the tan boots, black BDUs, the Bi-lo
25 receipt, the money rolls, the Newports, and it's at that

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1 point after, after you notice all that that he withdraws
2 his consent?

3 A. That is correct. During the initial questions about
4 the consent to search, I asked him if there was anything
5 illegal in the bedroom. He did state there was a small bag
6 of marijuana; he believed it was either on the TV stand or
7 on the dresser. We had a discussion about that prior to
8 that. But once we got in there, I didn't see it initially.

9 Q. All right, so at that point you find some items. He
10 withdraws the consent to search, and who do you go see for
11 the search warrant?

12 A. I contacted Officer -- Lieutenant Romanstein with the
13 City of Orangeburg since we were in the city limits. They
14 had not been notified prior to that. I contacted him on
15 the telephone, and Officer Chris Golden and Officer Shawn
16 Murphree went and met Lieutenant Romanstein at the
17 municipal complex.

18 Q. But you were not present at, okay, the city when Judge
19 Houser issued that ---

20 A. No, ma'am.

21 Q. --- search warrant?

22 A. I remained at Charlotte Circle.

23 Q. Do you remember what time you called Dennis
24 Romanstein?

25 A. No, ma'am. It was -- it had to be after 5 because I

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1 believe he normally gets off around 5, and we had to go
2 through the city dispatch to get him. He was the oncall
3 investigator for the city, so it was after business hours.

4 Q. Did you call him by cell phone or call him at home?

5 A. Cell phone.

6 Q. Well, do you know what time the search warrant would
7 have been obtained?

8 A. I'm not sure if Judge Houser noted that on the bottom.
9 I, I could look on there, but I believe the time of
10 execution was 9:00, so it was prior to that.

11 Q. Did, did Dennis Romanstein ever go to the scene at 140
12 Charlotte Circle to your knowledge?

13 A. No, ma'am.

14 Q. Were there any Orangeburg city cops present at 140
15 Charlotte Circle?

16 A. There was a uniformed patrol officer or two. I don't
17 remember who they are, but they were -- there was two DPS
18 officers there, but they didn't have any active role in
19 anything.

20 Q. They didn't, they didn't ---

21 A. No, ma'am.

22 Q. --- participate in the consent to search?

23 A. And the reason we called the City of Orangeburg was
24 just out of common courtesy because we were in the city.
25 Even though I was a county officer, that was just common

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1 courtesy. I didn't want to step on any toes, so to speak.

2 Q. Do you know exactly what or around what time the
3 Coinstar receipt was found?

4 A. It would have to be right after 5:30 from when I wrote
5 the time down on the Consent to Search and wrote my little
6 note beside where he, he would -- was have to sign -- he
7 would have signed. So, it was shortly after 5:30.

8 Q. And that was definitely found before the search
9 warrant was obtained?

10 A. Yes, ma'am. And I believe Officer Golden found that.

11 Q. And your testimony is is that Chris Golden was the
12 affiant for the warrant, correct?

13 A. He, his signature is the affiant, yes, ma'am.

14 Q. And he and Murphree went to Judge Houser's to get that
15 warrant, correct?

16 A. That is correct, yes, ma'am.

17 Q. And that that search warrant was issued to him by
18 Judge Houser, was given to him by Judge Houser?

19 A. That's correct, yes, ma'am.

20 Q. And that he returned to [REDACTED] where
21 you helped execute it?

22 A. When he returned back, he gave the search warrant to
23 me, and then I executed the search warrant.

24 MS. HINDS: One moment.

25 (COUNSELORS CONFER.)

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1 Q. Did you have any dealings with the other people that
2 lived in that residence? Did you speak to Joanna Miranda?

3 A. Yes, ma'am.

4 Q. Okay. What, what was the -- what was said to her?

5 A. I'm really not sure. I know while -- there was, there
6 was some time while they were getting the search warrant we
7 were just carrying on small talk with her and the people at
8 the residence because she had two small children. I
9 believe Ms. Kiett was there, too, and I'm not sure. There
10 was a couple more other family members. They were all
11 outside.

12 Q. And they remained outside?

13 A. Yes, ma'am. We -- once they left to get the search
14 warrant, we, we met with everybody. They came outside, the
15 family members.

16 Q. All right, you said that Mr. Bantan was initially
17 cuffed. Then about twenty minutes later you uncuffed him
18 when he gave consent?

19 A. Yes, ma'am.

20 Q. When he rescinded the consent, did you recuff him or
21 was he recuffed?

22 A. I'm not sure. I know when he was back there in the
23 bedroom with us, he had him right there. He wanted to come
24 back there with us and search, and of course that was
25 perfectly fine. And I'm not sure if he was recuffed or

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1 not. I know I -- we sat him back on the couch..

2 MS. HINDS: Nothing further.

3 THE COURT: Mr. Johnson. Yes, sir.

4 CROSS-EXAMINATION BY MR. JOHNSON:

5 Q. Officer, when you went to Charlotte Circle the first
6 time.

7 A. Yes, sir.

8 Q. What was the initial reason that you went there?

9 A. Calhoun County had some information. I'm not sure if
10 it was relayed through the captain or SLED. Of course I
11 was getting information from, from Captain Williams,
12 whatever was not coming through the radio. They had some
13 information that one of the individuals lived at 140
14 Charlotte Circle.

15 Q. Which individual was that?

16 A. I'm not sure.

17 Q. You didn't know? Nobody didn't tell you?

18 A. No, sir.

19 Q. They just told you to follow it?

20 A. Yes, sir. It was scratchy information and, you know,
21 once they got there and they called for assistance, I
22 directly heard that on the radio. Captain Williams was
23 beside myself and I went straight there.

24 Q. And you went into the house with the them. Is that
25 correct?

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1 A. They were already in the residence when I arrived.

2 Q. Then why did you talk to the co-defendant here?

3 A. Because I was an Orangeburg County officer.

4 Q. And you asked permission to search?

5 A. That is correct, sir.

6 Q. Were you given any information by the other officers
7 of what you were searching for?

8 A. Yes, sir.

9 Q. And what did they tell you to search for?

10 A. That they had had an armed robbery. I was briefed
11 prior to that, and they stated they were looking for
12 anything that may have been stolen from the convenience
13 store.

14 Q. Okay, and what was significant of the tan boots, the
15 Timberlands?

16 A. If I remember correctly, they -- I believe that was a
17 description that the Calhoun County officers had got of one
18 of the suspects.

19 Q. So, you were told that that was a description that
20 they had of one of the suspects?

21 A. Yes, sir, I believe so.

22 Q. That he had tan boots on?

23 A. I, I believe so, yes, sir.

24 Q. And that's why they took the Timberlands?

25 A. Yes, sir. When we initially with the verbal consent

1 went the to actual residence there, of course they, they
2 notice the Timberland boots. We were all right there
3 together.

4 Q. What other description did you get? I mean, was you
5 briefed before? Apparently you said that they told you
6 they was looking for tan boots, so apparently you got some
7 description of boots.

8 A. I'm sure. When I got to the residence I'm sure, but
9 I, I don't remember.

10 Q. You don't remember?

11 A. No, sir. They, they had all that information and they
12 were right there.

13 THE COURT: Who's they?

14 WITNESS: Officer Golden and Officer Murphree with
15 Calhoun County Sheriff's Office.

16 BY MR. JOHNSON:

17 Q. So, your whole search was based on what Officer Golden
18 and Officer Byrd told you?

19 A. Yes, sir, that's correct.

20 Q. And they told you what was relevant and what wasn't
21 relevant?

22 A. They informed me of the circumstances and the
23 situation, yes, sir.

24 Q. What, what did they tell you? That's what I'm trying
25 to find out.

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1 A. I'm sure they told me the description and that they
2 had the armed robbery, where it was, and things of that
3 nature. But to answer your question, I don't remember
4 exactly what they said the description they were wearing
5 was.

6 Q. But when you saw the tan boots, they told you to take
7 those?

8 A. The tan boots, yes, sir. They said that was relevant.

9 MR. JOHNSON: I have nothing further.

10 THE COURT: Redirect?

11 MR. JEFFRIES: Nothing from the state, Your Honor.

12 THE COURT: All right, is this witness free to leave?

13 From the state, yes? Yes?

14 MR. JEFFRIES: Yes, from the state.

15 THE COURT: Yes?

16 MS. HINDS: That's fine.

17 THE COURT: And yes?

18 MR. JOHNSON: Yes.

19 MS. FRYAR: You can go. Thank you.

20 (THE WITNESS EXITS THE STAND.)

21 MR. JEFFRIES: Your Honor, we have one more witness as
22 to the suppression hearing, and this is a witness who, you
23 know ---

24 THE COURT: Who will be available for tomorrow?

25 MR. JEFFRIES: That's right.

1 THE COURT: All right, here's what I'm going to do.
2 That is going to conclude the testimony for today, but I do
3 want to see you all, and let me talk to you just a moment
4 in chambers just in terms of some housekeeping matters for
5 tomorrow.

6 (A PAUSE.)

7 MR. BROWN: There's been a concern raised of the
8 possibility of Mr. -- that Todd Williams would leave now
9 and tell the other officers what he testified to.

10 THE COURT: Is he still here or is he gone? Is there
11 a motion to sequester witnesses?

12 MS. HINDS: There is, Your Honor.

13 THE COURT: Let me hear from the state. Any
14 objection?

15 MR. JEFFRIES: No objection, Your Honor. We would
16 just add throughout the course of the trial, we will have
17 our investigator.

18 THE COURT: Sure.

19 MR. JEFFRIES: Investigator Greg Whetstone and the
20 four adult victims I think are entitled to be present.

21 THE COURT: They are.

22 MR. JEFFRIES: I also would ask that it be reciprocal
23 obviously.

24 THE COURT: Certainly. All right, very well. The
25 only reason I caught you and asked you to step back in, Mr.

1 Williams, is because now that the witnesses will be
2 sequestered, then I would simply ask you and order you not
3 to discuss your testimony with anyone, fellow officers or
4 anyone in all candor.

5 MR. WILLIAMS: Yes, ma'am.

6 THE COURT: Very well, thank you.

7 MR. WILLIAMS: Thank you. Thank you, ma'am.

8 THE COURT: Thank you, sir. All right, anything
9 further from the state today?

10 MR. JEFFRIES: Nothing from the state, Your Honor.

11 THE COURT: From defendant?

12 MS. HINDS: Nothing.

13 THE COURT: Great.

14 (WHEREUPON, THE CASE IS AT EASE.)

15 TUESDAY, OCTOBER 2, 2007

16 (COURT RESUMES AT 10:15 A.M.)

17 (PHOTOGRAPHIC ARRAY FOR DEFENDANT SPEARS MARKED AS
18 STATE'S EXHIBIT NUMBER 2 FOR ID.)

19 (VOLUNTARY STATEMENT MARKED AS STATE'S EXHIBIT NUMBER
20 3 FOR ID.)

21 (PHOTOGRAPHIC ARRAY FOR DEFENDANT BANTAN MARKED AS
22 STATE'S EXHIBIT NUMBER 4 FOR ID.)

23 (SUPPLEMENTAL REPORT MARKED AS STATE'S EXHIBIT NUMBER
24 5 FOR ID.)

25 THE COURT: All right, yes, sir.

1 MR. JEFFRIES: Your Honor, the first matter, now that
2 we have the original search warrant, all the parties have
3 seen it, I would ask the court if we could, for the record,
4 substitute the original.

5 THE COURT: I think that is appropriate.

6 MR. JEFFRIES: For the copies that we had.

7 THE COURT: Any objection on behalf of Mr. Bantan?

8 MS. HINDS: No, Your Honor.

9 THE COURT: Thank you. All right, very well.

10 MR. JEFFRIES: What I will do is just go ahead and --
11 should I do that now?

12 THE COURT: Why not? Let's do this though, and as I
13 sit here I'm not quite sure how it would become relevant,
14 but in an abundance of caution, let us mark that as Court's
15 Exhibit Number 6.

16 MR. JEFFRIES: Okay.

17 THE COURT: But I will understand that you ---

18 MR. JEFFRIES: One exhibit or -- because I had them
19 separately marked. I think we have four that deal with the
20 search warrant.

21 THE COURT: However you want to do that. I think what
22 we'll do, instead of doing a substitution, we will just
23 include that, and you can mark it either separately or
24 together, however. And the reason I think it's importance
25 is that during your presentation yesterday, there was that

1 discussion that you had seen the original and it looked
2 different, and I think in an abundance of caution we should
3 keep both.

4 Do you agree, Ms. Hinds? You understand what I'm
5 doing? In other words, instead of doing a substitution, I
6 think because there was, because that issue arose
7 yesterday, I think instead of doing a substitution, we
8 ought to keep it. We ought to keep it all. We ought to
9 keep the copies.

10 MS. HINDS: Oh, I, I agree. I agree.

11 THE COURT: And we ought to keep the original. Mr.
12 Johnson, that was really your issue. Instead of doing a
13 substitution, which we would lose that prior copy of that
14 exhibit, I think it's more appropriate that we simply add.

15 MR. JOHNSON: I understand, Your Honor. No objection.

16 THE COURT: Okay, very well, and then we will use, for
17 purposes of my review I, unless I find otherwise as we
18 proceed, I would use the original for my determination.

19 MR. JEFFRIES: That was my next question. All right,
20 so if I could have these marked Court's 6 through 9.

21 (ORIGINAL COVER PAGE OF SEARCH WARRANT MARKED AS
22 COURT'S EXHIBIT NUMBER 6.)

23 (ORIGINAL SEARCH WARRANT MARKED AS COURT'S EXHIBIT
24 NUMBER 7.)

25 (ORIGINAL AFFIDAVIT FROM SEARCH WARRANT MARKED AS

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1 COURT'S EXHIBIT NUMBER 8.)

2 (ORIGINAL EXECUTION OF RETURN MARKED AS COURT'S
3 EXHIBIT NUMBER 9.)

4 MR. JEFFRIES: May it please the court, Your Honor?

5 THE COURT: Thank you.

6 MR. JEFFRIES: At this time, the state would call

7 Investigator Chris Golden.

8 CHRISTOPHER L. GOLDEN, BEING DULY

9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: State your full name for the record.

11 WITNESS: Christopher Lee Golden.

12 THE COURT: Your witness.

13 DIRECT EXAMINATION BY MR. JOHNSON:

14 Q. Investigator Golden, where are you employed?

15 A. I'm employed with the Elloree Police Department.

16 Q. And how long have you been with the Elloree Police
17 Department?

18 A. Approximately two months now.

19 Q. And where did you work immediately before that?

20 A. The Calhoun County Sheriff's Office.

21 Q. And what was your position with the Calhoun County
22 Sheriff's Office?

23 A. I had the rank of captain at that time.

24 Q. And let me ask you. Were you working for the Calhoun
25 County Sheriff's Department back in November of 2006?

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1 A. Yes, sir.

2 Q. And did you became involved with the alleged armed
3 robbery of the Bell's Bait and Tackle Shop in Elloree, or I
4 think it's also called the Wagon Wheel?

5 A. Yes, sir.

6 Q. And was that back in November of 2006?

7 A. Yes, sir.

8 Q. And let me ask you how you first became involved with
9 that investigation.

10 A. I got a call -- I was at my home at the time -- that
11 we had a armed robbery that had taken place at the Wagon
12 Wheel. I was one of the officers who responded to the
13 scene. When I first got there, I gathered what information
14 I could at the time. Information I was given at the time
15 was two black males, both armed with handguns, had left the
16 scene possibly on foot. They didn't know if there was a
17 car or anything of that sort. I set up a road perimeter,
18 just basically riding around in a circle perimeter looking
19 anybody, you know, anybody running or et cetera.

20 Q. And at some point while you were working the perimeter
21 -- first let me ask you. What other officers were involved
22 with this investigation?

23 A. There was Lieutenant Bill Cartwright, Investigator
24 Stanley Brown, Officer Sean Murphree. We had a bloodhound
25 team which consists of Richard Herron, Reserve Officer Lori

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1 Moore, Reserve Officer Kathy Herron, Office Deputy Brad
2 Huey, Deputy David Martin, Earl who was a resident deputy
3 at the time, and I believe Officer Chris Kinard who helped
4 set up -- just ride the perimeter.

5 Q. Okay. Approximately what time of the day are we
6 talking about when you respond to the incident location?

7 A. I had the incident location, time. What, what...

8 Q. Let me ask you generally what time of the day?

9 A. I was -- it was in the afternoon.

10 Q. Okay, and at some point during that afternoon, were
11 you -- and when I ask, when I say you, I mean the sheriff's
12 office -- were y'all given any information as to a possible
13 suspect, any description?

14 A. When, when I first got there and got the description
15 of two black males holding handguns, we immediately set up
16 a perimeter for the bloodhound team. After riding around
17 for a couple of minutes, talking to people who were beside
18 the road or on the -- I think there were DOT workers. I
19 talked to them. They hadn't seen anything. We went back
20 to the incident location.

21 At that time, there was -- can't recall his name.

22 Can't recall if he's related to the victim who works at the
23 Wagon Wheel. There was a comment that the guy made that
24 when we were trying to find out who could be, you know, one
25 of the suspects, made a comment that believed the guy was

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1 from New York.

2 Q. Okay.

3 A. And at that time, I said could it be Phillip Spears.

4 Q. Okay, and with that information of a possible suspect,
5 what did you do?

6 A. Possible suspect, I believe at that time Earl Kinnerly
7 [sic], Officer -- Deputy Earl Kinnerly, when we gave --
8 when we came up with that name, he went to Elloree and did
9 some checking with some people in Elloree to find out if
10 that suspect by that name had been in the area or was down
11 in this area, you know, on this day.

12 Q. And did you have any information about where suspect
13 Phillip Spears might be?

14 A. We had information that he frequents, visits a house
15 that was right down from the Wagon Wheel going toward Camp
16 Daniels on Old River Road. It was a doublewide right there
17 on the corner. I want to say Thompson and Old River going
18 down into Camp Daniels. We went down to check the
19 residence. There was nobody home on that day.

20 Q. Okay, and where did you go from there?

21 A. We learned that this Phillip Spears had a girlfriend
22 out in the Santee area. And we asked Officer Earl Kinnerly
23 if he knew where about this house was in Santee, and we
24 proceeded to go there.

25 Q. Okay, and what was this girlfriend's name?

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1 A. Tanesha or something like that.

2 Q. Well, in any event, did you go to the home of this
3 individual?

4 A. Yes, sir, we did.

5 Q. And did y'all speak to her?

6 A. When we got to the house, we called -- first we

7 notified Santee because it was in their jurisdiction, and
8 we let them know what we had and what we were trying to do.

9 We sat on the house. Once we identified the house where
10 Officer Earl Kinnerly took us, we sat on the house for a
11 couple of minutes to see if we could see any movement
12 coming in and out of the house.

13 Finally, myself and Officer Murphree pulled up to the
14 trailer. We saw a lady coming out of the house on a cell
15 phone talking, and there was a black male behind her coming
16 out. Myself and Earl and Officer Sean Murphree pulled up,
17 talked to the girl, told her who we were, why we were here,
18 and started asking her questions.

19 Q. Was this the same -- did you come to find out that
20 this was the same individual you thought was the girlfriend
21 of Phillip Spears?

22 A. Yes, sir.

23 Q. Okay, and after talking to her, what if any, anything
24 did y'all do then? Where did y'all go?

25 A. After to talking to her, we found out that Mr. Spears

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1 had recently just called her. And we learned through her
2 that he told her what he did at the Wagon Wheel, that he'd
3 just robbed the Wagon Wheel and want to know if they had
4 video cameras inside the store.

5 Q. Okay, and I'm going to kind of cut you off there and
6 ask you if you, at some point, responded to 140 Charlotte
7 Circle, Orangeburg?

8 A. Yes, sir, I did.

9 Q. Why did y'all go over there?

10 A. We had information from the girlfriend's brother that
11 Phillip Spears, if he's down in that area visiting or
12 whatever, he goes to this trailer park. That sometimes he
13 visits over there.

14 Q. And where is this trailer park?

15 A. It's [REDACTED]

16 Q. And what county is that in?

17 A. That's in Orangeburg County.

18 Q. And what, do you know what town or city?

19 A. That's Orangeburg City.

20 Q. Okay. So, you went to this location. What -- any
21 other agencies involved?

22 A. After we went there, Orangeburg County deputies came.
23 Office Todd Williams responded. Some, I think Investigator
24 Craft from Orangeburg County showed up, Captain Randy
25 Williams.

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1 Q. And did y'all request Orangeburg County respond?

2 A. Yes, sir, we did.

3 Q. And why did y'all do that?

4 A. Because we, when we got to the trailer, as we were
5 approaching, myself and Officer Murphree, we heard some
6 movement in the back of the trailer. As we started coming
7 up to the steps, we still heard a little bit of movement in
8 the back. We knocked on the door. A black female came to
9 the door. We identify ourselves, who we were, why we are
10 here. We got consent to go into the trailer.

11 Well, let me back up. Before we got consent, I was
12 asking her if Phillip Spears was here. She looked at me
13 like it -- you know, she had look like she wanted to say
14 yes. She didn't know. She looked like she was scared. I
15 just told her we had a warrant for Mr. Phillip. That...

16 Q. Who all was there at that time?

17 A. There was the lady who came to the door, two little
18 kids, and far as we know we have another individual at the
19 back of the trailer, but we couldn't identify him yet
20 because we were still on the outside talking to the lady.

21 Q. And as far as law enforcement, what agents did you ---

22 A. We had a Orangeburg deputy go to the, around to the
23 back.

24 Q. Okay, as you're speaking to this lady at the door, do
25 you ask for consent to come in the home?

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1 A. Yes, I did.

2 Q. And what was her -- did you get that consent?

3 A. Yes, sir.

4 Q. And did y'all, did you continue into the home?

5 A. Yes, sir, we did.

6 Q. And the individual in the back, did y'all have an
7 opportunity to speak to this individual?

8 A. Yes, sir, we did.

9 Q. Kind of explain to the court how that happened.

10 A. Once we made entry into the home, I took position
11 because we're -- didn't know who was in the back. We're
12 assuming it's Phillip Spears in the back of the trailer.
13 As you walk into this trailer, it's a old model, single-
14 wide trailer. You walk in. You have the kitchen. Then
15 you have the living room, and there's like a little bar
16 that comes in between. And what I did was I took the
17 position around behind the bar just case if there was going
18 to be a shootout or any, you know, danger. Officer Sean
19 Murphree came in, posted in the living room behind the wall
20 as you go down the hallway.

21 I immediately called out suspect to come out of the
22 back of the room. Asked him to walk backwards towards me
23 with his hands up where I could see them. I immediately
24 told him to step back, step back, keep coming, keep coming,
25 keep coming. Finally when he came into the living room, I

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1 asked him to go down on his knees, to keep his hands up
2 where I could see them. At that time, Officer Murphree
3 detained the suspect at that time.

4 Q. And what happened next?

5 A. Once he was detained and we turned him around to where
6 we could see his face, I identified him as Titus Bantan,
7 not Phillip Spears.

8 Q. And let me ask you. Did you, did you already know
9 Phillip Spears?

10 A. Yes, sir.

11 Q. And did you know Titus Bantan?

12 A. Yes, sir.

13 Q. And this person you recognized as Titus Bantan?

14 A. Yes, sir.

15 Q. And let me ask you. Well, just tell me what happened
16 next.

17 A. Once we turned him around and identified him as Titus
18 Bantan, not Phillip Spears, we detained him for a short
19 period of time while we finished going through all the
20 rooms to make sure nobody else was hiding in closets, up
21 under beds, et cetera. Once we did that, we came back out.
22 At that time Officer Todd Williams from Orangeburg County,
23 they arrived. Other units, Investigator Craft and
24 Investigator -- Captain Rainey came.

25 We started talking to Titus, telling him why we were

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1 there. We were looking for Phillip Spears. Armed robbery
2 just taken place at the Wagon Wheel in our county.

3 Q. Was he a suspect at this time?

4 A. He's not a suspect at this time.

5 THE COURT: Who is he? I need to know who he is.

6 Q. Mr. Titus Bantan is the individual you're referring
7 to. Is that correct?

8 A. Titus Bantan, yes, sir.

9 Q. Okay, and was he a suspect at this time?

10 A. No, sir, he was not.

11 Q. Okay, but you recognized him as somebody you know from
12 Orangeburg?

13 A. Yes, sir.

14 Q. Okay, and as you're talking to him, does he have any
15 information about Phillip Spears?

16 A. No, sir. Our questions were when is the last time
17 you've seen him, has he been over here, when is the last
18 time you talked to him, questions of that nature. We took
19 the handcuffs off of him. That's when Officer Tom Williams
20 and all them showed up. We asked him if he had been home
21 all day. He said he was home with the flu; he'd been in
22 the bed all day, was sick. His girlfriend I believe showed
23 up at the time.

24 THE COURT: Mr. Golden.

25 MR. JOHNSON: I'm sorry.

1 THE COURT: Here's what I need for you to do for me.
2 There are many men involved in what you're telling me.

3 WITNESS: Yes, ma'am.

4 THE COURT: I want to follow you and I'm listening
5 very carefully to you.

6 WITNESS: Yes, ma'am.

7 THE COURT: It would help me tremendously if you could
8 -- and it's hard to do and I know it is, so I'm not
9 fussing. But the more you can not use pronouns, the more
10 it will help me because I am trying. I want to follow you
11 precisely.

12 WITNESS: Yes, ma'am.

13 THE COURT: If you could do that, that would help me
14 so much.

15 WITNESS: Yes, ma'am.

16 THE COURT: Thank you. I'm sorry to interrupt.

17 MR. JEFFRIES: That's all right, Your Honor.

18 THE COURT: But pronouns, they always -- you know,
19 especially when it's a narrative because I'm following and
20 there's a story and I'm trying to, in my mind -- and all of
21 a sudden I hear he or him, I don't know who that is.

22 WITNESS: I'm sorry.

23 THE COURT: That's okay.

24 BY MR. JEFFRIES:

25 Q. Let me ask you this. Were you communicating with

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1 other officers from Calhoun County during this period
2 you're at the home at [REDACTED] in Orangeburg?

3 A. Yes, sir. Once we got consent to go into the home, I
4 -- we were transmitting with Orangeburg County Sheriff's
5 Office.

6 Q. I'm sorry, let me stop you there. I'm specifically
7 talking about the other members of the Calhoun County
8 Sheriff's Office. Was there anybody still at the Wagon
9 Wheel location?

10 A. I believe there was Investigator Stanley Graham,
11 Captain Tim Stephenson at the time.

12 Q. And let me ask you this. Any of the victims and
13 potential witnesses from the robbery, were they still with
14 the sheriff's office, Calhoun County Sheriff's Office?

15 A. I believe so, sir. I believe the victim, Ms. Natasha,
16 was with them. I believe she was doing a photo lineup.
17 She had done a photo lineup with Mr. Phillip Spears.

18 Q. Okay, and let me ask you to kind of go back to where
19 you were before. As you're talking to Titus Bantan, at
20 some point does he become a suspect?

21 A. Once I identified Titus Bantan, I -- Lieutenant Bill
22 Cartwright, who was there, came in along the Orangeburg
23 County Sheriff's Office. I relayed the information on
24 Titus to Captain Tim Stephenson.

25 Q. What information was that?

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1 A. That basically Titus Bantan's information, like his
2 physical appearance, date of birth because there was a ID
3 card that had all his physical information.

4 Q. And why did you do that? Why were you giving the
5 other officers information about Titus Bantan?

6 A. Because I knew Titus, Titus and Phillip to be
7 associates.

8 Q. Okay. So, at this point is he in your mind a suspect?

9 A. Yes, sir.

10 Q. Okay, and what does Lieutenant Cartwright do with that
11 information?

12 A. We re ---

13 Q. Description of Titus Bantan?

14 A. We relayed the information to Captain Tim Stephenson
15 so he could do a second photo lineup involving Mr. Titus
16 Bantan.

17 Q. And you said second photo lineup. Who was the first
18 photo lineup?

19 A. The first photo lineup was done of Phillip Spears.

20 Q. And who was that lineup shown to, if you know?

21 A. Ms. Natasha.

22 Q. Okay, and second lineup, who was in that one?

23 A. Titus Bantan.

24 Q. And are you aware whether or not it was shown to
25 anyone?

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1 A. It was shown to Ms. Natasha.

2 Q. And are you aware of whether or not she could identify
3 him?

4 A. Yes, sir.

5 Q. And so what did you do after you had Titus Bantan
6 identified as the second suspect?

7 THE COURT: Can I interrupt? The question was who was
8 in the second lineup, and then he answered Bantan. The
9 next question, Ms. Harris?

10 (REQUESTED PORTION IS READ BACK.)

11 BY MR. JEFFRIES:

12 Q. And who was it in the second lineup that Natasha
13 Rivers identified as the second suspect in the armed
14 robbery?

15 A. Titus Bantan.

16 Q. Okay, and with Titus Bantan identified as the second
17 suspect, what did you then do?

18 A. We asked permission to search his bedroom.

19 Q. And at this time, was he in custody, so to speak?

20 A. No, sir. He was not charged. He was not being
21 charged with anything at the time.

22 Q. Okay, and so how did you go about asking him if you
23 could search? Who would have asked him that?

24 A. Officer Todd Williams.

25 Q. And why is that?

1 A. Because we are in Orangeburg County.

2 Q. Okay, and what was his response, Mr. Bantan's?

3 A. I believe his response was you can search, but I'm not
4 signing anything.

5 Q. Okay, and what did y'all do at that point?

6 A. We continued to search the bedroom. At that time,
7 Titus Bantan followed us down the hall to the bedroom. He
8 stood in the doorway of the bedroom, right there in the
9 hallway. I proceeded to search. If you walk into the
10 bedroom, his bed is laying on the floor on the box spring.
11 The bed is pushed up against the window, center of the
12 room. Was a small closet to your left. Clothes in a
13 basket on the left-hand side up against the wall, and I
14 proceeded to search in that area.

15 I recovered a receipt that was a coin cash in. You
16 take coins, cash them in. It was at a Bi-lo. I can't
17 recall the amount on the receipt, but that's, I found that.
18 I noticed in plain view there was some Timberland boots and
19 some dark clothing. Pants, like BDU type pants.

20 Q. Okay, let me stop you right there. Specifically, why
21 did you recover that Bi-lo receipt?

22 A. Because ---

23 Q. What value did you think that had?

24 A. On that receipt you had that same date of the armed
25 robbery. The time was -- had the time. Maybe an hour and

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1 a half after our robbery had taken place. And I knew from
2 the information from the other officers who were at that
3 scene that there were some coins, a large amount of coins
4 taken. And on this receipt there was a large amount of
5 coins cashed in.

6 Q. Okay, and as to the boots you said you observed, why
7 was that relevant to you?

8 A. That was information given that possibly one, one of
9 the suspects was wearing.

10 Q. And I think the third thing you said you observed was
11 some black BDUs?

12 A. Yes.

13 Q. Why was that significant to you?

14 A. Because from witnesses at the incident location, they
15 described the suspects wearing dark clothing.

16 Q. And tell me what happens next after you ---

17 A. Once we do that ---

18 Q. ---observe these items.

19 A. --- Mr. Titus Bantan started recanting on the consent
20 to search. At that time, we stopped our search; we
21 informed him that we were going to get a search warrant.
22 Officer Todd Williams stayed with Mr. Titus. Myself and
23 Officer Sean Murphree went. We called my lieutenant.
24 Lieutenant Bill Cartwright called Lieutenant Romanstein
25 with the Orangeburg Public safety, let him know what we

1 had. That we need to get a search warrant. Myself and
2 Officer Sean Murphree left, proceeded to the Orangeburg
3 Public Safety headquarters.

4 Q. And let me ask you, let me stop you right there. What
5 if anything did you actually recover and take during that
6 consent to search from the bedroom?

7 A. I held on to the receipt.

8 Q. And what about the boots?

9 A. I let them stay, let the boots stay there.

10 Q. And the BDUs?

11 A. Let them stay there.

12 Q. And did you take anything other than that receipt?

13 A. No, sir.

14 Q. And why did you take the receipt?

15 A. The receipt was a very valuable part of the evidence
16 in my judgment. It had the date, the time, and I knew
17 there was a large amount of coins taken from the incident
18 location and cashed in. And like I said, there was a large
19 amount of coins cashed in on this receipt. So, I did not
20 feel comfortable letting that receipt stay there, and
21 somebody get it and tear it and could not use it as
22 evidence.

23 Q. Did you take that receipt before or after Mr. Bantan
24 then recanted his consent to search?

25 A. I already had the receipt in my hand before he

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1 recanted.

2 Q. Okay. Now, tell me what happened when you went to the
3 Orangeburg Department of Public Safety.

4 A. We met with Lieutenant Romanstein. Lieutenant
5 Romanstein was calling Judge Houser.

6 Q. Who is Roman, Lieutenant Romanstein working for?

7 A. He is working for Orangeburg Public Safety; he's an
8 investigator there.

9 Q. And why did you feel the need to have him involved?

10 A. It was an Orange -- the incident location was in
11 Orangeburg City, so we called him. Met with him at the
12 headquarters. He notified Judge Houser. Judge Houser
13 showed up. We got the search warrant. I signed it. Went
14 back to the incident location on Charlotte Circle. Gave it
15 to Officer Todd Williams of the Orangeburg County Sheriff's
16 Office.

17 Q. Let me stop you right there. Why did you give it to
18 Todd Williams?

19 A. It was in his jurisdiction for him to serve.

20 Q. Who actually served the search warrant?

21 A. Officer Todd Williams.

22 Q. Was he involved with the entire search?

23 A. Yes, sir he was.

24 Q. Did y'all at that point search the home?

25 A. Yes, sir, we did.

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1 Q. And recovered certain items?

2 A. Yes, sir, we did.

3 Q. And the Coinstar receipt, when was that recovered?

4 A. That was recovered during the search warrant. It was
5 found in the closet.

6 Q. I'm sorry, now the receipt we were talking about
7 earlier, when was that ---

8 A. Oh, the receipt as found during the consent to search.

9 Q. Okay. Was there any other items taken at that point?

10 A. No, sir, not during the consent to search.

11 Q. Let me show you what's been labeled Court's Exhibit
12 Number 8 and ask you if you recognize this.

13 A. Yes, sir.

14 Q. What do you recognize that as?

15 A. That's the search warrant that we obtained from --
16 Judge Houser signed it, issued it.

17 Q. And specifically, which part of the search warrant is
18 it?

19 A. The affidavit part.

20 Q. And who does it indicate this affidavit was given by?

21 A. It was given by myself, Chris Golden.

22 Q. And does it indicate what judge it was given to, the
23 affidavit?

24 A. It was given by Mr. Houser, Judge Houser.

25 Q. And who signs as the affiant?

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1 A. I did.

2 Q. Okay, and let me show you what's been labeled Court's
3 Exhibit Number 7 and ask if you recognize this part.

4 A. Yes, sir.

5 Q. And what do you recognize that as?

6 A. The search warrant that describes the premises to be
7 searched and description of the property.

8 Q. And specifically let me ask you. To who is this
9 search warrant issued to?

10 A. Orangeburg, County of Orangeburg.

11 Q. If you would just that top line, read that to the
12 Court?

13 A. State of South Carolina, County of Orangeburg,

14 Q. And who is it actually given to?

15 A. Municipality of Orangeburg.

16 Q. All right, just read this top sentence just below
17 right there.

18 A. It says: To any bonded law-enforcement office of the
19 state or county or of the Municipality of Orangeburg.

20 Q. All right, let me show you State's Exhibit Number 9
21 and ask if you recognize that.

22 A. Yes, sir.

23 Q. And what is that part of the search warrant search?

24 A. It's the return of the search warrant.

25 Q. And who does it indicate executed the search warrant?

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1 A. Todd Williams.

2 Q. And who does it indicate did the inventory of what was
3 recovered during the search warrant?

4 A. Todd Williams.

5 Q. And who does it indicate actually took part in the
6 search?

7 A. Myself and Officer Sean Murphree.

8 Q. And who else was involved with the search?

9 A. Todd Williams.

10 Q. And Todd Williams was with what agency back then?

11 A. Orangeburg County Sheriff's Office.

12 Q. At any point during the search of the home, either
13 before consent or after consent, was Calhoun County
14 searching the home without Orangeburg County present?

15 A. No, sir.

16 Q. And who actually executed the search warrant, giving
17 it, leaving it there for the residents?

18 A. That was also Todd Williams.

19 Q. And why was Todd Williams the one to execute the
20 search warrant?

21 A. Because he worked for Orangeburg County Sheriff's
22 Office, and we were in Orangeburg.

23 Q. And other than retrieving the actual search warrant by
24 providing the affidavit to the judge, did you do anything
25 else to actually execute the search warrant at the home in

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1 Orangeburg?

2 A. Once we received the search warrant from Judge Houser,
3 went back to the incident location, I immediately put it in
4 Todd Williams's hand, asked him to serve it.

5 Q. And this armed robbery took place in what county?

6 A. Calhoun County.

7 Q. And was it a Calhoun County investigation?

8 A. Yes, sir.

9 Q. And is that why you provided the affidavit to Judge
10 Houser?

11 A. Yes, sir.

12 MR. JEFFRIES: Beg the court's indulgence.

13 THE COURT: Okay.

14 MR. JEFFRIES: That's all the questions I'd have.

15 THE COURT: Thank you. Just one second before cross-
16 examination.

17 (A PAUSE.)

18 THE COURT: Cross-examination.

19 MS. HINDS: Thank you, ma'am.

20 CROSS-EXAMINATION BY MS. HINDS:

21 Q. I just want to go over this again. When did you
22 respond to the Wagon Wheel? Your testimony was in the
23 afternoon?

24 A. Yes, ma'am.

25 Q. Okay. Can you tell me what time you responded to the

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1 Wagon Wheel?

2 A. I cannot tell you the exact time, ma'am.

3 Q. Who all was there?

4 A. When I arrived on the scene, Investigator Stanley
5 Graham, Captain Tim Stephenson, Lieutenant Bill Cartwright,
6 bloodhound team, Officer Earl Kinnerly. I responded,
7 ~~Officer Sean Murphree, Officer Chris Kinard.~~ I believe
8 that's, that's all I recall.

9 Q. And were they outside the Wagon Wheel or inside the
10 Wagon Wheel?

11 A. When I got there, I believe Investigator Stanley
12 Graham was outside and I believe Captain Tim Stephenson,
13 Lieutenant Bill Cartwright were inside the store processing
14 the scene. The bloodhound team was outside the store.
15 That's all I remember.

16 Q. What about the witnesses?

17 A. Witnesses, I believe there were some family members or
18 some concerned people in the neighborhood coming up to the
19 incident location. I believe Ms. Natasha, I'm thinking she
20 was inside. That's all I recall.

21 Q. Did you do, did you do any interviewing of the
22 witnesses?

23 A. No, ma'am, I did not.

24 Q. What was the physical description you were given of
25 the suspects?

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1 A. At that time, ma'am, I was given two black males armed
2 with handguns wearing dark clothing, and I believe one of
3 the witness said something orange, beige Timberland boots
4 or something.

5 Q. And you said the name Phillip was brought up by
6 yourself, correct?

7 A. One -- I can't recall the gentleman's name, ma'am.
8 When we were trying to get the information so we could set
9 up a perimeter, help the bloodhound team, one of the
10 gentleman said I believe this -- one of the suspects was
11 from New York. And that through later that Ms. Natasha
12 could identify one of the suspects because she had went to
13 school with him somewhere down in Gilman, high school. And
14 that's when I said could it be Phillip Spears, and I
15 believe the gentleman said could have been, that nature.

16 Q. Is Phillip Spears the only person from New York?

17 A. It was -- not, that's not -- I -- that's the only
18 person I know from New York. I don't know anybody else
19 from New York.

20 Q. You don't know anybody else from New York?

21 A. No, ma'am.

22 Q. Do you know Titus Bantan?

23 A. Knew Titus Bantan from him and Phillip were
24 associates.

25 Q. You didn't know he was from New York?

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1 A. No, ma'am.

2 Q. Who knew Titus's girlfriend?

3 A. Who knew Titus's girlfriend?

4 Q. Excuse me, who knew Phillip, Mr. Spears's girlfriend?

5 A. I believe Office Earl Kinnerly developed a lead,
6 possible lead by going to the town of Elloree and talking
7 to some people he knows. And he came back with information
8 that Phillip had a girlfriend out in Santee.

9 Q. And how was the address gotten?

10 A. It was gotten through Earl, Officer Earl Kinnerly.

11 Q. And she was on the phone when you were there?

12 A. When I pulled up to -- when we finally pulled up to
13 the house in Santee, we pulled in the driveway and a female
14 came out, and she was on the cell phone.

15 Q. Okay, and did you talk to her after she got off the
16 cell phone?

17 A. Yes, we did.

18 Q. And did you ask her?

19 A. We told her who we were, identified ourselves as
20 Calhoun County sheriff's deputies. We advised her of the
21 situation we had had just taken place. We asked her if she
22 knew Phillip, if she could possibly cooperate and help us
23 out. And that's when she told us about the phone call she
24 just had from Phillip.

25 Q. And what did she say he'd said?

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1 A. He told her what he did at the Wagon Wheel.

2 Q. What he did?

3 A. Yeah, that, that he just robbed the store the Wagon
4 Wheel and that -- wanted her to go back and see about the
5 video cameras, some sort of that nature. See if they had
6 video cameras in the store.

7 Q. She did tell you that ---

8 A. Yeah.

9 Q. --- Phillip said that he robbed the Wagon Wheel,
10 correct?

11 A. That's right.

12 Q. Did y'all try to set up a meeting?

13 A. We did. At that time, I was coordinating with my
14 officers because after that, he got off the phone with her
15 and when she told us what he just said, he was --wanted to
16 meet her before he left. So, we got the impression he was
17 still in the area. Didn't know how close by. Didn't know
18 exactly where at at this time, but we felt like he was
19 still close by, and we was trying to set up a meeting place
20 with her and Mr. Phillip.

21 Q. To go back just a little bit, did she tell you if he
22 had called her that day before that phone call that you
23 came upon?

24 MR. JEFFRIES: Your Honor, I'm going to object.

25 They're getting outside the scope of the search warrant.

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1 She wants to cross-examine him on those type of things. I
2 think that's for the jury. This is a search warrant
3 suppression hearing.

4 THE COURT: I'm going to give her some latitude.
5 Thank you, Ms. Hinds. You may proceed.

6 BY MS. HINDS:

7 A. What was your question again? -- I'm sorry, ma'am.

8 Q. Did, did Ms. Adams tell you of any other phone calls
9 that Mr. Spears had made to her?

10 A. No, ma'am.

11 Q. Were there anymore phone calls to Ms. Adams after the
12 one that you had stumbled upon?

13 A. I believe we asked her -- after she told us the first
14 conversation when we pulled up and we got either her to
15 call or he called back to set up a meeting location between
16 the girlfriend and Mr. Phillip Spears.

17 Q. He did call back one more time?

18 A. Yes, ma'am.

19 Q. And that meeting never happened, correct?

20 A. No, ma'am.

21 Q. Okay. Did you know that Mr. Spears had been
22 identified, identified at that point from the lineup?

23 A. At that time, I believe they were in the process the
24 setting up the photo lineup. I know Captain Tim Stephenson
25 was in charge of that, and Ms. Natasha, recollection that

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1 she identified Phillip as one of the suspects.

2 Q. Okay, so you did know that?

3 A. Yes, ma'am.

4 Q. Okay. Who told you that Mr. Spears frequented that
5 trailer park?

6 A. The girlfriend's brother was also at the trailer when
7 we talked to the girlfriend, and he was cooperating with us
8 as well, and he told us about the trailer park.

9 Q. Does he have a name?

10 A. I cannot recall his name.

11 Q. Okay, so at that point, you go to the trailer park.
12 Is that correct?

13 A. Once the meeting location did not happen, that's when
14 we proceeded to go to the trailer park.

15 THE COURT: Ms. Hinds, can I stop you right here for
16 just a moment because you asked the officer about the photo
17 lineup, and here's what I heard. I heard that the photo
18 lineup was being set up at the time that he is speaking to
19 Ms. Adams. And then I heard additional information about
20 an identification having been made by -- he's referring to
21 her as Ms. Natasha. I am unclear about the relationship
22 between those two. Because I must find these facts, that's
23 why they're important to me that I am very clear about
24 them, and I am not clear about that.

25 BY MS. HINDS:

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1 Q. All right, you know that Tim Stephenson was getting a
2 photo lineup together or -- excuse me. Let me back up. At
3 that point, was Bill Cartwright or Tim Stephenson putting
4 together a lineup?

5 A. It was Tim Stephenson.

6 Q. Okay, the first lineup?

7 A. Yes, ma'am.

8 Q. Okay, and then you try to arrange a meeting. The
9 meeting never takes place.

10 A. Yes, ma'am.

11 Q. At what point do you find out -- let me back up. Do
12 you know at some point that an identification was actually
13 made?

14 A. I believe it was on the process of going to the
15 meeting location if -- I can't be exact, but -- because we
16 left the trailer to go to Orangeburg, and it was a good
17 little ride because we had to go out 301 back into
18 Orangeburg. It was done between that transit period I was
19 trying to leave the trailer and go to the meeting location,
20 if that helps.

21 Q. And at some point, you're notified that Ms. Rivers had
22 made an identification?

23 A. Yes, ma'am.

24 Q. And you were told ---

25 A. And we ---

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1 Q. --- that she identified who?

2 A. Phillip Spears.

3 Q. All right, what you were you driving that morning to
4 Charlotte Circle?

5 A. We were in Office Sean Murphree's pickup truck.

6 Q. Unmarked?

7 A. It's a personal pickup truck, yes, ma'am.

8 Q. How were you dressed?

9 A. I was dressed in BDUs, tactical pants. My normal
10 investigator uniform and polo shirt, my attack vest.

11 Q. What time did you get to the trailer?

12 A. I want to say -- I know we sat at the hospital trying
13 to -- the meeting location was at the hospital for a couple
14 hours. I'm not mistaken, ma'am, I believe there was one
15 more phone call made between the girlfriend and Mr.
16 Phillip. I believe that was around 5:30-ish.

17 Q. Okay.

18 A. Going into that evening. So, I would say around a
19 little bit after 6 we got to the trailer.

20 Q. Was it still light out?

21 A. Yes, ma'am, it was.

22 Q. And you knocked on the door?

23 A. Yes, ma'am.

24 Q. And who answered?

25 A. I believe it was Mr. Titus Bantan's sister. I can't

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1 recall her name.

2 Q. Okay, and I believe you said that she answers the door
3 and you asked about -- let me ask you. What exactly did
4 you say to her when she answered the door?

5 A. I identify myself as Officer Chris Golden with the
6 Calhoun County Sheriff's Office, along with Officer Sean
7 Murphree. We told her, once we identify ourselves, we
8 explained to her why we were there. That we were looking
9 Phillip Spears. That we had information that he visits
10 this trailer or hangs out here. We proceed to ask her if
11 he was there at the time. She could not come out right
12 away and give me a yes or no answer.

13 But as before we got to the trailer and we got out of
14 our truck and walking up to the entrance of the trailer, we
15 heard some movement in the back of the trailer. As we got
16 up to the door and after going through the process of
17 identifying ourselves and explaining why we were there, we
18 asked if anybody was in the home besides her. And she kind
19 of looked and eventually she came out and said yes.

20 And I was trying to get, get to see if she would tell
21 me if it was Phillip or not, but she would not come out and
22 say. And I asked is this person was from New York, is the
23 person in the house from New York. I remember saying that
24 to her, and she said yes. And I asked her consent to come
25 into the home, and she said yes.

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1 Q. Are you, are you aware that Ms. Adams is mentally
2 challenged?

3 A. No, ma'am, I'm not aware of that.

4 Q. You said she was acting nervous?

5 A. Yes, ma'am.

6 Q. Wouldn't you agree that would be a common reaction
7 when a cop comes to the door?

8 A. Yes, ma'am.

9 Q. Why, why would you ask if a guy from New York was
10 there?

11 A. Because she went in -- when I asked her if Phillip was
12 in the house, she should never say yeah and I knew -- just,
13 just a question to ask.

14 Q. Okay, where were your weapons when you entered the
15 house?

16 A. Where was my weapons?

17 Q. Uh-huh.

18 A. My weapon was in my holster right at the doorway.
19 Now, when we entered the home, once we secured her and the
20 two kids and put them outside so they would be out of
21 harm's way, we came -- once I took position behind in the
22 kitchen, my gun was drawn at that time.

23 Q. And you said you were by the ---

24 A. I was ---

25 Q. --- counter?

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1 A. --- in the kitchen. You know, like the old trailers
2 you have a little countertop and you got the kitchen. It's
3 a small room, kitchen, and you have a little counter, and I
4 took position, took cover behind the counter in the
5 kitchen.

6 Q. Okay. When you called for Titus to come out, he
7 cooperated, didn't he?

8 A. I called for the individual to come out of the
9 bedroom, come out. I did not know it was Titus in the
10 bedroom.

11 Q. Okay, the individual cooperated, didn't he?

12 A. Yes, ma'am.

13 Q. Okay, he didn't try to run, did he?

14 A. No, ma'am.

15 Q. He wasn't under arrest at that time, correct?

16 A. No, ma'am.

17 Q. He wasn't even a suspect at that time, right?

18 A. No, ma'am.

19 Q. And I believe you said you cuffed him for officers'
20 safety?

21 A. Yes, ma'am. He was detained for officers' safety.

22 Q. And at that point when you start to question him, he
23 tells you he hasn't seen Phillip, correct?

24 A. Yes.

25 Q. Okay. You didn't have a warrant for Mr. Bantan at

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1 that time, right?

2 A. No, ma'am.

3 Q. Okay. You had done a protective sweep at that point
4 after you cuffed him. Is that correct?

5 A. He was cuffed, detained for officers' safety. We went
6 in, did a brief sweep of the trailer, make sure nobody else
7 was hiding, came back out, and handcuffs was taken off of
8 him.

9 Q. The handcuffs were taken off of him after you did the
10 sweep?

11 A. Yeah. Once we came back out of the sweep and we took
12 the handcuffs off of him.

13 Q. So, the cuffs are off about how long?

14 A. A short period of time just to come in and -- it's a
15 two-bedroom trailer. The bedrooms were real small. They
16 had a bath in the back, one bath. Ten minutes or less. It
17 wasn't that long,.

18 Q. All right, you don't have a warrant for Mr. Bantan.
19 You don't at that point have any reason to arrest him. Is
20 that correct?

21 A. That's correct.

22 Q. You've already done the protective sweep. Why didn't
23 you just leave?

24 A. Well, we started talking to him and see if Phillip has
25 been around. We were given the information that Phillip

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1 comes over there and visits. We asked him when's the last
2 time you've seen Phillip. When's the, when's the last time
3 you've seen him, visited, has he come over, stuff in that
4 nature. He said he hasn't seen him, hasn't visited him.
5 He hasn't come by or anything. I remember asking him have
6 you been home all day. He said he'd been home all day with
7 the flu, sick in the bed.

8 By that time his girlfriend comes pulling up outside
9 with another companion. I can't recall her name. She was,
10 she was wondering what was going on. I explained to her
11 why we were over here.

12 I think again either myself or Officer Sean Murphree
13 asked you sure you been home all day, and I believe at that
14 point he said that he stepped out to go get some medicine.
15 And then we were thinking, well, you told us you were home
16 all day and you're going -- now you're telling us you
17 stepped out. So, we were keeping that in check. And the
18 girl friend said that she went to the store and got some
19 medicine for him.

20 Q. Wouldn't that be consistent if he was sick?

21 A. Yeah.

22 Q. So, after you get the answers to these questions, you
23 find out that Mr. Spears is not there, you don't have any
24 warrant for Titus, yet you asked to search the trailer?

25 A. Yes, ma'am.

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1 Q. And your testimony is that Titus agreed to the search?

2 A. Yes, ma'am.

3 Q. And you found the Coinstar receipt?

4 A. Yes, ma'am.

5 Q. Were there any prints on the Coinstar receipt?

6 A. I did not fingerprint it, no, ma'am.

7 Q. And then at some point Titus tells you to stop
8 searching?

9 A. Yes, ma'am.

10 Q. Okay, about how long after he gave you consent did he
11 rescind the consent?

12 A. Once he gave his consent and we made our way down the
13 hallway to the back bedroom, once we started searching, I
14 found the receipt. I would say in a matter of a couple
15 minutes into the consent to search he recanted.

16 Q. Okay, but your -- and your testimony is that in a
17 couple of minutes, you found the Coinstar receipt, the
18 Timberland boots, pants?

19 A. No. The Timberland and the pants I saw in plain view.
20 I didn't have to search for that.

21 Q. Okay.

22 A. I found the receipt.

23 Q. Found the receipt initially?

24 A. Yes, ma'am.

25 Q. Do you remember a meeting that we had on September 26?

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- 1 A. Yes, ma'am.
- 2 Q. It was a Wednesday afternoon?
- 3 A. Yes, ma'am.
- 4 Q. And who was present at that meeting?
- 5 A. It was me and Officer Sean Murphree.
- 6 Q. And who else was in the room?
- 7 A. Now, which -- let me make sure I'm right.
- 8 Q. That was the Wednesday meeting where we ---
- 9 A. At the annex?
- 10 Q. Uh-huh.
- 11 A. It was me, Officer Sean Murphree, yourself, Mr. -- Ms.
- 12 Karen Fryar, Mr. Jeffries, Investigator Greg Whetstone,
- 13 your partner over there, Mr. Phillip's attorney, Mr. Dan
- 14 Daniels. I believe that was all.
- 15 Q. Okay, and didn't you say at that time that after Titus
- 16 gave his consent, that you didn't even make it down the
- 17 hall to the bedroom before he changed his mind?
- 18 A. I don't recall. I'm -- no, I'm not saying you're
- 19 wrong. I believe we said we got consent to search, but
- 20 didn't find anything during consent. That we found
- 21 everything else in the search warrant.
- 22 Q. Okay, so you did say at that point in time on the 26th
- 23 that you didn't find anything during the consent to search?
- 24 A. Yes, ma'am.
- 25 Q. That everything was found after the search warrant

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1 obtained?

2 A. Yes, ma'am.

3 Q. Okay, but nothing was before the consent was
4 withdrawn?

5 A. Yes, ma'am.

6 Q. Okay, and that's different from your testimony today,
7 correct?

8 A. Yes, ma'am.

9 Q. Were you lying then, or are you lying now?

10 A. Well, I'm not lying. No, I'm not lying.

11 Q. But you admit the testimony is different ---

12 A. Yes, ma'am.

13 Q. --- today, okay. When did you hear about the second
14 lineup being done?

15 A. Second lineup was being done while we were at the
16 trailer.

17 Q. Were you notified that an identification had been
18 made?

19 A. Yes, ma'am, we were notified.

20 Q. And who was that notification by?

21 A. That, I -- Captain Tim Stephenson told us.

22 Q. About what time was that?

23 A. Got to the trailer after 6. Talking. It was between
24 6 to 7, ma'am. It was in the process of being in the
25 trailer and the consent to search.

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1 Q. All right, do you recall what time it was when you
2 went to Judge Houser's to get the search warrant?

3 A. It was, I'll say it was getting dark. It was dark.

4 Q. No idea ---

5 A. I can't recall the exact time now.

6 Q. And I believe you said you called Public Safety before
7 you went over there?

8 A. We called Lieutenant Romanstein.

9 Q. Okay, on his cell phone or through the work phone?

10 A. I did not have his cell phone. Lieutenant Bill
11 Cartwright, excuse me, used to work for Orangeburg Public
12 Safety, and he had Lieutenant Romanstein's number.

13 Q. Okay, so you called Romanstein?

14 A. Yes, ma'am.

15 Q. And you go and you present the evidence to Judge
16 Houser. Is that correct?

17 A. Yes, ma'am.

18 Q. Where exactly was Mr. Rutherford -- Officer Romanstein
19 at that point in time?

20 A. He, he was right there with us.

21 Q. Okay. Did he say anything?

22 A. We just told him the information we had, the case we
23 were working on, and he made a phone call to Judge Houser.

24 Judge Houser was somewhere about on his personal business.

25 We had to wait there a couple minutes until Judge Houser

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1 got there.

2 Q. And when he got there, who was sworn?

3 A. Ma'am?

4 Q. When he got there, who was sworn to give that
5 affidavit?

6 A. I was there.

7 Q. You, were you there or ---

8 A. I was saying I ---

9 Q. --- you were sworn?

10 A. I was sworn. I signed the affidavit.

11 Q. And you gave the testimony that led to the -- that led
12 to the search warrant. Is that correct?

13 A. Yes, ma'am.

14 Q. And your name is on, on the search warrant, correct,
15 as the person it was given to?

16 A. Yes, ma'am.

17 Q. And you work for Calhoun County. Is that correct?

18 A. Yes, ma'am.

19 Q. Or you were working at Calhoun County at the time?

20 A. At the time, Yes, ma'am.

21 Q. Was there anybody else present besides Sean, yourself,
22 Judge Houser, and Office Romanstein?

23 A. No, ma'am.

24 Q. Who handcuffed Titus? Sorry to go back, but I just
25 want to clear -- make sure I understand.

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1 A. Officer Sean Murphree.

2 Q. Sean, he's the one who actually cuffed him, okay. Was
3 he cuffed to the front or the rear?

4 A. He was cuffed in the rear, ma'am.

5 Q. After, after he was arrested after the search warrant,
6 where was he taken to?

7 A. He was taken to the Orangeburg-Calhoun Detention
8 Center.

9 Q. Directly to the detention center?

10 A. Yes, ma'am.

11 Q. Do you know what time he got to the jail?

12 MR. JEFFRIES: Your Honor, I have to object. This is
13 outside the scope of the search warrant. Now we're going
14 to where he was taken after he was arrested.

15 THE COURT: What fact, if this is of consequence, does
16 that make?

17 MS. HINDS: I'll withdraw the question.

18 THE COURT: Okay.

19 BY MS. HINDS:

20 Q. Just once last question. Do you have any idea what
21 time the search warrant was actually issued?

22 A. No, I cannot recall the exact time, no, ma'am.

23 MS. HINDS: One moment.

24 THE COURT: She's going to consult and then, Mr.
25 Johnson, you are up.

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1 (COUNSELORS CONFER.)

2 MR. BROWN: Your Honor, I just have a few questions.

3 BY MR. BROWN:

4 Q. Officer, were you also ---

5 THE COURT: Any objection to dividing the attorneys?

6 MR. JEFFRIES: Your Honor, I would object to that; I
7 would object to that.

8 THE COURT: Very well.

9 MS. HINDS: Okay.

10 CROSS-EXAMINATION BY MS. HINDS RESUMES:

11 Q. Did you meet with me again on Friday the 28th of
12 September?

13 A. Yes, ma'am, I did.

14 Q. Okay, and at that meeting what did you tell me?

15 A. I told you that after talking with Officer Sean
16 Murphree, that the coin receipt stood out in my mind.
17 After talking over with Sean and myself and after thinking,
18 it triggered in my mind that the coin receipt was found
19 during the consent to search, not during the search
20 warrant.

21 Q. And, and you told me that on Friday. Do you recall
22 that -- did you call me first time Friday?

23 A. Yeah.

24 Q. Okay, and we spoke on the phone, correct?

25 A. Yes, ma'am.

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1 Q. And then I set up a meeting for later that day,
2 correct?

3 A. Yes, ma'am.

4 Q. And who was present at the meeting?

5 A. Myself, yourself, Dan Daniels, and your...

6 Q. Mr. Brown?

7 A. Yeah, your copartner, right.

8 Q. Did we ask you if you -- how many times you had met
9 with the solicitor at that point?

10 A. I think you asked me why didn't I tell you that
11 Wednesday after we talked.

12 Q. Did I ask you if you had met with the solicitor prior
13 to the Wednesday meeting?

14 A. Yes, ma'am.

15 Q. And what was your response?

16 A. I said yes, ma'am, I did.

17 Q. Okay, do you remember how many times you told me?

18 A. I believe I met with Ms. Karen one time, and she
19 called me and told me that this case was going to trial.

20 Q. Do you remember in the Friday meeting stating that the
21 handcuffed were removed from Mr. Bantan when he was at 140
22 Charlotte Circle once consent, once he gave consent to
23 search?

24 A. Yeah, the handcuffs were taken off when -- when we
25 identified him not being Phillip, as Titus, we took the

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1 handcuffs off of him. He did not have the handcuffs on him
2 during the consent to search.

3 Q. When exactly were the cuffs taken off?

4 A. They were taken off soon as we identify him as Titus,
5 not Phillip.

6 Q. So, they were -- I believe your earlier testimony was
7 that they were just on for a very brief period once you
8 recognized him.

9 A. Once we had him detained, when we did a brief sweep
10 and come back, then there -- then once we identify him as
11 Titus, not Phillip.

12 Q. Did you not tell me in the meeting on Friday that the
13 handcuffs were on for a period of time, not just minutes,
14 and that they were removed when he gave consent to search?

15 A. Well, a period of time would be ---

16 THE COURT: No, sir, answer the question. Ask him the
17 question again.

18 A. Give me the question again.

19 THE COURT: Answer the question, please, that has been
20 asked.

21 BY MS. HINDS:

22 Q. Did you not tell me in the meeting on Friday that he
23 was handcuffed for a period of time? Not just minutes, not
24 just the time it took to recognize him and do the
25 protective sweeps. Did you not tell me that the cuffs were

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1 only removed when he gave consent to search?

2 A. That's what I told you, yes, ma'am.

3 Q. Do you remember telling me on Friday also that Officer
4 Romanstein was only there to open the building because it
5 was after hours?

6 A. No. That's what Office Sean Murphree -- when I -- no,
7 he was there during the, when we got the search warrant and
8 waiting for Judge Houser.

9 Q. Did you not tell me that he did not participate in
10 getting the search warrant?

11 A. No. Officer Romanstein was there when we got the
12 search warrant.

13 MS. HINDS: No further questions.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. JOHNSON:

17 Q. Good morning, Officer Golden.

18 A. Hey. How you doing, sir?

19 Q. All right. Officer Golden, just, just briefly. Are
20 you now saying -- I was at that meeting that you talked
21 about we had Wednesday, I guess it was, Wednesday,
22 Thursday. You are now saying that at that meeting that --
23 do you remember telling everyone there that you walked down
24 the hall but he refused, stopped the search then, and that
25 you turned around and went back? Do you remember saying

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1 that at that meeting?

2 A. I don't know if I recall or Officer Sean Murphree said
3 that.

4 Q. No. I'm saying it is my recollection that you said --
5 you were the first one to talk. Is that correct?

6 A. Yes, sir.

7 Q. Okay, and you said that you was taking him down the
8 hall to go to the back bedroom to search. You remember
9 saying that?

10 A. Yes, sir.

11 Q. And that he, right before he got to the bedroom, he
12 rescinded his consent and you stopped at that time. That
13 you didn't go in the back bedroom.

14 A. Yes, sir. You're right.

15 Q. And that you went back and then you got a search
16 warrant.

17 A. Yes, sir.

18 Q. And that you didn't search at all because he rescinded
19 it. Is that correct?

20 A. Yes, sir.

21 Q. And now you're saying something different?

22 A. Yes, sir.

23 Q. And what are you saying now?

24 A. Saying that when we got consent to search, we found
25 the receipt.

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1 Q. And where do you find the receipt at?

2 A. In the clothes.

3 Q. And where were the clothes?

4 A. Right there on the floor in a basket.

5 Q. In what room?

6 A. In the back bedroom.

7 Q. So, you did go in the back bedroom?

8 A. Yes, sir.

9 Q. And you're saying that you couldn't remember that
10 then?

11 A. No, sir. I did not have my notes in front of me at
12 the time.

13 Q. So, you have notes that have that on there?

14 A. After going back and looking at the -- after talking
15 with Sean and talking about it and thinking about it, it
16 triggered my mind that that's what happened.

17 Q. That's not what I'm asking you. You say you didn't
18 have your notes at that time. So, do you have notes?

19 A. Not with me right now, no, sir.

20 Q. But you have notes that have that written down?

21 A. I just looked at the copy of my search warrant to help
22 me refresh my memory.

23 THE COURT: No, sir. The question was do you have
24 notes.

25 WITNESS: Right now?

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1 THE COURT: No, sir. Do you have notes?

2 BY MR. JOHNSON:

3 A. No, sir.

4 Q. So, when you said a minute ago you refreshed your
5 memory with notes, that wasn't true either?

6 A. Yeah, when I -- after I looked at the search warrant,
7 yeah.

8 Q. I'm confused. You said that after you told us that
9 you didn't go down there, that you went back and you
10 refreshed your memory after talking to the officer and
11 reviewing your notes. That's what you just said.

12 A. Yes, sir.

13 Q. Now you just said you don't have notes.

14 A. Yes, sir.

15 Q. So, how did you refresh your memory? After talking to
16 the officer, he told you that wasn't correct?

17 A. No. Just after thinking about it and going back and
18 looking in my search warrant.

19 Q. What did, what, what, what on the search warrant, what
20 on the search warrant could have refreshed your memory to
21 the point that you knew you didn't go in the bedroom?
22 What's on the search warrant?

23 A. The reason for the affiant to look. If you look on my
24 -- the search warrant, it says that I found -- there was
25 items found during the consent to search.

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1 Q. So, you're matching your story to match your search
2 warrant?

3 A. No. After looking at the search warrant and thinking
4 about what I did, that's what happened.

5 Q. When you was talking to us first that day when we met,
6 you wasn't thinking then?

7 A. Thinking the best that I could, yes, sir.

8 Q. And you couldn't remember that you didn't go in that
9 bedroom then?

10 A. I knew I went in the bedroom, yes, sir.

11 Q. But you remember telling us that you didn't go?

12 A. Yes, I remember telling you that.

13 Q. Why?

14 A. I didn't have my notes in front of me. This case
15 happened 2006. I try to recall the best way I know how.

16 Q. You knew when you came to that meeting that you were
17 going to talk to us about what happened. Is that correct?

18 A. Yes, sir.

19 Q. You knew that we were going to question you, and I'm
20 sure that the attorneys for the state told you to be
21 prepared to tell us what happened. Is that correct?

22 A. Yes, sir.

23 Q. And you refreshed your memory prior to coming to that
24 meeting. Is that correct?

25 A. To the best of my knowledge.

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1 Q. And you came to that meeting and told us something
2 totally different than you're saying now.

3 A. Yes, sir.

4 Q. Next question. When you was talking to -- when you
5 went, you came to the scene.

6 MR. JOHNSON: Well, before I do this, Your Honor, can
7 we approach?

8 THE COURT: I tell you what. This comes at a good
9 time to take a little break.

10 MR. JOHNSON: Okay.

11 THE COURT: Just a little comfort break and you can
12 approach in chambers.

13 MR. JOHNSON: That will be fine.

14 THE COURT: Is that all right with you? I know I need
15 to take a short break.

16 Officer Golden, you can also take a break. Do not
17 discuss your testimony with anyone.

18 WITNESS: Yes, ma'am.

19 THE COURT: Best way to allay any concerns is don't
20 have any conversations with anyone during the break.

21 WITNESS: Yes, ma'am.

22 THE COURT: But you certainly take your break. We'll
23 take about ten minutes. Y'all go take your comfort break,
24 and then come on back in chambers, and that will suffice
25 for the approach, if you will.

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1 (OFF THE RECORD.)

2 THE COURT: Everyone please be seated. I believe you
3 were in your cross examination.

4 MR. JOHNSON: And my motion, Your Honor, that I made?

5 THE COURT: Yes, sir, denied.

6 MR. JOHNSON: Is denied?

7 THE COURT: Yes, sir.

8 BY MR. JOHNSON:

9 Q. Officer, Officer Golden, you went to the scene, is
10 that correct, of the crime?

11 A. Yes, sir, I responded.

12 Q. There was other officers already there?

13 A. Yes, sir.

14 Q. There was other individuals that weren't related that
15 had nothing to do with the police I guess that was there,
16 civilians?

17 A. Yes, sir.

18 Q. Now, when you met with us on that Wednesday, when you
19 met with everybody, do you remember how the name Phillip
20 Spears came up?

21 A. When I arrived to the incident location when we were
22 trying to gather the information on what was going on, I
23 believe at that time there was a gentleman -- can't recall
24 his name -- that said that believed that one of the
25 suspects was from New York. And I said could it be Phillip

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1 Spears. Just, just normal reaction, normal, you know,
2 answer to his question. And I asked could it be Phillip
3 Spears, and I believe at the time the gentleman said the
4 name Phillip sounds familiar or it was...

5 Q. So, the gentleman that said the person from New York,
6 was he a witness to the crime?

7 A. I don't know. I don't recall if he was a witness
8 inside the store at all.

9 Q. Well, who was it?

10 A. Just a gentleman from the crowd. I can't recall his
11 name or ---

12 Q. Can you describe him?

13 A. I know he was a black male. He was in his late
14 forties, late thirties. I can't...

15 Q. Well, don't you think that that would have been --
16 well, if you're investigating a crime as you were there,
17 right? You were there because there was a crime committed,
18 right?

19 A. Yes, sir.

20 Q. You have an individual who was not a victim that tells
21 you about a suspect, and you don't question them?

22 A. No, sir, I did not question him. I just -- when he
23 made that -- I made the comment could it be Phillip Spears,
24 and he thought so. That's when I started ---

25 Q. You didn't ---

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1 A. --- on the perimeter.

2 Q. At that time, you, you -- everybody was a suspect at
3 that time, right?

4 A. Yes, sir.

5 Q. Then why wasn't this gentleman a suspect if he knew so
6 much?

7 A. I can't tell you that.

8 Q. Why would Phillip Spears be on the top of your mind as
9 far as just to say Phillip Spears?

10 A. It's just a name that popped in my head.

11 Q. Where were you standing when you said Phillip Spears?

12 A. I was outside of the store in the parking lot, front
13 parking lot.

14 Q. Who was around you?

15 A. I recall, I know Officer Sean Murphree was there.

16 Outside was Investigator Stanley Graham.

17 Q. Was any victims there?

18 A. I believe the victims were inside the store.

19 Q. Are you sure?

20 A. I believe Ms. Natasha, the victim, she was inside

21 talking and Stan -- Investigator -- Lieutenant Bill

22 Cartwright and Captain Tim Stephenson.

23 Q. Well, what about the other victims?

24 A. I don't know where they were at.

25 Q. So, you don't know if they overheard when you say

1 Phillip Spears?

2 A. Don't know.

3 Q. But you said it loud enough that other officers...

4 A. I don't know how loud I said it.

5 Q. Well, apparently everybody heard you because then
6 y'all went to go look for Phillip Spears, right?

7 A. Well, we went to a trailer right down the road.

8 Q. Right, and that was before the photo ID was done. Is
9 that correct?

10 A. Yes, sir.

11 Q. So, basically from that point on when you said Phillip
12 Spears, the investigation was looking for Phillip Spears?

13 A. We had a suspect in mind, but we was not sure.

14 Q. Did you, did you go and look for anybody else?

15 A. No, sir.

16 Q. Did you question anybody else and ask about any other
17 person other than Phillip Spears from that point on after
18 you said Phillip Spears?

19 A. I did not, no, sir.

20 Q. Do you have any knowledge anybody else questioned
21 anybody, anybody else other than Phillip Spears from that
22 point on?

23 A. I believe Officer Earl Kinnerly went to Ellore.
24 Where did he go in Ellore, I could not tell you, and
25 talked to some people in Ellore.

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1 Q. Which officer was it?

2 A. Officer Earl Kinnerly.

3 Q. All right. Who sent Officer Earl Kinnerly [sic] to
4 Elloree?

5 A. I do not recall who sent him. I believe Earl went on
6 his own.

7 Q. Just went on his own?

8 A. Yes, sir.

9 Q. Is -- he's an investigator?

10 A. No, sir. He's a deputy.

11 Q. So, he's just a regular deputy?

12 A. Yes, sir.

13 Q. And he just went on his own without any direction?

14 A. Yes, sir.

15 Q. Who was in charge?

16 A. I believe it would have been Captain Tim Stephenson.
17 He was the first -- I don't know if he was the first one,
18 but he was there before I got there.

19 Q. But let ask you about procedure. Is it your normal
20 procedure that officers just do what they want to do?

21 A. Well, in, in our department, Officer Earl Kinnerly,
22 who was a resident deputy at the time, knew just about any,
23 everybody in that area. He's from that area; he's got
24 family ties, people in that area he can go and talk to.

25 Q. But that's not what I asked you. He went on his own.

C. GOLDEN - CROSS-EXAMINATION BY MR. JOHNSON

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1 That's what you just said.

2 A. Yes, sir.

3 Q. Without any directions from anybody.

4 A. Yes, sir.

5 Q. And my question is is that your normal procedure that
6 officers just do what they want to do?

7 A. Not necessarily do what they want to do, but if --
8 they can help out and participate.

9 Q. From that point on, once you said Phillip Spears, as
10 far as you know your investigation was to look for Phillip
11 Spears, right?

12 A. Well, yes, sir.

13 Q. When you did the photo lineup, you did a photo lineup
14 and you put a picture of Phillip Spears in?

15 A. Yes, sir.

16 Q. Did you do a photo lineup of any other suspects?
17 Because of two people?

18 A. I could not tell you all who was in the photo lineup
19 because I didn't conduct the photo lineup.

20 Q. When you got to the house of Ms. Adams, you went to
21 that house, right?

22 A. Is this the one on Charlotte Circle?

23 Q. Right.

24 A. Yes, sir.

25 Q. No, not on Charlotte Circle. Tanesha Adams.

C. GOLDEN - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. Santee, yes, sir.

2 Q. Santee.

3 A. Yes, sir. Yes, sir.

4 Q. You went to that house, right?

5 A. Yes, sir.

6 Q. Ms. Adams was there?

7 A. Yes, sir.

8 Q. Who else was there?

9 A. I believe it was Ms. Adams's brother.

10 Q. Okay.

11 A. I was there, Officer Sean Murphree was there, and then
12 Officer Earl Kinnerly.

13 Q. Was anybody else there?

14 A. I only recall Ms. Adams and her brother.

15 Q. Okay. Do you see that lady sitting back over there in
16 the back in the courtroom on the right-hand -- on the left-
17 hand side?

18 A. Can you describe what she ---

19 MR. JOHNSON: Tonya, would you stand up?

20 Q. You recognize her?

21 A. No, sir.

22 Q. You don't recognize her as being there at the house
23 with Ms. Tanesha Adams when you got there?

24 A. No, sir.

25 Q. Do you remember when you went to the hospital?

C. GOLDEN - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. To the hospital?

2 Q. I mean, to -- after you left there, she said she was
3 going to meet supposedly Mr. Spears at the hospital, right?

4 A. Yes, sir.

5 Q. And y'all set up a sting operation to try to catch him
6 at the hospital, right?

7 A. Yes, sir.

8 Q. Do you remember what car she went in?

9 A. No, sir, I do not recall.

10 Q. Don't you know she went in Tonya Johnson's car?

11 A. I don't recall the car.

12 Q. Have you gone through any reports, take notes?

13 A. I -- not, not, not that day. Not when we were in the
14 process of trying to catch ---

15 Q. After you finished, did you do notes?

16 A. No, sir.

17 Q. Why?

18 A. Just didn't.

19 Q. In your standard procedure, isn't -- aren't you as a
20 police officer instructed that you take notes so that when
21 you do come to trial you can refresh your memory and be
22 clearer about things that you testify about?

23 A. Yeah, it would be helpful to do that, yes, sir.

24 Q. You wasn't taught that?

25 A. I can't recall if I was taught that or not. I mean...

C. GOLDEN - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. You can't recall? What is the normal procedure of the
2 police department? Do you take notes? Do you do police
3 reports?

4 A. Yes, sir, I do reports, yes, sir.

5 Q. This is a major crime?

6 A. Yes, sir.

7 Q. There is no police report. Why?

8 A. I did not do a report.

9 Q. Did you do any -- did you write down anything about
10 what you did that day?

11 A. No, sir.

12 Q. I notice you say you didn't write down anything.

13 A. Any notes? Just basically what I did that day. I
14 mean, I didn't write, no. If you're asking me that, no.

15 Q. No, I'm asking if they're, if they're written
16 somewhere.

17 A. No, sir.

18 Q. Well, well, how then do you remember what time you go
19 somewhere, what time you do -- what time you look for
20 someone? You don't, you don't have any records of it?

21 A. No, sir.

22 Q. Describe Ms. Adams's brother.

23 A. Black male.

24 Q. About 6 feet, 6 feet 1?

25 A. He was tall. I don't know the exact height.

C. GOLDEN - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. How tall are you?

2 A. I'm 5-11.

3 Q. Was he taller than you?

4 A. I can't recall -- I don't -- if he was taller than me.
5 I wasn't trying to compare me with him.

6 Q. Did you talk to him?

7 A. I believe we talked to him at the -- at Ms. Adams's
8 house.

9 Q. Right. You talked to him, right?

10 A. Uh-huh.

11 Q. Did you look him in the eye, or did you look down at
12 him?

13 A. I mean, I talked to him. I didn't stare at his eyes
14 the whole time.

15 Q. I'm asking you so I can get a feeling for how tall he
16 was. Was he about your height? Was he tall? You say he
17 was tall?

18 A. He was tall.

19 Q. So, he was taller than you?

20 A. Could have been.

21 Q. So, about 6 feet?

22 A. Could have been.

23 Q. 160 pounds?

24 A. Could have been.

25 Q. So, he matched the description of the suspect?

C. GOLDEN - REDIRECT EXAMINATION BY MR. JEFFRIES

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1 A. Could have been.

2 Q. And you didn't question him?

3 A. No, sir.

4 Q. And he actually took you to the co-defendant house,
5 didn't he?

6 A. Yes, sir.

7 Q. And he had information, right?

8 A. Yes, sir.

9 Q. And you didn't question him?

10 A. No, sir.

11 Q. And you didn't suspect that he could have been a
12 possible suspect?

13 A. No, sir.

14 MR. JOHNSON: I've got no other questions.

15 THE COURT: Redirect?

16 MR. JEFFRIES: Briefly, Your Honor.

17 REDIRECT EXAMINATION BY MR. JEFFRIES:

18 Q. Investigator Golden, I understand we're not in front
19 of a jury. Let me just ask you. You testified about
20 knowing Phillip Spears and Titus Bantan. How do you know
21 these individuals?

22 A. Reason I know, because we had a case that -- involving
23 a bank robbery in Cameron, which -- small town small town
24 located down 176 which is in Calhoun County. I didn't --
25 that -- when the robbery came out, I was not the lead

C. GOLDEN - REDIRECT EXAMINATION BY MR. JEFFRIES

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1 investigator on that case. Captain Steven West, who passed
2 away, was the lead investigator on that case.

3 Through his investigation, he developed Mr. Phillip
4 Spears and Titus Bantan, along with a third suspect called
5 Laquan Donaldson, involved in the bank robbery in Cameron.
6 Mr. Phillip Spears was arrested in a parking lot, a little
7 sting operation that was done by Calhoun County Sheriff's
8 Office, along with Orangeburg Public Safety. They took Mr.
9 Spears down in the parking lot, I believe. He resisted.
10 I believe he punched one of the officers. They had him.

11 They were looking for Titus Bantan at the time. They
12 had warrants, outstanding warrants for him. I know Titus.
13 I were -- we were helping looking for him. His face, we
14 had warrants, we had a picture of his booking photo.
15 Laquan Donaldson, the third suspect, they arrested him and
16 charged him in connection with the robbery.

17 Q. Okay, so when you heard that these individuals might
18 have been from New York, is that why you talked about these
19 two individuals?

20 A. Yes, sir.

21 Q. And did you, in fact -- at some point, someone from
22 Calhoun County Sheriff's Office got a lineup with Mr.
23 Spears in it. Is that correct?

24 A. Yes, sir.

25 Q. And was Mr. Spears then identified as one of the

1 robbers?

2 A. Yes, sir. I believe he was.

3 Q. And at some point, was a photograph shown that had
4 Phillip's -- Titus Bantan as well?

5 A. Yes, sir.

6 Q. Was he also identified as one of the suspects in this
7 robbery?

8 A. Yes, sir.

9 Q. Mr. Johnson asked you about this other individual who
10 helped y'all find [REDACTED] the brother of
11 Tanesha Johnson [sic]. Was he ever shown in a photo lineup?

12 A. I couldn't tell you. I did not do the photo lineup.
13 I don't know who all was put in the photo lineup besides
14 Phillip in one photo lineup and Titus in the second.

15 Q. But both of them were identified in photo lineups?

16 A. Yes, sir.

17 Q. And is that why you then concentrated your
18 investigation on those individuals?

19 A. Yes, sir.

20 Q. Let me ask you about something that was testified to
21 earlier. You testified when you spoke to us, all the
22 attorneys and the investigator last week on Wednesday, you
23 indicated that you hadn't -- you didn't have your notes.

24 What are you referring to when you say your notes?

25 A. I'm referring to, like, paperwork, like reports done.

C. GOLDEN - REDIRECT EXAMINATION BY MR. JEFFRIES

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1 I didn't necessarily do the incident report on the Wagon
2 Wheel. I didn't have the copy of the search warrant that
3 would help me refresh my memory.

4 Q. So, is that what you mean when you ---

5 A. Yeah, that's what I ---

6 Q. --- said you hadn't looked at any notes?

7 A. Yes, sir.

8 Q. Okay. You don't work for the Calhoun County Sheriff's
9 Office anymore, do you?

10 A. No, sir, I do not.

11 Q. So, you didn't have the access with you to the
12 incident report or any of the other documents relating to -
13 --

14 MR. JOHNSON: Your Honor, objection. He's leading the
15 witness.

16 THE COURT: Sustained.

17 BY MR. JEFFRIES:

18 Q. What, if anything, did you have in your possession
19 relating to this incident up until you started preparing
20 for trial?

21 A. Just my memory.

22 Q. And when you talked to us that day on Wednesday, what
23 were you using to recall this?

24 A. Just based on my memory, what I could recall that day.

25 Q. And when did you first see the search warrant with

1 regards to the warrant served at [REDACTED]

2 When did you have the opportunity to review that?

3 A. That was Wednesday, I believe at the time, Wednesday.

4 Q. Was it before or after we had all talked?

5 A. That was after.

6 Q. And so are you then refreshed as to what happened?

7 A. Yes. Yes, sir.

8 Q. And did you also have the opportunity to speak with

9 Deputy Graham -- I'm sorry, Deputy, Deputy Murphree

10 A. Yes, sir.

11 Q. And did y'all look at the search warrant?

12 A. Yes, sir.

13 Q. And did you look at the incident report?

14 A. We just looked at the search warrant.

15 Q. Okay, and as to the questioning about you correcting
16 what, what you had told them before, who initiated that
17 second conversation where you wanted to clear up what you
18 said the first time?

19 A. I was told to get in touch with Ms. Peggy Hinds.

20 Q. And did you approach them to tell them you were
21 mistaken?

22 A. I called Ms. Peggy Hinds and was looking for Ms. Peggy
23 Hinds. She was out of the office. I believe Investigator
24 Dan Daniels, I talked to him, told him that I needed to
25 talk to Ms. Hinds. I was told she was looking for me and I

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1 wanted to, you know, clear up a matter.

2 Q. You initiated that?

3 A. Yes, sir.

4 Q. And did either Ms. Fryar or myself tell you to change
5 your story in any way?

6 A. No, sir.

7 Q. And let me ask you. You were also asked about,
8 several times about time. Did you do any notes that day?

9 A. No, sir.

10 Q. The day of the robbery, and did you have any
11 independent investigative report as to this robbery?

12 A. No, sir.

13 Q. And do you just independently remember the times that
14 everything occurred?

15 A. Just briefly the times and the day.

16 Q. Let me ask you because you were asked. At what time -
17 - y'all responded to the incident scene earlier. I think
18 Ms. Hinds asked you that, and I think you testified it was
19 the afternoon. Would looking at the incident report
20 refresh you as to time that y'all responded?

21 A. Yes, sir.

22 Q. And let me ---

23 MR. JOHNSON: Objection, Your Honor.

24 THE COURT: Yes?

25 MR. JOHNSON: If the incident report is not his, he

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1 can't be refreshed by it.

2 MR. JEFFRIES: Yes, he can.

3 THE COURT: Yes. You can refresh your recollection
4 with the Manhattan telephone book.

5 MR. JOHNSON: I understand that, Your Honor, but ---

6 THE COURT: What he's got to do is he's got to show

7 him the document and ask him if it refreshes his
8 recollection. It's got to be refreshing his recollection.

9 Must be refreshed. Can't simply read the document. If you
10 would just show him the document.

11 BY MR. JEFFRIES:

12 Q. I'm going to show you this document and ask you if it
13 refreshes your recollection as to what time y'all would
14 have responded to the incident location back on November 6,
15 2006.

16 A. Yes, sir.

17 Q. And approximately what time was that?

18 A. Between 10 and 11.

19 Q. And would that be the a.m. or p.m.?

20 A. That'd be a.m.

21 Q. Between 10:30 and 11 a.m.?

22 A. Yes, sir.

23 Q. There was some questions about when the search took
24 place, the search warrant and the consent to search. Did
25 you obtain any items from the house, either you or any of

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1 the other officers, during the period of time where he
2 rescinded his consent to search before you received the
3 search warrant? Was anything recovered?

4 A. Only thing I had was the coin receipt.

5 Q. And was that -- what period of time was that?

6 A. That was during the consent to search.

7 Q. And after he rescinded his consent and before you got
8 the search warrant, was anything recovered?

9 A. No, sir.

10 Q. Ms. Hinds asked you specifically when Mr. -- you were
11 aware that the individual at [REDACTED] wasn't
12 Phillip Spears, why did you leave -- why didn't you leave
13 at that time?

14 A. Because I knew that Titus and Phillip were associates
15 and that this could possibly be our second suspect.

16 Q. And why did you think they were associates and
17 possibly ---

18 A. Because of the previous bank robbery they were
19 connected to in Cameron.

20 MR. JEFFRIES: Beg the court's indulgence. That's all
21 I have, Your Honor.

22 THE COURT: Ms. Hinds, recross?

23 MS. HINDS: One small clarification.

24 RECROSS-EXAMINATION BY MS. HINDS:

25 Q. You testified that you went to -- you, Shawn and Earl

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1 went to Tanesha Adams's house, and it was there that you
2 spoke with her brother, correct?

3 A. Her brother and her.

4 Q. And when -- and she came -- he came back with you to
5 Orangeburg, correct?

6 A. Yes, ma'am.

7 Q. And when the meeting at the hospital didn't take
8 place, he's the one that took you to 140 Charlotte Circle?

9 A. Yes, ma'am.

10 Q. And he told you -- why, why did he say that, that he
11 ---

12 A. He told us that Phillip visits out there, hangs out
13 there, goes over there and stays sometimes.

14 Q. But not that he lived there, correct?

15 A. I don't recall that he said he lived there.

16 Q. But that he visits there?

17 A. Yes, ma'am.

18 MS. HINDS: Thank you.

19 THE COURT: Thank you. Mr. Johnson, you may recross.

20 MR. JOHNSON: Thank you. Please the court?

21 RE CROSS-EXAMINATION BY MR. JOHNSON:

22 Q. Now that your memory has been refreshed, do you
23 remember any other times?

24 A. What, what other times?

25 Q. Your memory was just refreshed by a document given to

C. GOLDEN - RECROSS-EXAMINATION BY MR. JOHNSON

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1 you. You remember it was, like, 10:00 or so. Does that
2 help refresh your memories about the other times you
3 couldn't remember before?

4 A. Yes, sir.

5 Q. It does?

6 A. What other times you trying to get at?

7 Q. All right, what time did you get to Tanesha Adams's
8 house?

9 A. 11, 12, afternoon. Something like that, lunchtime.

10 Q. Well, 11 is not afternoon but 12, so which is it?

11 A. Between 11 and 12. I mean, I can't...

12 Q. All right, and the photo ID was done at 1:15 where the
13 -- one of the victims, alleged victims picked my client.
14 It was done around 1:15. Is that correct, or some time in
15 the afternoon?

16 A. Some time in the afternoon.

17 Q. 2:15, I'm sorry. Some time in the afternoon?

18 A. Yes, sir.

19 Q. So, when you went to Tanesha Adams's house, you was
20 looking for Phillip Spears?

21 A. Yes, sir.

22 Q. So, you had -- was looking for Phillip Spears before
23 you have a photo lineup saying that he was the actual
24 individual?

25 A. That's correct.

C. GOLDEN - RECROSS-EXAMINATION BY MR. JOHNSON

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1 Q. And the man you pull up, you actually, actually did --
2 what time did you do the sting where you went to the
3 hospital?

4 A. The afternoon.

5 Q. Was it before you know that he was picked out of the
6 photo lineup?

7 A. I believe we were on the process of heading to the
8 hospital.

9 Q. So, you was on your way to the hospital. By that
10 time, you'd already went to Tanesha Adams's house looking
11 for Phillip Spears. You'd already said that Phillip Spears
12 was probably the person that did it. You said that out at
13 the scene, and you went to a sting operation looking for
14 Phillip Spears before you got your photo lineup, or you was
15 on your way going there?

16 A. I was on the way going there.

17 MR. JOHNSON: I've got no other questions.

18 THE COURT: All right, you may come down.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Any additional witnesses?

21 MR. JEFFRIES: No, Your Honor.

22 THE COURT: All right, very well, turn to the defense.

23 Ms. Hinds, for the purposes of the suppression hearing, do
24 you have witnesses?

25 MS. HINDS: We do have a witness. If I could go get

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

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1 her?

2 THE COURT: Of course.

3 (A PAUSE.)

4 JOANNA MIRANDA, BEING DULY SWORN,

5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please state your full name for the
7 record.

8 WITNESS: Joanna Miranda.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION BY MS. HINDS:

11 Q. Joanna, you prefer to be called Anna, do you not?

12 A. Huh?

13 Q. Do you prefer to be called Anna?

14 A. Yes.

15 Q. Joanna, where do you live?

16 A. [REDACTED]

17 Q. And where were you living November 6, 2006?

18 A. I forgot.

19 Q. Was it a different address?

20 A. Yes.

21 Q. Who else lived there?

22 A. Huh?

23 Q. Who else lives, lived there with you?

24 A. Me, my brother?

25 A. What's your brother's name?

1 A. Titus Bantan.

2 Q. Anybody else?

3 A. His girlfriend, Sheree Klett and two, his two little
4 boys.

5 Q. And what's the boys' names?

6 A. Tie Bantan, Titus Bantan.

7 Q. On November 6 of 2006, did someone come to the door
8 that was unusual?

9 A. Yes.

10 Q. Who came to the door?

11 A. Cop.

12 Q. Was there, was there more than one officer?

13 A. Yes.

14 Q. And what were they wearing?

15 A. Green or beige. Forgot.

16 Q. Did they have their guns drawn?

17 A. They ain't take it off.

18 Q. Do you remember what they asked you?

19 A. Can I talk to you.

20 Q. And what did you say?

21 A. I said no.

22 Q. Did they ask you anything else?

23 A. Soon as, soon as I opened the door, they had came in
24 and when they had came in, they all -- when they had came
25 in...

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

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1 Q. Anna, you've got to speak up a little bit, I'm sorry.

2 A. I said it had, when they had came in, they said can I
3 talk to you. When they were saying can I talk to you, they
4 was, like -- I told them yeah, they could talk to me. And
5 I say -- they say did you see -- they say -- what's his
6 name? -- Spears or something like that, like did I see
7 Spears.

8 Q. And what did you say?

9 A. I said no, I ain't see him, not that -- no, they asked
10 -- sorry. I'm nervous. I'm sorry.

11 WITNESS: Sorry, Judge. I'm nervous.

12 THE COURT: That's quite all right.

13 WITNESS: Can I say it again or something?

14 THE COURT: You go right ahead. You're doing fine.

15 BY MS. HINDS:

16 A. When they had came, when they had came and they was,
17 like, yes, they come in and then when they came in, they
18 said can I talk to you. And I said yeah, they could talk
19 to me. And when they had come ---

20 THE COURT: Can you speak up just a little bit more?

21 A. When they had talked to me, they said anybody in the
22 back, and I say my brother. They said -- then that's when
23 they about to take the gun out. I said let me get my
24 nephews out first.

25 Q. And you went outside then?

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

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1 A. Yes.

2 Q. Did you see them -- did you see any more of what
3 happened inside the trailer?

4 A. No because I was outside.

5 Q. So, you didn't see them put the cuffs on Titus?

6 A. No.

7 Q. Do you remember whether it was dark or light out when
8 the police officers knowcked on the door?

9 A. Light.

10 Q. Still light? You don't know what time it is, do you,
11 what time it was?

12 A. No.

13 Q. Was it light out or dark out when they left?

14 A. Dark.

15 Q. Do you have any idea what time it was?

16 A. No. I don't remember.

17 Q. Okay. Anna, do you work?

18 A. No.

19 Q. And do you get a government check?

20 A. I get SSI and disability.

21 Q. Okay, and what do you get SSI for? Do you know?

22 A. Slow learner.

23 Q. And what do you use that SSI check money for? What do
24 you spend it on?

25 A. Pay my bills.

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

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1 Q. And what bills do ---

2 A. And rent.

3 Q. What bills do you have?

4 A. Rent.

5 Q. Rent? Was your brother home that morning?

6 A. Yes.

7 Q. Were you the first one up that morning?

8 A. Yes.

9 Q. And who was there when you woke up?

10 A. It was Titus and the two little boys. Sheree Kiett
11 left.

12 Q. To the best of your knowledge, was Titus in the house
13 that day?

14 A. Yes.

15 Q. Could Titus has left the house.

16 MS. FRYAR: I object to the relevance of this line of
17 questioning.

18 THE COURT: With regards to the suppression hearing,
19 what fact ---

20 MS. FRYAR: I'll withdraw the question.

21 THE COURT: Very well. Very well.

22 MS. HINDS: No further questions. Answer any
23 questions the other attorneys may have for you, okay?

24 WITNESS: Uh-huh.

25 THE COURT: Yes, ma'am.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 MS. FRYAR: Please the court?

2 CROSS-EXAMINATION BY MS. FRYAR:

3 Q. How are you doing today, Ms. Miranda?

4 A. Hey.

5 Q. Do you remember seeing me before? Would you look this
6 way, look at me? How you doing today?

7 A. Fine. Good.

8 Q. Do you remember talking to me before?

9 A. You came to my house.

10 Q. Yes, ma'am, and did I come to your house with this guy
11 right here behind me, Investigator Whetstone?

12 A. Yeah, he came with you.

13 Q. Okay, and did we come and sit on the couch in your
14 house and talk with you?

15 A. Uh-huh.

16 Q. Okay.

17 THE COURT: That's a yes?

18 WITNESS: Oh, yes. I'm sorry, Your Honor.

19 THE COURT: That's okay.

20 BY MS. FRYAR:

21 Q. And where you were living when me and Mr. Greg came to
22 see you at your house? When we came to your house, was it
23 as Morris Street?

24 A. Where I'm living now?

25 Q. Yes, when me and Mr. Whetstone came to see you, where

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 were you living, Ms. Anna?

2 A. Oh, [REDACTED]

3 Q. There we go, okay, and do you remember us talking with
4 you about what happened before that when you were living on
5 Charlotte Street -- excuse me, Charlotte Circle?

6 A. Repeat.

7 Q. Did we talk to you about what happened when we -- when
8 you were living on Charlotte Circle?

9 A. Yes.

10 Q. Okay, and when you were living on Charlotte Circle,
11 ma'am, who was living with you in that trailer? Who all
12 lived together, Ms. Miranda?

13 A. Me and Sheree Kiett and Titus and two boys who lived
14 there.

15 Q. Okay, and is Sheree Kiett, is that, is that your
16 brother Titus's girlfriend?

17 A. Yes.

18 Q. Okay, and do they have a child together?

19 A. Yes.

20 Q. What do y'all call him?

21 A. Titus son?

22 Q. What do you call him? What do you call that little
23 boy?

24 A. My nephew?

25 Q. Yes, ma'am. What is his name, ma'am?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 A. Titus Bantan.

2 Q. And what do y'all him?

3 A. Oh, Freaky Tie.

4 Q. Okay, do you call him Little T?

5 A. No.

6 Q. You call him what?

7 A. Tie, Tie and Titus. That's what we call him.

8 Q. Okay. All right. Now, so that's one of the little
9 children that was in the house. Who were the other two
10 little children that were in the house? You had a little
11 boy, right?

12 A. Yeah.

13 Q. Do you have a son, ma'am?

14 A. No, I don't have no son.

15 Q. Whose little boy was that other than little Titus?

16 A. Sskkk cousin.

17 Q. Okay, and what's his name?

18 A. They call him Burt.

19 Q. Okay, and was there a little girl in the house as
20 well?

21 A. Yes.

22 Q. And who was she?

23 A. Sheria.

24 Q. And whose child is she?

25 A. Sheree Kielt cousin daughter.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 Q. Okay, and do you always pretty much stay at the
2 trailer?

3 A. Yes. I always stay at the trailer.

4 Q. Okay. Does sometimes during this period of times, did
5 sometimes Titus not be at the trailer when you stayed at
6 the trainer?

7 A. Titus be at the trailer.

8 Q. Okay. On this day, you're telling us Titus was at the
9 trailer, ma'am, but isn't it true that sometimes Titus
10 isn't at the trailer, and Sheree's not at the trailer, and
11 you take care of these three children. Is that what you
12 do?

13 A. Yes.

14 Q. Okay, do you feed them?

15 A. Yes.

16 Q. Do you give them a bath?

17 A. Uh-huh.

18 Q. Do you put their clothes on for them, have to get
19 their clothes on?

20 A. Yeah.

21 Q. Okay. You tryd to teach them things?

22 A. Uh-huh.

23 Q. Okay. In fact, you probably, you take the most care
24 of them, don't you?

25 A. Yeah.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 Q. And you do that all by yourself sometimes, don't you?

2 A. Yes, sometimes.

3 Q. Okay. Now I want to ask you about this time when you
4 said the police came to you house, okay?

5 A. Yeah.

6 Q. Do you recall telling us that when the police came to
7 your house, you told your brother, Titus, the police are at
8 the house?

9 A. Yes.

10 Q. And you told him the police are at the door, right?

11 A. Yes.

12 Q. And he told you to open the door, right?

13 A. Yes.

14 Q. Okay, and so you, after talking with Titus, let them
15 come on in the house. Is that right?

16 MR. BROWN: Object, Your Honor. That wasn't the
17 answer. I think there's testimony -- the answer was she
18 opened the door, not that she let them in.

19 THE COURT: Let me here the question again. Let me,
20 I'm going to listen. I've got some water there for you if
21 you'd like a cup of water. Got it? Great.

22 Now let me here the question again.

23 MS. FRYAR: Could we have Ms. Harris read it again?

24 THE COURT: Sure.

25 (REQUESTED PORTION IS READ BACK.)

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 MR. BROWN: I understand what we're dealing with Ms.
2 Miranda as a witness. I think implicating anything or
3 leading in the way of you let somebody in on implicating
4 the answer would be somewhat dangerous with her situation,
5 and I ---

6 MS. FRYAR: Your Honor, I think that would be an
7 appropriate question for him to ask her on cross-
8 examination. But question is directly related to the one I
9 just -- she just gave an affirmative. After talking with
10 her brother, Titus, she let them come into the house,
11 right, and that's what she just said: after talking with.
12 I'm just saying, pretty much again ---

13 THE COURT: Overruled. You may proceed.

14 BY MS. FRYAR:

15 Q. Okay, Ms. Miranda. Ms. Miranda?

16 A. Hmm?

17 Q. So, when you talked to Titus and he said let them come
18 into the house, you let them come into the house, right?
19 You'll have to say yes or no.

20 A. Yes.

21 Q. Okay, and so when they came into the house, did you
22 stay in house?

23 A. No. I told them to wait.

24 Q. Okay, and so do you remember if they said to Titus can
25 we look around your house?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 A. I was, I was outside then.

2 Q. You were outside when they were talking to Titus?

3 A. Yeah.

4 Q. Is that right?

5 A. Yeah.

6 Q. So, you don't know what they said while they were in

7 the house.

8 A. Yes.

9 Q. Is that right?

10 A. That's right.

11 Q. While you were in the house -- or did you ever go back
12 in the house while the policemen were there?

13 A. When I had to get something for the kids or something,
14 yeah.

15 Q. Okay, and when you went into the house, they let you
16 come on in, right?

17 A. Uh-Huh.

18 Q. Did you see Titus when you came back in the house?

19 A. Yeah.

20 Q. Okay. What was he doing?

21 A. Laying on the couch, having a handcuff. He was sick.

22 Q. Okay, laying on the couch, had the handcuffs?

23 A. Yeah.

24 Q. Being handcuffed?

25 A. Yeah.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 Q. All right. Were you there when they were looking
2 around your house?

3 A. Yeah.

4 Q. Okay, and what do you remember about that, Ms.
5 Miranda? What were they looking at?

6 A. Going in the back room looking.

7 Q. Okay, and was there some officers from Orangeburg
8 there, too?

9 A. It was lots of officers. I can't remember what
10 officers.

11 Q. Okay, there were lots of officers there?

12 A. Yeah.

13 Q. Okay. Do you know what Orangeburg officers look like,
14 what their uniforms look like or anything?

15 A. No, I don't.

16 Q. Can you read and write, ma'am?

17 A. Yes.

18 Q. Okay. Do you pay your own rent, ma'am?

19 A. Yes, I do.

20 Q. Okay. Who's your landlord?

21 A. Right now?

22 Q. Yes, ma'am.

23 A. I don't know her name.

24 Q. Okay. Who was your landlord when you were living at
25 [REDACTED] at the other, other place?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 A. I think his name John. I don't know I remember his
2 name.

3 Q. How do you go about paying your rent?

4 A. Huh?

5 Q. Do you take your rent to the man?

6 A. Yes.

7 Q. Okay. How do you get the rent money?

8 A. My SSI check.

9 Q. Okay. Do you go cash your check at the bank?

10 A. No.

11 Q. Okay, you get your check and you get it cashed to by
12 somebody else?

13 A. No. I go to the liquor store.

14 Q. You go to the liquor store and you get it cashed.

15 Other than paying the rent, do you buy other things?

16 A. No, because I don't have enough because I got to pay
17 bills, too.

18 Q. I gotcha. How do you go about paying your bills, Ms.
19 Miranda? What do you do? You write a check?

20 A. I give them cash.

21 Q. Give them cash. Do you know who you owe bills to?

22 A. My light and my rent. That's it.

23 Q. Okay, and that's who you give cash to?

24 A. Uh-huh.

25 Q. And you do that every month?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 A. Yes.

2 Q. Okay. Now, let's go back to this day when this
3 happened when the police came to your house. Was Sheree
4 Kiett there, too?

5 A. No.

6 Q. She never come?

7 A. No, she came. She came, she came after, after she saw
8 all the cops at her house.

9 Q. Okay. So, she came after the police had gone inside
10 your house, right?

11 A. Uh-huh.

12 THE COURT: That's a yes?

13 WITNESS: Yes.

14 THE COURT: That's okay. I know what you mean, but I
15 need our court reporter to have an audible answer, okay?

16 WITNESS: Okay.

17 THE COURT: Thank you.

18 BY MS. FRYAR:

19 Q. And they let, they let Ms. Sheree Kiett come in the
20 house, too, didn't they?

21 A. Yes.

22 Q. Did officers when they came, Ms. Miranda, did they all
23 stay or did some of them decide to stay and some of them go
24 away?

25 A. All them was around.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 Q. Okay. Did some stay and come back?

2 A. Yeah, going back and forth, I guess.

3 Q. Okay, and the police officers didn't prevent Ms.
4 Sheree Kiett from coming in the house, did they?

5 A. No.

6 Q. So during this period of time, what were you doing?

7 A. They had went shop -- she went shopping and -- for
8 which groceries and stuff.

9 Q. The police let you put away groceries in the house?

10 A. Yes. Yes.

11 Q. Thank you, maan. Did you ever hear the police yelling
12 at Titus?

13 A. No.

14 Q. Did you ever hear Titus yelling about anything. He
15 was too sick to yell.

16 Q. He wasn't feeling good that day, right?

17 A. Right.

18 Q. Were you there when they were looking in his bedroom
19 for stuff?

20 A. Uh-huh.

21 THE COURT: I need you to answer.

22 A. Yes.

23 THE COURT: Thank you.

24 Q. Did you hear Titus tell them not to do that, or did
25 Titus let them do that?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 A. I, I did not hear that part. I didn't -- I don't know
2 about that part.

3 Q. You don't know if they -- he said they could or not?

4 A. No.

5 Q. Mainly when the police got there, though, they asked
6 you did you know somebody named Phillip Spears, right?

7 A. Yeah, that's his name.

8 Q. Okay, and you do know ppssm don't you?

9 A. No.

10 Q. You know a fellow named Dee, right? Is Dee the same
11 person as Phillip Spears?

12 A. First they said Daniel.

13 Q. Daniel, okay. Do you remember when me and Investigator
14 Whetstone were sitting on your couch talking with you, Ms.
15 Anna?

16 A. Uh-huh.

17 Q. And you said you know Phillip Spears as Dee?

18 A. Right.

19 Q. You remember that? That's what ---

20 MR. JOHNSON: Your Honor.

21 Q. --- you called him.

22 MR. JOHNSON: Your Honor.

23 Q. Is that correct?

24 THE COURT: Just a second. Yes?

25 MR. JOHNSON: I object to the, to the question. She

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 just said she doesn't know Phillip Spears. Now the
2 attorney asked her you do know Phillip Spears. She already
3 answered. It's been asked and answered.

4 THE COURT: What she asked her was do you remember
5 having a conversation with us, at which point you said, and
6 then she gave her the statement. Is there an objection to
7 that question?

8 MR. JOHNSON: Yes, ma'am.

9 THE COURT: And what is the nature of that?

10 MR. JOHNSON: That question, that's it's been asked
11 and answered.

12 THE COURT: Okay, I'll allow it.

13 MS. FRYAR: After I refreshed her memory that she ---

14 THE COURT: I'll allow it.

15 MS. FRYAR: Thank you, Your Honor.

16 BY MS. FRYAR:

17 Q. Now, remember what you said to the police when they
18 said have you seen him that day? What did you tell them?

19 A. Repeat.

20 Q. Had you seen Dee that day?

21 A. Oh, no.

22 Q. And did you tell the police I hadn't seen him today?

23 A. Right.

24 Q. Okay, but as far as you know, Ms. Miranda, while the
25 police were inside the house, they never did anything to

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 harm Titus, did they?

2 A. No, they didn't do nothing to harm Titus.

3 Q. And you let them in the house when Titus told you it
4 was okay to do that, did you?

5 A. Yeah. Yes.

6 MS. FRYAR: I don't have any further questions. Thank
7 you, Ms. Miranda.

8 THE COURT: Redirect?

9 MS. FRYAR: Just one more, Your Honor.

10 THE COURT: All right.

11 MS. FRYAR: I apologize.

12 THE COURT: All right.

13 BY MS. FRYAR:

14 Q. Ms. Miranda.

15 A. Yes.

16 Q. Let me ask you this. You see this fellow right here?
17 Stand up if you need to.

18 A. Yes.

19 Q. You see this fellow right here?

20 A. Uh-huh.

21 Q. Do you know him?

22 A. Not really but a little bit.

23 Q. Has he been, has he been to your house? Has he been
24 to your house before? Has she been to the trailer before?

25 A. No.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

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1 Q. You have not been at home when he was at your trailer
2 before?

3 A. Uh-uh.

4 Q. When you say not really, what do you mean? Do you
5 know him a little bit?

6 A. Somewhere else.

7 Q. You know him from somewhere else? Okay. Where do you
8 think you know him from?

9 A. I don't know.

10 THE COURT: You can be seated if you'd like.

11 Q. You want to look at him some more, or do you know who
12 it -- you know this face, don't you?

13 A. Yeah.

14 Q. Okay. Do you know where you know him from, ma'am?

15 A. I have forgot, no.

16 Q. You've gotten? Okay. Isn't it true that you know
17 this fellow as Dee? Is that right?

18 A. Uh-huh.

19 Q. Okay.

20 THE COURT: Can you answer for me?

21 WITNESS: Yes.

22 THE COURT: Thank you.

23 MS. FRYAR: Okay, thank you. I don't have any further
24 questions.

25 THE COURT: Redirect?

J. MIRANDA - CROSS-EXAMINATION BY MR. JOHNSON

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1 MR. JOHNSON: Please, I ---

2 THE COURT: I'm sorry. I'm going to this way. I'm so
3 sorry. I'd actually planned on going this way, and then I
4 didn't, so thank you. I'm so sorry, Mr. Johnson.

5 MR. JOHNSON: Thank you, Your Honor.

6 THE COURT: Thank you.

7 CROSS-EXAMINATION BY MR. JOHNSON:

8 Q. Good afternoon, Ms. Miranda. I just have one question
9 for you. You did not see Phillip Spears or Dee at your
10 house that day, did you?

11 A. No.

12 MR. JOHNSON: Nothing further.

13 THE COURT: Now redirect?

14 MS. HINDS: No, Your Honor.

15 THE COURT: You may come down. Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: All right, I notice the hour, and,
18 counsel, let me see you. Let me see you.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: All right, we are going at this time, we
21 are going to stop with the suppression matter. We will
22 reconvene once we have our jury this afternoon.. But I do
23 need to hear, as I understand it there is a motion with
24 regards to the indictments by the state.

25 MS. FRYAR: Your Honor, at this time the state is

1 making a motion to amend the indictments as they appear
2 before the court at this time? Specifically, Your Honor,
3 we would like to amend the armed robbery indictment as to
4 Mr. Bantan where we have misspelled his name as B.a.t.a.n.
5 to B.a.n.t.a.n. I am referring to indictment number 2007-
6 GS-09-0004. Additionally, Your Honor ---

7 THE COURT: Let me, let me get it in front of me
8 because I don't even have a copy. And this, the number is,
9 last numbers?

10 MS. FRYAR: Last 4 digets are 0004.

11 THE COURT: Okay. All right.

12 MS. FRYAR: I'll tell you that when this gentleman was
13 arrested it was spelled that way, and so it's a scrivener's
14 error on the indictment.

15 Additional, Your Honor, we are asking the indictments
16 be amended to Mr. Bantan for the offense of kidnapping in
17 2007-GS-90-0220 and the offense of possession of firearm as
18 to Mr. Bantan in indictment number 2007-GS-09-0218. And
19 the indictment for kidnapping as to Mr. Spears in 2007-GS-
20 09-219 for the offense of possession of a firearm during
21 the commission of a violent crime. And as to the
22 indictment for kidnapping for Mr. Spears in 2007-GS-09-
23 0221. Those four indictments, Your Honor, have the same
24 scrivener's error both as to Mr. Bantan and to Mr. Spears
25 whereas the indictment reads that these offenses occurred

1 on or about November 6, 2007. We would of course amend and
2 move to amend this to 2006. All of these are scrivener's
3 errors, Your Honor, that we have the wrong year and a
4 misspelling.

5 As you know, ma'am, a motion to amend indictments is
6 addressed to your sound discussion. The burden is on the
7 defense to show an abuse of any -- abuse or any prejudice.
8 There is no prejudice to these defendants by simply
9 allowing the amendment of the scrivener's error. Changing
10 Mr. Bantan's name spelling doesn't change anything.
11 Changing the dates from 2007 to 2006 doesn't surprise or
12 prejudice them in any way, and they have had discovery and
13 have known all along that the alleged date is November 6,
14 2006. They have been fully able to prepare for that date.
15 It's obviously a scrivener's error because 2007 is not even
16 here yet, November 2007, and we're allowed under State vs.
17 Corts.

18 THE COURT: First of all, Ms. Hinds.

19 MS. HINDS: We would just object for the record, Your
20 Honor, in that she's had plenty of time to -- before this
21 even went to grand jury to have gone through and gotten the
22 correct date on there. And for that reason, we would
23 object.

24 THE COURT: Very well. Yes, sir.

25 MR. JOHNSON: I concur with co-counsel's objections.

1 THE COURT: Yes. Thank you very much. I'm going to
2 allow the indictments to be amended because they clearly
3 are scrivener's errors with regards to Mr. Bantan's name.
4 Clearly Mr. Bantan I think is certainly well aware that the
5 indictments are addressed to him and that his name was
6 misspelled. And I was trying to remember the indictment,
7 one of the indictments was served about a month ago.
8 Which, tell me which one that was, which number.

9 MS. FRYAR: Your Honor, both of the entitlements were
10 kidnapping and commission of a crime using a firearm. But
11 both of these gentlemen were presented to the grand jury
12 August 27, 2007.

13 THE COURT: Okay.

14 MS. FRYAR: Excuse me, ma'am, August 24th.

15 THE COURT: 24th?

16 MS. FRYAR: Yes, ma'am.

17 THE COURT: I know Mr. Bantan was actually served with
18 the indictment in some hearings, in and around some
19 hearings I was having with regards to him. So, I think
20 that in my presence I know that he was notified certainly
21 that he was the subject, he was the defendant in the
22 indictments. And so I think pursuant to State vs. Gentry
23 certainly has had notice of that.

24 With regards to the date, I am satisfied that counsel
25 both for Mr. Bantan as well as for Mr. Spears have been

1 quite aware that the date of the alleged incident for which
2 their clients are here, Mr. Spears and of course Mr.
3 Bantan, was November 6, 2006. So, I do believe they've had
4 notice of that and and there's been no prejudice which has
5 occurred to them. And on those bases, I will allow the
6 amendment, noting the exception of defense counsel to that
7 ruling.

8 Now, I ask. Ms. Hinds, have you and Mr. Brown, have
9 you all had an opportunity to read the indictments
10 regarding Mr. Bantan?

11 MS. HINDS: I have.

12 THE COURT: Because those are the indictments, that's
13 the language that I will read to the jury, and I just
14 simply ask if you understand that.

15 MS. HINDS: I do.

16 THE COURT: Okay, very well. And, Mr. Johnson, have
17 you read the indictments as they relate to Mr. Spears?

18 MR. JOHNSON: Yes, I have, Your Honor.

19 THE COURT: And do you understand that those are the
20 indictments that I will read?

21 MR. JOHNSON: Yes, I do.

22 THE COURT: Very well. All right. Now I'm going to
23 turn to you, Ms. Hinds, before the jury arrives, and my
24 question to you is whether or not there will be a motion to
25 sever.

1 MS. HINDS: There is, Your Honor.

2 THE COURT: All right, I'm listening to you. Just one
3 second. Is the young person who came in one of our jurors?

4 MS. FRYAR: That is a witness.

5 THE COURT: Okay. Very well. Where is Mr. Whaley?

6 Mr. Whaley, I don't want the sheriff in a position of

7 having to interact with witnesses or potential witnesses.

8 I want you to do that. I'd like you to take your post,
9 please, sir, at the back door. I do not want the jurors to
10 enter the courtroom. Very well, thank you.

11 All right, Yes, ma'am.

12 MS. HINDS: Mr. Brown is going to argue the issue.

13 THE COURT: Yes, sir.

14 MR. BROWN: Thank you, Your Honor. Obviously in this
15 case, in cases asking for a severance, it is generally
16 granted in the cases I've at in situations with co-
17 defendants who then attack each other or finger each other.
18 It would be our position that really could happen at any
19 point in the trial. So, we would be concerned that that
20 would come out at some point in trial, and it would really
21 muck things up, maybe help prejudice our client, Mr.
22 Bantan.

23 Also, the other way -- reason it would be severed is
24 if there's some sort of prejudice against the client. And
25 I think the fact that the way the evidence kind of lays out

1 in this case, it's kind of a tale of two, two cases. They
2 have some direct evidence that they -- I'm sure the state
3 intends to put forward such as an ID of our co-defendant,
4 the co-defendant Mr. Spears, by somebody who knows him
5 personally. And on top that, there's allegedly a
6 confession from Mr. Spears that was given over the phone
7 to, I guess, either a cousin or an ex-girlfriend.

8 Neither one of those are culpatory or have anything to
9 do with my client, Mr. Bantan. The evidence against Mr.
10 Bantan, though some of it is direct, I guess they intend to
11 put forward a, a lineup in which someone picks, allegedly
12 picks our client out of a lineup. A lot of it is
13 circumstantial and less direct evidence against our client.
14 Our concern is this.

15 (COUNSELORS CONFER.)

16 MR. BROWN: Pardon me, Your Honor.

17 THE COURT: Sure.

18 MR. BROWN: Also the state, the police did find a gun
19 that allegedly they can link to Mr. Spears, not to my
20 client, not to Mr. Bantan. Understand that there's,
21 there's really is two sets of evidence. Some of it is
22 overlapping but because it is so direct and we have IDs by
23 somebody that allegedly knows Mr. Spears personally,
24 confession, and a gun they can link to Mr. Spears, none of
25 which they can link to Mr. Bantan, our concern is that it

1 would be confusing to the jury if they're allowed to lump
2 it all on top of, on top of Mr. Bantan. And that would
3 fairly prejudice him, and it may cause confusion. And the
4 verdict, the eventual verdict may not be reliable due to
5 the confrontation and the kind of mucking up of the
6 different evidence. Thank you, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. FRYAR: Thank you, Your Honor. Your Honor, as she
9 knows, often cases are severed and pretty much the only
10 time in South Carolina cases are severed is when we have
11 issues where there is going to be a witness statement where
12 one defendant is going to testify against the other or has
13 given a statement -- excuse me -- where he implicates
14 himself and the other co-defendant. Of course I'm relying
15 on the Ruden.

16 Your Honor, there would be no violation these
17 gentlemen's right of confront the witnesses against there.
18 There would be no right of the Sixth Amendment that would
19 be violated in proceeding in this case against them because
20 there are no such statements. We don't have any evidence,
21 evidence against one that's not admissible against the
22 other that the defense cannot cross-examine about. The
23 confession that Mr. Brown speaks of given by Mr. Spears to
24 Ms. Adams does not in any way implicate Mr. Bantan, and so
25 they can cross-examine the witnesses freely.

1 THE COURT: Let me give you some of the case law that
2 I have had an opportunity to review. I've reviewed, State
3 vs. Walker, 366 SC 643; State vs. Rice at 368 SC 610; State
4 vs. Garrett at 350 SC 613; State vs. Dennis at 337 South
5 Carolina or SC 275; State vs. Nichols at 325 SC 111; State
6 vs. Kirkpatrick at 320 SC 38. And having reviewed these
7 cases, it seems that what our courts are telling us is that
8 severance is appropriate when the defendant can show that
9 there is a serious risk that a joint trial would compromise
10 a specific trial right of the co-defendant or prevent the
11 jury from making a reliable judgment about a co-defendant's
12 guilt.

13 Certainly trying defendants together is appropriate
14 when the indictments as to each of the defendants are of
15 the same general nature of a connected transaction closely
16 related in time, place, and character. And under those
17 instances, it is appropriate that co-defendants be tried
18 together. I believe that vis-a-vis this defendant, and
19 based on the argument of counsel, I don't know that
20 prejudice has been shown. Having said that, Mr. Johnson,
21 so you wish to weigh in on behalf of Mr. Spears?

22 MR. JOHNSON: Your Honor, my argument as relates to
23 severance of the case would be similar to the co-defendant
24 arguments. We feel that there are, there are, there are
25 evidence, direct evidence that relates to co-defendant.

1 And as long as they are opposite arguments that co-
2 defendants make, for benefit of protecting my client's
3 rights, I guess I would have to request a severance as
4 well.

5 THE COURT: Yes, sir. State vs. Walker and State vs.
6 Rice of course say that antagonistic defenses do not
7 constitute requisite prejudice, specifically State vs.
8 Walker. And that State vs. Dennis likewise supports that.
9 Part of the also in State vs. Nichols even talks about one
10 co-defendant being worried about the demeanor of the co-
11 defendant, a negative influence, if you will. In that
12 case, State vs. Nichols, those, it was found appropriate
13 that those individuals be tried together. So, I would
14 respectfully deny your motion, noting your exception
15 thereto. All right.

16 MS. HINDS: Thank you, Your Honor.

17 THE COURT: Now, now, let me, I want to speak to my
18 audience and I want to explain to both my witnesses and
19 family members this. The jury is about to come in, and we
20 have many more jurors than can fit probably on one side of
21 the courtroom. It is important that you not -- you being
22 witnesses and victims -- that you not interact in any
23 respect, in any regard whatsoever with any of our jurors,
24 our prospective jurors. I am concerned that to some degree
25 that may have occurred yesterday, but I am prepared to

1 address that when the jury comes in.

2 I cannot allow that to happen, ladies and gentlemen,
3 and, therefore, I admonish both my folks who may be here
4 just observing -- it's a public place; delighted to have
5 folks here observing -- or family or victims or witnesses
6 or anyone. It is not appropriate that you to interact in
7 any regard. To even say hello is not appropriate with our
8 jury members, our jury panel. And if I hear or see or
9 determine that that has occurred, I will be forced to hold
10 you in contempt. Now, my lawyers know that. I trust that
11 you will relay that to your witnesses as well.

12 We are about to let our jurors come into the
13 courtroom, and I would simply ask that either during jury
14 selection that you remain outside the courtroom if you
15 wish. Certainly your choice. But in the event that you
16 wish to be present, and you're welcome to be present, I'm
17 going to ask that those associated with the defense take
18 this first row right behind the defense counsel. And
19 likewise, those who would be present for the selection of
20 the jury on behalf of the state, if you would likewise take
21 this row here behind the state's lawyers. And if you all
22 spill over, just ask them to stand perhaps in this area or
23 -- that would probably be appropriate.

24 And, Mr. Whaley, Mr. Whaley, keep for me for the
25 defense side this front, and certainly we can have security

1 on this first row as well. And then fill up this side of
2 the courtroom: my left, your right, this side first. And
3 then if we run out of space here on my left side, your
4 right side, then begin to fill up the right side, but begin
5 with the back row because hopefully there will be enough
6 space for any of the witnesses on behalf of the state to
7 take the first two rows. That way, I can introduce them to
8 the jury and the jury can put faces with names, which would
9 I think be efficacious. All right, is that clear? Is that
10 clear, Mr. Whaley? You got that?

11 BAILIFF: Yes, ma'am.

12 THE COURT: Thank you.

13 MS. FRYAR: Your Honor, in that vain, I did want to
14 make some amendments to our witness list before we bring up
15 the ---

16 THE COURT: Sure, and I've left that -- no, I've got
17 it with me. Hold on one second. Okay, I'm listening.

18 MS. FRYAR: Where is says that Pete Johnson, Your
19 Honor, that should be Keith Johnson, Lieutenant Keith
20 Johnson with SLED.

21 THE COURT: Okay.

22 MS. FRYAR: And we'd like to add a potential other
23 witness, Earl Kinley, to the list.

24 THE COURT: All right, got it.

25 MS. FRYAR: Thank you, ma'am.

1 THE COURT: Very well. Now, here's what I want to do.
2 I want to take a short break as the jury comes in. I'd
3 like to keep it to about ten minutes.

4 Mr. Whaley, tell the jury that we're going to be about
5 ten minutes when they come in. Just bear with us, okay?
6 And, guys, y'all come on and just take the defendants back.
7 Leave them of course dressed and with their restraints as
8 they are.

9 Actually, Mr. Whaley, if you will go downstairs and
10 let the jury know please bear with us. We'll be about ten
11 minutes before they can come up. And then in about ten
12 minutes, let them -- or we'll come get you when they're
13 ready to come up. It will be about ten more minutes.

14 (OFF THE RECORD.)

15 THE COURT: Ladies and gentlemen, good afternoon.
16 It's a terrible thing to begin the afternoon with an
17 apology, but we have been working solidly all day, ladies
18 and gentlemen, and we had to take really literally about
19 fifteen minutes for all of us to get a little something to
20 eat because we wouldn't want to be up here with low blood
21 sugar this afternoon. So, we took a little bit of a break.

22 And now, ladies and gentlemen, welcome. Thank you for
23 being here so promptly this afternoon. I want you to know
24 at this time we are going to select our jury in our first
25 case for trial this week, which we will begin promptly in

1 the morning, ladies and gentlemen, but we are going to
2 select our jury this afternoon.

3 Let me give you an overview of how we are going to be
4 proceeding. In a moment, I'm going to call on the
5 solicitor, Ms. Fryar here, to call the first case for
6 trial, and then I am going to be reading to you some of the
7 allegations of the indictments. And then I am going to be
8 introducing you to some folks. Then I'm going to be asking
9 you some questions, and then we will select our jury. I
10 then have some very brief preliminary matters to discuss
11 with the jury, and then we will conclude with our jury this
12 afternoon. And then we will begin in the morning.

13 Now, ladies and gentlemen, at this time I am going to
14 call on Ms. Fryar to, if she would be so kind, as to please
15 call our first case for trial this week. Let me introduce
16 Ms. Fryar. She is the assistant solicitor here in Calhoun
17 County. If you would, please call your first case for
18 trial.

19 MS. FRYAR: Thank you, Your Honor. Your Honor, the
20 state calls the matter of Titus Abraham Bantan, who's
21 charged with armed robbery in indictment number 2007-GS-09-
22 004 with the offense of armed robbery. Also charged with
23 the offense of possession of a firearm or knife during the
24 commission of a crime of violence in indictment number
25 2007-GS-09-0218. And also charged with the offense of

1 kidnapping in indictment number 2007-GS-09-0220.

2 Additionally, Your Honor, the state is calling the
3 cases of Phillip Lee Spears, who's been indicted for armed
4 robbery in indictment number 2007-GS-09-0148. The charge
5 of possession of a firearm or knife during the commission
6 of crime of violence in indictment 2007-GS-09-0219. And
7 finally the offense of kidnapping in indictment number
8 2007-GS-09-0221.

9 THE COURT: Thank you very much. Ladies and
10 gentlemen, in just a moment I am going to be reading to you
11 some of the allegations of the indictments. Ladies and
12 gentlemen, I want to tell you what an indictment is and
13 what an indictment is not. And then I am going to be
14 defining for you some words that I will be using through
15 this process so that you will understand the definitions
16 that I intend when I use those terms.

17 Now, ladies and gentlemen, even before we begin that
18 process, I tell you that the case that Ms. Fryar has called
19 to trial is the State vs. Titus Bantan and the State vs.
20 Phillip Spears. Now, ladies and gentlemen, yesterday,
21 yesterday as I was doing the general qualifications,
22 because there was work that was going to be ongoing after
23 you left us yesterday for a little bit, of course this
24 morning there were folks who were involved in this
25 particular case who were present yesterday. Because this

1 wonderful courtroom is the size that it is and because so
2 many of our wonderful jurors responded to this summons and
3 didn't have to have those chauffeured driven rides down to
4 the courtroom, we had a wonderful number of people here
5 yesterday. As a result of that, ladies and gentlemen,
6 there may have been some interaction between witnesses
7 and/or other interested folks in this particular case and
8 our juror panel. Ladies and gentlemen, I don't in any way,
9 in any way intimate that anything not appropriate has
10 occurred. It is just the simple reality of the physical
11 surroundings yesterday and the number of folks who were
12 here yesterday, no more, no less.

13 However, ladies and gentlemen, my first question of
14 you this afternoon is did you, to your knowledge, did you,
15 to your knowledge, have any interaction with anyone who has
16 anything to do with the case of the State vs. Abraham
17 Bantan and Phillip Lee Spears? If you did, I simply need
18 to know that. If you would be so kind as to stand at this
19 time.

20 (NO ONE STANDS.)

21 THE COURT: Very well. Ladies and gentlemen, I'm
22 going to ask that question of you again because it's not
23 exactly the fairest question to ask of you, did you have
24 any interaction with the folks that have something to do
25 the case and you don't know who those people are.

1 Obviously there were some folks here, and you may or may
2 not have known. You may not have known that they had
3 anything to do with this particular case. And so when I go
4 through and I introduce some folks to you and I ask you if
5 you know them, are you acquainted with them, I will try to
6 remember to ask you have you had any interaction with them
7 whatsoever. And that will be an opportunity for you to
8 reflect on whether or not you've had any interaction, to
9 include yesterday and today, with any of the folks that I
10 will be asking you about. If so, just let me know, and
11 then I may or may not have one or two additional questions
12 for you at that time.

13 Now, ladies and gentlemen, I am going to use the term
14 acquainted with a number of times this afternoon because
15 I'm going to ask you are you, you'll hear me ask are you
16 related by blood or marriage or acquainted with So-and-So.
17 I'm going to ask you that a number of times. I would like
18 to define what I mean when I use the term acquainted with,
19 and I want to be very candid and tell you. What I am
20 trying to find out is do you have any connection with these
21 individuals, with these folks that I will ask you about
22 whatsoever; however small, I want to know.

23 Now, let me give you an example of what I mean when I
24 use the term acquainted with. You may have gone to school
25 with somebody that I'll ask you about twenty years ago.

1 You hadn't thought about these folks. You haven't talked
2 to them. You haven't seen them, but you know that you went
3 to school with someone whose name I'll mention twenty years
4 ago. Ladies and gentlemen, believe it or not that
5 relationship, as limited, as old and moldy as it is, would
6 be encompassed within my definition of acquainted with.

7 It may be that you work at the biggest plant in South
8 Carolina and this other person, or this person whose name
9 I'll mention also works at this plant, biggest plant in
10 South Carolina. You know, once a year you wave at each
11 other way across the cafeteria at the holiday party, and
12 you wave at each other because you're waving at everybody.
13 Ladies and gentlemen, believe it or not that relationship,
14 as limited as it is, would be encompassed within my
15 definition of acquainted with. I'm simply trying to find
16 if you have any connection with these individuals
17 whatsoever, and that's the reason for the very broad
18 definition of acquainted with.

19 Now, ladies and gentlemen, I am going to be reading to
20 you some of the allegations of the indictments. Now, I
21 want to hasten to tell you what an indictment is and what
22 an indictment is not. Ladies and gentlemen, under our law
23 an indictment is a notice document. It simply is the means
24 by which the State of South Carolina gives notice to a
25 citizen that the state maintains, the state alleges that

1 that citizen has violated one or more of the criminal laws
2 of the State of South Carolina. It is a notifying
3 document. Ladies and gentlemen, what an indictment is not
4 is evidence, is evidence of any of the allegations which it
5 contains. It is not that. It is simply the notifying
6 document.

7 And let me hasten to tell you that Mr. Bantan denies
8 each and every allegation of each of the indictments
9 against him; he has pled not guilty to each and every
10 allegation. And that Mr. Spears has pled not guilty to
11 each and every allegation in each of these indictments
12 against him. Ladies and gentlemen, that, under our law,
13 places upon the State of South Carolina the burden of
14 proving each and every allegation beyond a reasonable
15 doubt.

16 Now, we are going to talk much, much more about that.
17 But, ladies and gentlemen, I want you to understand at this
18 juncture just as I have said: the indictment is the notice
19 document. It is not evidence of any of the allegations
20 which it contains, and Mr. Bantan and Mr. Spears have pled
21 not guilty to these indictments.

22 So, why then would I read you any of the allegations
23 in the indictments? Ladies and gentlemen, I do that for
24 one reason and one reason only. It is the means that I
25 have to find out whether or not any of you know or even

1 think you may know, or if you have heard or think that you
2 may have heard anything about these allegations. And
3 that's the reason that I will be reading to you some of
4 these allegations.

5 Now, Ladies and gentlemen, I am going to begin with
6 the indictments involving, or the indictments and those
7 ~~allegations in the indictment against Mr. Bantan.~~ Ladies
8 and gentlemen, this is indictment 2007-GS-9-4 and it
9 alleges in part, I would tell you that this is an
10 indictment for armed robbery. And it alleges in part that
11 Titus Abraham Bantan did in Calhoun County on or about
12 November 6, 2006, feloniously take from the person or
13 presence of the victim James -- pronounce, please, his last
14 name for me.

15 MS. FRYAR: Bourgeois, Your Honor.

16 THE COURT: Bourgeois?

17 MS. FRYAR: Yes, ma'am.

18 THE COURT: Bourgeois at the Wagon Wheel Convenience
19 Store by means of force or intimidation while armed with a
20 deadly weapon, being a handgun, goods or monies of the said
21 victim being described as follows: U.S. currency. Then it
22 goes on to allege that it's a violation of a statutory
23 provision of the State of South Carolina.

24 Ladies and gentlemen, 2007-GS-9-218 states in part,
25 and it is an indictment for possession of a firearm or a

1 knife during commission of a crime of violence. And this
2 indictment alleges that Titus Bantan did in Calhoun County
3 on or about November 6, 2006, while committing the violent
4 crime of armed robbery have in his possession and/or did
5 visibly display a firearm during commission of the
6 aforementioned crime and as a result violated, and again
7 there's mention of a statutory provision.

8 Indictment 2007-GS-09-0220, which is an indictment
9 alleging kidnapping, alleges in part that Titus Abraham
10 Bantan did in Calhoun County on or about November 6, 2006,
11 willfully and unlawfully seize, confine, inveigle, decoy,
12 kidnap, abduct, or carry away Natasha Rivers and/or
13 Lamarques Rivers and/or Raheem Rivers and/or James
14 Bourgeois and/or Cleveland Williams and/or Iskier Prezzie
15 without authority of law, this offense being a violation
16 and again a statutory provision is mentioned, is alleged.

17 Now, ladies and gentlemen, with regards to the
18 indictments against Mr. Phillip Lee Spears, indictment
19 2007-GS-09-148, which is an indictment for armed robbery,
20 alleges that Phillip Lee Spears did in Calhoun County on or
21 about November 6, 2006, feloniously take from the person or
22 presence of the victim James Bourgeois at the Wagon Wheel
23 Convenience Store by means of force or intimidation while
24 armed with a deadly weapon, being a handgun, goods or
25 monies of the said victim being described as follows: U.S.

1 currency. This offense being a violation, and the
2 statutory provision is given.

3 Indictment 2007-GS-09-219, which is an indictment for
4 possession of a firearm or knife during the commission of a
5 crime of violence, alleges that Phillip Lee Spears did in
6 Calhoun County on or about November 6, 2006, while
7 committing the violent crime of armed robbery have in his
8 possession and/or did visibly display a firearm during the
9 commission of the aforementioned crime and as a result
10 violated, and again the statutory provision is there
11 alleged.

12 And indictment 2007-GS-9-221, which is an indictment
13 for kidnapping, alleges that Phillip Lee Spears did in
14 Calhoun County on or about November 6, 2006, willfully and
15 unlawfully seize, confine, inveigle, decoy, kidnap, abduct,
16 or carry away Natasha Rivers and/or Lamarques Rivers and/or
17 Raheem Rivers and/or James Bourgeois and/or Cleveland
18 Williams and/or Iskier Prezzie without authority of law,
19 this offense being a violation and again a statutory
20 provision is there alleged.

21 Ladies and gentlemen, again with regards to the
22 indictments against Mr. Bantan, he has pled not guilty;
23 with regards to the indictments against Mr. Spears, he
24 likewise has pled not guilty. Ladies and gentlemen, I ask
25 of you, do you know or think you may know or have you heard

1 or think you may have heard, to include today, anything
2 about these allegations? If so, please stand at this time.

3 You know what I'm going to do? Those of you who have
4 stood, I'm going to ask you to approach and while you wait,
5 please do not mention of course anything to your fellow
6 jurors. I am going to ask you to approach one at the time.

7 Mr. Whaley, if you would send these folks one at the
8 time? And of course, counsel, please let me invite you to
9 approach.

10 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

11 THE COURT: Here's the thing. What I am going to ask
12 you to do is first of all get you to tell me your name.
13 Ms. Harris here, our court reporter, I need enough volume
14 for her to hear you. Everybody else just got to gather
15 around because obviously I want to hear what you have to
16 tell me, but I don't want the other jurors to hear.

17 JUROR: Yes, ma'am.

18 THE COURT: Tell me your name again.

19 JUROR: Russell Middleton.

20 THE COURT: Mr. Middleton, tell me what you know or
21 think you know or have heard.

22 JUROR: The victim's, the victim's, the gal, the lady,
23 Ms. Rivers.

24 THE COURT: Ms. Rivers.

25 JUROR: Her two brothers work for me at Palmetto

1 Field, and I had to let them go the day that it happened.
2 They were very upset, and so I overheard them.

3 THE COURT: I understand. Mr. Middleton, I just ask
4 of you, do you believe you could set all of that aside?

5 JUROR: Sure.

6 THE COURT: And do you believe that -- well, let me
7 stop. Have you had, did you have any discussion with them
8 when they returned?

9 JUROR: No.

10 THE COURT: Okay. Have you had any discussions with
11 anyone about this matter?

12 JUROR: No.

13 THE COURT: Tell me what you understood from them when
14 they left.

15 JUROR: They really didn't know what was going on.
16 All they heard, all they heard was, you know, that there
17 was a robbery and their sister was taken, and that's all I
18 know.

19 THE COURT: All right.

20 JUROR: But because of the relation, that they worked
21 for me and that was their sister. That's really all I
22 know.

23 THE COURT: Do they still work for you?

24 JUROR: Yes, they do.

25 THE COURT: Okay. How long have they worked for you?

1 JUROR: One of them has been with me a full year; the
2 other one is part-time, so he's only been about maybe
3 thirty days.

4 THE COURT: Okay.

5 JUROR: But again I thought I should mention it.

6 THE COURT: All right.

7 JUROR: But I'd hate for it to come down to something
8 where, you know, just because they work for me to upset
9 something the court rules on.

10 THE COURT: I do understand that certainly. You are
11 so kind to be concerned about that, but that is not what I
12 want you to be concerned about. To be perfectly frank, if
13 you would step back to the bar so that I can talk about
14 you.

15 All right, I'm uncomfortable. I think he is -- I
16 think that he would do just as he said. I think he would
17 certainly try to put these matters out of his mind, but he
18 has a personal and ongoing personal relationship with the
19 brothers of one of the victims. I am uncomfortable. I'm
20 uncomfortable with him in that position, and I'm going to
21 exclude. I just think that's best; I just think that's
22 best.

23 Mr. Middleton, Mr. Middleton, I am going to ask you to
24 sit this one out, okay? And the reason for that is that I
25 am uncomfortable putting you in the position of having the

1 brothers of one of these victims work for you in an ongoing
2 relationship. I certainly don't want to upset the apple
3 cart, so to speak. And I just think that's best.

4 JUROR: That's fine.

5 THE COURT: That's best all around. I really do.
6 Thank you.

7 JUROR: Any time.

8 THE COURT: I need to give you a little bit of
9 instruction. If you would just stay with us.

10 JUROR: Okay.

11 MR. JOHNSON: Judge, that's what I wrote about him
12 yesterday.

13 THE COURT: Gotcha. We have other people. Come on.
14 What is it that television, come on down. What's the
15 television show say?

16 Hi. Tell me your last name again.

17 JUROR: Curtis.

18 THE COURT: Yes, sir, Mr. Curtis. Tell me what you
19 think you know or what you ---

20 JUROR: The one, the robbery on, on the Wagon Wheel, I
21 visit his store, used to visit his store a lot.

22 THE COURT: A lot, okay. Come forward just a little
23 bit because I need Ms. Harris to hear and don't want the
24 jury to hear. Tell me what you know.

25 JUROR: All I, all I know is that somebody had robbed

1 him. And I don't know who it was or if they ever caught
2 them or what. I just knew about it.

3 THE COURT: Okay, okay. Have you ever had occasion to
4 talk to anyone at the Wagon Wheel about what happened?

5 JUROR: Not really. I didn't even know J.K. I mean,
6 I just -- you know, it's his business.

7 THE COURT: Sure. Who is J.K.?

8 JUROR: He was the owner of the Wagon Wheel.

9 THE COURT: The owner. Do you know what his name is
10 other than J.K.?

11 JUROR: That's all I know about it. That's what I
12 said. I don't.

13 THE COURT: Okay, okay. It's just a gentleman,
14 though, who's referred to as J.K.?

15 JUROR: Yeah.

16 THE COURT: Okay, and have you seen J.K. around the
17 courtroom?

18 JUROR: Uh-huh.

19 THE COURT: You have?

20 JUROR: Yeah.

21 THE COURT: All right, yesterday?

22 JUROR: Yeah, yesterday and today.

23 THE COURT: And today. Did you have occasion to speak
24 to J.K.?

25 JUROR: I didn't know if he was a litigant or what.

1 THE COURT: Yes, exactly. All right, and ---

2 JUROR: Anyway, he, he closed his store. He doesn't
3 even have the store open anymore.

4 THE COURT: Okay. Okay.

5 JUROR: I mean, that's the first contact I've had with
6 him since he closed the store.

7 THE COURT: Okay, because he closed the store. Do you
8 know why he closed the store?

9 JUROR: No. That's none of my business.

10 THE COURT: I understand. Now, do you believe --
11 well, let me ask this. Other than visiting the store, do
12 you believe -- well, other than visiting the store, do you
13 have a relationship with J.K. at all?

14 JUROR: Just visiting the store.

15 THE COURT: Just visiting the store?

16 JUROR: And that's, that's all I...

17 THE COURT: Okay. Now ---

18 JUROR: I just know, I just know him because he was a
19 neighbor. You know, lives about a mile.

20 THE COURT: Okay.

21 JUROR: About a mile from me, the -- with the store.

22 THE COURT: Okay.

23 JUROR: We'd go get drinks and bread.

24 THE COURT: All right.

25 JUROR: And stuff like that and bait.

1 THE COURT: Right.

2 JUROR: That's it.

3 THE COURT: Okay, as a result of your relationship,
4 and that's a business relationship, a former business
5 relationship?

6 JUROR: Yeah, yes, it is, a business relationship. I,
7 I mean ---

8 THE COURT: Might that ---

9 JUROR: I don't even -- last name, don't even know his
10 name at that time.

11 THE COURT: I understand. Might that or could that
12 interfere with in any respect your ability to be completely
13 fair and impartial to the state, as well as Mr. Bantan ---

14 JUROR: No, it couldn't.

15 THE COURT: --- as well as Mr. Spears?

16 JUROR: I don't know what happened.

17 THE COURT: Okay.

18 JUROR: All this is hearsay, what I've heard.

19 THE COURT: Is hearsay?

20 JUROR: Was all hearsay. You know, everyone says he
21 was robbed.

22 THE COURT: Okay.

23 JUROR: That's all I know about.

24 THE COURT: And any other hearsay other than he was
25 robbed?

1 JUROR: No.

2 THE COURT: Okay.

3 JUROR: Really, when I seen him up here yesterday, it
4 surprised me. I didn't know what the -- you know, I hope
5 he ain't in no trouble.

6 THE COURT: I understand, and do you believe that you
7 can set aside your business relationship and make up your
8 mind about this case about this case what you ---

9 JUROR: Because, I mean, I'm the type, I got to hear
10 both sides of the story to find out what's going on.

11 THE COURT: All right. Very well, and you wouldn't be
12 affected by your business relationship?

13 JUROR: No.

14 THE COURT: Okay.

15 JUROR: He wasn't, he wasn't harmed or anything as far
16 as I know, so.

17 THE COURT: Okay.

18 JUROR: Maybe scared.

19 THE COURT: Okay, and would the fact that he may have
20 been scared ---

21 JUROR: But as far, far as speaking about it, I never
22 talked to him about it.

23 THE COURT: Okay, and do you believe that the fact
24 that, as you say, he wasn't harmed, he wasn't -- he was
25 probably scared. He wasn't harmed. Would that in any way

1 have impact on your ability to be completely fair and,
2 impartial to ---

3 JUROR: No.

4 THE COURT: --- the state as well as the to defendant?

5 JUROR: Like I said, I don't know what the whole story
6 is behind it.

7 THE COURT: All right, do you think you know what some
8 of the story is?

9 JUROR: Other than he was robbed. I mean, far as I
10 don't know if there was a reason why or, you know, I don't
11 know. It's just, I knew because I was a neighbor and heard
12 about it.

13 THE COURT: Did you, and did you hear any information
14 about who may have robbed the store?

15 JUROR: No.

16 THE COURT: Or any of the circumstances?

17 JUROR: I don't, I don't know who did it or what. I
18 didn't know nothing about it.

19 THE COURT: Okay. Very well. Thank you so much.

20 JUROR: Thank you.

21 THE COURT: Thank you, Mr. Curtis. Please stay with
22 us.

23 JUROR: Go back?

24 THE COURT: Yes, sir. Thank you.

25 Hi, tell me your last name again.

1 JUROR: Withrow.

2 THE COURT: Withrow? Yes, ma'am, Ms. Withrow.

3 JUROR: All I know is the owner of the Wagon Wheel,
4 they call him J.K., so I don't even know his name, so I'm
5 assuming this Jerome whoever you were talking about. That
6 little store of his is located up the road from home, so
7 all I know is that I heard that it had gotten robbed.

8 THE COURT: All right, did you hear anything else or
9 any details?

10 JUROR: No.

11 THE COURT: Any circumstances?

12 JUROR: No.

13 THE COURT: Did you hear anything about who might have
14 robbed the store?

15 JUROR: I, all I heard was that it was somebody that
16 he knew.

17 THE COURT: Who's he? That J.K. knew?

18 JUROR: J.K., yeah, he knew who it was.

19 THE COURT: That J.K. knew who it was?

20 JUROR: Yes.

21 THE COURT: Okay. Anything else you can remember
22 hearing after?

23 JUROR: No.

24 THE COURT: And did you happen to read anything in the
25 newspaper?

1 JUROR: No.

2 THE COURT: Now, you described a business relationship
3 with the store.

4 JUROR: Well ---

5 THE COURT: Not really. Only that it's located near
6 it?

7 JUROR: It's just a convenience store, and we would go
8 up there every great once in a while. You know, my husband
9 might need a pack of cigarettes, or we might need a loaf of
10 bread, something like that. Now because of health reasons,
11 I know that his store is closed.

12 THE COURT: All right.

13 JUROR: And I know he, J.K., enough to say hi to, and
14 that's about it.

15 THE COURT: Do you have a relationship with J.K.
16 outside of the business relationship?

17 JUROR: No.

18 THE COURT: Do you believe that the relationship as
19 you have described it could or might in any respect
20 interfere with your ability to be completely fair and
21 impartial to the state, as well as to Mr. Bantan and Mr.
22 Spears?

23 JUROR: No. I wouldn't have a problem.

24 THE COURT: Do you believe that you could make up your
25 mind based solely on what you hear in this courtroom while

1 court is in session?

2 JUROR: Uh-huh. Yes.

3 THE COURT: Would you be, could you be affected by
4 this relationship or what you have heard as you have
5 described it?

6 JUROR: No.

7 THE COURT: Very well. Thank you. Please stay with
8 us.

9 Yes, sir, come on forward. Hi. Yes, sir, tell me
10 your last name.

11 JUROR: Griffin.

12 THE COURT: Griffin.

13 JUROR: G.r.i.f.f.i.n.

14 THE COURT: Right. Yes, sir, Mr. Griffin, tell me
15 what you -- who you know or what you've heard or what you
16 think you know.

17 JUROR: A friend of mine lives about a quarter mile
18 from Wagon Wheel told me it had been robbed.

19 THE COURT: All right.

20 JUROR: And I don't know the folks, their names even,
21 the people who were at the Wagon Wheel, but I've been
22 trading with them for a number of years.

23 THE COURT: All right.

24 JUROR: Prior to their closing.

25 THE COURT: What does that mean, trading? How much

1 are we talking about?

2 JUROR: About once a week.

3 THE COURT: Once a week, and what would you do?

4 Just ---

5 JUROR: Buy bread or worms or Cokes or -- they had a
6 newspaper machine, State paper machine. You can't get it
7 delivered to my home.

8 THE COURT: Okay.

9 JUROR: I'd have to go there and buy me a State paper.

10 THE COURT: I understand, and other that this business
11 relationship as you have described it, did you visit each
12 other's homes?

13 JUROR: No. No, no, no, no.

14 THE COURT: Did you ---

15 JUROR: I didn't even know their names.

16 THE COURT: I understand. Now, you said that a friend
17 of yours mentioned that the store had been robbed?

18 JUROR: Robbed.

19 THE COURT: Any other details that you ---

20 JUROR: No.

21 THE COURT: --- remember the friend told you ---

22 JUROR: No. He didn't tell me any of the details.

23 THE COURT: Okay. Now, the relationship as you have
24 described, could that, might that in any respect interfere
25 with your ability to be completely fair and impartial ---

1 JUROR: I don't ---

2 THE COURT: --- to the state, as well as to Mr.
3 Bantan, as well as to Mr. Spears?

4 JUROR: I don't feel it would be; I don't think it
5 would be.

6 THE COURT: Here's what important is that you believe
7 that you could make up your mind based upon what you hear
8 in court while court is in session completely unaffected by
9 that prior relationship?

10 JUROR: I think I could, sure.

11 THE COURT: Very well. I'll ask you to please stay
12 with us. JUROR: Okay.

13 THE COURT: Thank you, Mr. Griffin, and there's Ms.
14 Griffin.

15 JUROR: That's my wife. She's going to say the same
16 thing.

17 THE COURT: And I can't wait to hear her.

18 Come on, ma'am. You know us women. We don't let our
19 husbands speak for us. Hi, Ms. Griffin. How are you?

20 JUROR: Nice to meet you.

21 THE COURT: Nice to see you. Ms. Griffin, tell me
22 either what you know or you think you know or what you've
23 heard about these matters.

24 JUROR: We heard from friends that the store had been
25 robbed.

1 THE COURT: All right.

2 JUROR: We do business there, buying fishing bait and
3 a newspaper, and Randy would always go in. I may have gone
4 in once or twice. I didn't recognize -- he did most of the
5 business, but they did sit by me on the pews yesterday.

6 THE COURT: All right, and did you all talk?

7 JUROR: I did talk to the young boy. He had two
8 pierced balls in the back of his neck.

9 THE COURT: Yes.

10 JUROR: And I asked him how he got them to stay there.
11 He said, he just told me they were screwed in. That's it.

12 THE COURT: All right. Did y'all talk about why you
13 were?

14 JUROR: Oh, no, nothing like that. That was the only
15 thing.

16 THE COURT: All right, and you told me that your
17 friends mentioned that the store had been robbed.

18 JUROR: Right.

19 THE COURT: Do you remember any of the details?

20 JUROR: No. In fact, I was surprised when you said
21 kidnapping.

22 THE COURT: All right.

23 JUROR: Because we never saw it in the paper.

24 THE COURT: Okay.

25 JUROR: We don't subscribe to the newspaper, so we

1 never saw a write-up. It was only what our friends said,
2 that it was robbed.

3 THE COURT: Okay, and did the friends say anything
4 about the store when it was robbed, any details?

5 JUROR: Uh-uh.

6 THE COURT: Any information about who might have done
7 that?

8 JUROR: No, uh-uh. We just started gossiping about
9 it.

10 THE COURT: As a result of that relationship, that
11 relationship as you have described, might that, could that
12 in any regard interfere with in any respect your ability to
13 be completely fair and impartial to the state, as well as
14 to Mr. Bantan, as well as to Mr. Spears?

15 JUROR: I could be fair.

16 THE COURT: Do you believe you could set that business
17 relationship and those words that you've heard from folks
18 as you have described, do you believe you could set that
19 aside and make up your mind based upon what you hear in
20 court while court's in session?

21 JUROR: Yes. I could.

22 THE COURT: I'm going to ask you this question. In
23 ten years I've never had spouses ---

24 JUROR: Some people told us yesterday that it's weird.

25 THE COURT: It is quite weird because it is a random

1 selection; it is quite a random selection. If you and Mr.
2 Griffin were to be selected to serve on this jury together,
3 do you believe -- because I will give you an instruction
4 not to discuss this matter or allow anyone to discuss it
5 with you, to include your fellow jurors, to include family
6 and friends. Do you believe that you could live in the
7 same home and do all the things that spouses do and honor
8 that instruction not to discuss the matter or allow him to
9 discuss it with you?

10 JUROR: After thirty-seven years of marriage, yeah.

11 THE COURT: You can stay in then. Thank you.

12 Hi. How are you?

13 JUROR: I come straight from work.

14 THE COURT: Tell me your last name.

15 JUROR: Daugherty.

16 THE COURT: Daughterty, of course. Just like the
17 former coach at UNC basketball. Yes, sir, tell me what you
18 know or think you know, what you've heard or think you've
19 heard.

20 JUROR: I just know J.T. and them people run the Wagon
21 Wheel.

22 THE COURT: J.T. runs the Wagon Wheel. How do you
23 know J.T.?

24 JUROR: Well, I live right down the road.

25 THE COURT: Okay. All right, sir, and do you visit in

1 each other's home?

2 JUROR: Ma'am?

3 THE COURT: Do you all visit in each other's homes?

4 JUROR: No.

5 THE COURT: Okay.

6 JUROR: In each other's homes?

7 THE COURT: Homes.

8 JUROR: No, no.

9 THE COURT: Have you ever visited his in home? Has he
10 ever visited in your home?

11 JUROR: No, ma'am.

12 THE COURT: All right, and did you do business at the
13 Wagon Wheel?

14 JUROR: Yeah, I just -- yeah.

15 THE COURT: Okay, and how often do you think you did
16 business at the Wagon Wheel?

17 JUROR: Maybe a time or two a week maybe.

18 THE COURT: Okay, yes, sir, and tell me what, if
19 anything, did you hear about these events at the Wagon
20 Wheel.

21 JUROR: No, I didn't even know about.

22 THE COURT: Okay.

23 JUROR: I just know it was closed.

24 THE COURT: Do you have any idea or did you receive
25 any information about the reasons for the closing?

1 JUROR: No, ma'am.

2 THE COURT: All right, very well. As a result of your
3 having done business with the Wagon Wheel ---

4 JUROR: Yes, ma'am.

5 JUROR: --- do you believe that that business
6 relationship might or could -- and I'm talking in any
7 regard -- interfere with your ability to be completely fair
8 and impartial to the state, to Mr. Bantan, and as to Mr.
9 Spears?

10 JUROR: Yeah, probably so.

11 THE COURT: You think it would?

12 JUROR: Yes, ma'am.

13 THE COURT: And tell me -- okay, very well. Very
14 well, sir, what I'm going to ask you to do for me is to not
15 discuss this matter with your fellow jurors.

16 JUROR: Yes, ma'am.

17 THE COURT: But I am going to ask you to remain with
18 us because there are some, there are some additional
19 instructions that I have to give you.

20 JUROR: Yes, ma'am.

21 THE COURT: All right.

22 JUROR: Yes, ma'am.

23 THE COURT: Thank you, sir.

24 JUROR: Thank you.

25 THE COURT: Excused.

1 Hello, how are you? Now, tell me your last name.

2 JUROR: Carson.

3 THE COURT: Carson, Mr. Carson, tell me what you know
4 or think you know, what you've heard or think you've heard.

5 JUROR: I went to school with him.

6 THE COURT: With who?

7 JUROR: Titus.

8 THE COURT: Okay, okay. How long ago?

9 JUROR: I graduated in '96.

10 THE COURT: All right, and how many years did y'all go
11 to school together?

12 JUROR: I'm not sure what grade he was in.

13 THE COURT: You're not sure? Can you take one step up
14 here right this way, this way just because I need Ms.
15 Harris to be able to hear you. There you go; you're fine.
16 Now, have you seen him since you all graduated in '96?

17 JUROR: Uh-huh.

18 THE COURT: You have? All right, and does that
19 include Mr. Spears and Mr. Bantan? Just Mr. Bantan, and
20 that's a yes?

21 JUROR: Yes, ma'am.

22 THE COURT: All right, and how often would you see Mr.
23 Bantan?

24 JUROR: Maybe saw him about a year ago.

25 THE COURT: About a year ago, all right. Now, let me

1 ask you this question. Have you ever met Mr. Spears?

2 JUROR: Huh-uh.

3 THE COURT: Do you know Mr. Spears? Is that a no,
4 right, two nos? All right. As a result of your -- how
5 would you describe your relationship with Mr. Bantan? Were
6 you friends, acquaintances?

7 JUROR: We just know each other.

8 THE COURT: Know each other, okay. Went to school
9 together for some period of time?

10 JUROR: Yeah. I think the whole time at O.W.

11 THE COURT: O.W., okay, and so that would have been
12 four years or three years?

13 JUROR: He's younger than me, so...

14 THE COURT: So, he's younger than you. I understand.
15 You just remember him being there?

16 JUROR: Uh-huh.

17 THE COURT: All right. As a result of that
18 relationship, Mr. Carson, and I really mean in any respect,
19 could that, might that in any regard, any regard interfere
20 in any way or impact in any way on your ability to be
21 completely fair and impartial to the state, to Mr. Bantan,
22 or to Mr. Spears?

23 JUROR: I mean, I wouldn't think so because I knew
24 him.

25 THE COURT: All right, all right, and let me ask you

1 this. Can you set that relationship, just as you describe
2 it, can you set that completely aside and make up your mind
3 in this case based upon what you hear in court while court
4 is in session?

5 JUROR: Yes, ma'am.

6 THE COURT: And again let me ask one final question.

7 You saw, you say, Mr. Bantan about one year ago?

8 JUROR: It was -- I've seen him.

9 THE COURT: Okay, some time ago.

10 JUROR: Yes, ma'am.

11 THE COURT: It might have been a year. I'm not going
12 to tie you to an active period at all. But as you recall
13 that, your sense of it is about a year ago. Do you
14 remember the circumstances that you saw him?

15 JUROR: No. I maybe saw him at a store, something
16 like that.

17 THE COURT: Okay. It was in passing?

18 JUROR: Uh-huh.

19 THE COURT: In other words, he wasn't at your home,
20 and you weren't in his house?

21 JUROR: No, ma'am.

22 THE COURT: All right, your memory is that it was more
23 in passing?

24 JUROR: Yes, ma'am.

25 THE COURT: All right, very well. All right, I'm

1 going to ask you to stay with us, Mr. Carson. Thank you so
2 much. Gone on have a seat.

3 He's staying.

4 Hi. Tell me your name.

5 JUROR: Pondexter-Snider.

6 THE COURT: And should I call you Pondexter-Snider or
7 Snider?

8 JUROR: It doesn't...

9 THE COURT: Snider is okay?

10 JUROR: That's fine.

11 THE COURT: Thank you. Ms. Snider, tell me what you
12 know or think you know, what you've heard, think you've
13 heard.

14 JUROR: I really don't know what's going on. The
15 young lady, the Rivers that was called.

16 THE COURT: Yes.

17 JUROR: By my father, I am related to them down the
18 line.

19 THE COURT: Okay.

20 JUROR: So, to be sure, you know, I'm standing here
21 letting you know that I'm related.

22 THE COURT: And you did exactly right because -- so I
23 get to know whatever it is. So, what you would tell me is
24 that there is some family relationship between you and Ms.
25 Rivers through your dad?

1 JUROR: Yes, ma'am.

2 THE COURT: All right.

3 JUROR: I'll tell you about it.

4 THE COURT: Okay.

5 JUROR: Okay.

6 THE COURT: My mother used to do this to me, and I
7 could never keep up. I'm going to pay attention.

8 JUROR: My dad and Tasha, Tasha grandmother, my dad
9 and Tasha, dad and Tasha grandmother is two first cousins.

10 THE COURT: Got it, okay. Does that make you first
11 cousins once removed or twice removed? I don't know.

12 JUROR: My dad first cousins.

13 THE COURT: I think that makes you first cousins twice
14 removed. Isn't that right? I understand. Let me follow
15 up a couple of these questions, Ms. Snider. Do you all
16 visit each other's home?

17 JUROR: No, ma'am.

18 THE COURT: Do you all go to the same family reunions?

19 JUROR: Okay, Saturday gone, some of the Rivers, my
20 grand uncle was ninety years old.

21 THE COURT: Yes.

22 JUROR: We was together.

23 THE COURT: Okay.

24 JUROR: For his ninety year celebration.

25 THE COURT: Okay.

1 JUROR: Okay, some of the Rivers is a member of the
2 same church that I goes to, the High Chapel. Most the time
3 I spend with church since I have retired, went back to
4 work, I be in the Columbia area.

5 THE COURT: All right, did any conversation about any
6 of these Rivers happen to come up?

7 JUROR: Oh, no, ma'am, because I was on jury and I, I
8 try to stay away from trouble.

9 THE COURT: Has there been any kind of conversation
10 about these events at all? Did you even know about these
11 events?

12 JUROR: Not until you was reading about them.

13 THE COURT: Not until I read them and when I read the
14 names, you realized that there might be, there was this
15 cousin once removed?

16 JUROR: What made me pay attention when I was sitting
17 out there and I said that look like Thomas daughter. I
18 know down the line that I'm related to the Rivers by my
19 dad.

20 THE COURT: Right.

21 JUROR: I better come up here to be sure what's going
22 on.

23 THE COURT: Well, I make it just as broad as I know
24 how. Okay, very well. Because of that family
25 relationship, cousins removed or not removed, whatever,

1 that relationship exactly as you've described it.

2 JUROR: Yes, ma'am.

3 THE COURT: Might that, could that in any respect
4 interfere with your ability to be completely fair and
5 impartial to the state, to Mr. Bantan, to Mr. Spears?

6 JUROR: I believe in telling you the truth because I'm
7 working for the state.

8 THE COURT: Yes, ma'am.

9 JUROR: And I don't like to get in no trouble.

10 THE COURT: Yes, ma'am.

11 JUROR: I believe in telling the truth.

12 THE COURT: Yes, ma'am. So, believing in telling the
13 truth, might that, could that relationship in any respect
14 interfere with your ability to be completely fair and
15 impartial to the state, as well as to Mr. Spears, as well
16 as to Mr. Bantan?

17 JUROR: I tell the truth.

18 THE COURT: Okay, well what does that mean?

19 JUROR: What do I mean?

20 THE COURT: Yes.

21 JUROR: I'm not going to take their side of the story.
22 Okay, if they're wrong, they're wrong. However, the other
23 people, they're wrong, they're wrong.

24 THE COURT: Okay, let me ask it this way. Can you
25 make up your mind in this case based upon what you hear in

1 court while court is in session completely unaffected by
2 that family relationship? Let me do it again. Okay, can
3 you make up your mind, if you were a juror in this case ---

4 JUROR: Yes, ma'am.

5 THE COURT: --- could you make up your mind based
6 solely, based only on what you hear in court, testimony
7 from the witnesses, the evidence, the exhibits which would
8 be moved into evidence, could you make up your mind based
9 upon what you hear in court while the court is in session
10 unaffected completely by the fact that you have this family
11 relationship as you have described?

12 JUROR: Yes, I can.

13 THE COURT: You can set that relationship aside?

14 JUROR: Yes, ma'am.

15 THE COURT: And make up your mind based upon what you
16 hear in court?

17 JUROR: Yes, ma'am.

18 THE COURT: Thank you, Ms. Snider. Please stay with
19 us.

20 JUROR: Thank you.

21 THE COURT: Thank you.

22 MR. JEFFRIES: Your Honor, what's that number?

23 THE COURT: Pondexter-Snider, 147, 147.

24 Hello. We're going to get you to come right here,
25 right in here. Tell me your last name again.

1 JUROR: Strock.

2 THE COURT: Strock. Mr. Strock, tell me what you may
3 know, may have heard, may know.

4 JUROR: I know the Bourgeois man when I see him.

5 THE COURT: Okay.

6 JUROR: But I don't -- couldn't tell you his first
7 name.

8 THE COURT: All right.

9 JUROR: I think he had a son behind me in school a
10 good year.

11 THE COURT: Okay.

12 JUROR: And I vaguely remember a little bit about it
13 happening, but I don't remember any the details.

14 THE COURT: Okay. Now, as a result of that
15 relationship and what you heard, do you believe that that
16 relationship might or could interfere with your ability to
17 be completely fair and partial to the state, to Mr. Bantan,
18 as well as Mr. Spears?

19 JUROR: No.

20 THE COURT: Can you set that aside and make up your
21 mind based upon what you hear in court while court is in
22 session?

23 JUROR: Yes, ma'am.

24 THE COURT: Can you tell me any particularity, what it
25 is that you remember hearing?

1 JUROR: That they got robbed. That's about it.

2 THE COURT: Thank you so much.

3 JUROR: All right. Thank you.

4 THE COURT: Please stay with us, Mr. Strock.

5 (END OF CONFERENCES AT SIDEBAR.)

6 THE COURT: Now, ladies and gentlemen, if I speak down
7 here, can you hear me? All right, if you get where you
8 can't hear me, wave like this because I've got lots of
9 volume. Just ask my family.

10 Now, ladies and gentlemen, I want to introduce you to
11 some folks to some folks and then -- I'm going to introduce
12 you to some folks. I'm going to begin by introducing you
13 to Ms. Karen Fryar and Mr. B.J. Jeffries. Now, these
14 individuals are assistant solicitors here in the First
15 Circuit, and which one of you is going to introduce and
16 name the lawyers in the office here in Orangeburg? Of
17 course the solicitor, the elected solicitor for the First
18 Judicial Circuit is David Pasco. He is the solicitor. My
19 question is going to be as to both Ms. Fryar and Mr.
20 Jeffries, as well as to the individuals whose names they
21 are going to mention in just a moment, is are you related
22 by blood or marriage or acquainted with any of these
23 individuals. All right.

24 MR. JEFFRIES: Good afternoon. The other attorneys in
25 the First Circuit Solicitor's Office in addition to myself

1 and Karen Fryar are Tonya Scott, Don Sorensen, Kelly
2 Burbadge, Robert Clariday, Crystal Chapman, Glenn Justice,
3 Harrison Bell, Susan Williams, Russell Hilton, Laura
4 McCann, Virgil Dees. I believe that's it.

5 THE COURT: Are you related by blood or marriage or
6 acquainted with any of those individuals? If so, please
7 stand. Come on down.

8 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR.)

9 THE COURT: Come on right here. Tell me your last
10 name again.

11 JUROR: Knight.

12 THE COURT: Yes, sir. Knight, Mr. Knight, yes, sir.
13 I didn't know there were any Knights outside Dorchester
14 County.

15 JUROR: We're all over the place, Laurens especially.
16 Crystal Chapman was my attorney in a divorce proceeding.

17 THE COURT: How long ago, Mr. Knight?

18 JUROR: 1990, '91.

19 THE COURT: As a result of that professional
20 relationship, could that in any regard impact on your
21 ability to be completely fair and impartial both to the
22 state, as well, as to Mr. Bantan, and to Mr. Spears?

23 JUROR: No impact.

24 THE COURT: Can you make up your mind based on what
25 you hear in court while court is in session unaffected by

1 that ---

2 JUROR: Of course.

3 THE COURT: --- professional relationship? That was
4 an of course?

5 JUROR: Yes.

6 THE COURT: Thank you, Mr. Knight. Please stay with
7 us. Thank you so much.

8 (END OF CONFERENCE AT SIDEBAR.)

9 THE COURT: Anyone else? Mr. Jeffries reminded name
10 that Bill McIntosh, Bill McIntosh is also one of the
11 lawyers in the solicitor's office down in Dorchester
12 County. So, I would are you related by blood or marriage
13 or acquainted with Bill Macintosh? If so, please stand.
14 And I find no one standing.

15 Now, ladies and gentlemen, please allow me to
16 introduce you to Ms. Peggy Hinds, Ms. Hinds, and Andrew
17 Brown and Jason Turnblad. Ladies and gentlemen, if you all
18 would be so kind as to tell me the names of the lawyers in
19 your office, and my question again to each of them, are you
20 related by blood or marriage or acquainted with, or have
21 you or any member of your immediate family ever been
22 represented by Ms. Hinds, Mr. Brown, Mr. Turnblad or any of
23 the following individuals.

24 MS. HINDS: Chief Public Defender in Orangeburg County
25 is Michael Culler. Also in the office are Doug Mellard,

1 Julia Moore, Rachel Acres. Also sitting at the table is
2 Dan McDaniel, and he's our investigator.

3 THE COURT: Thank you. The question is are you
4 related by blood or marriage or acquainted with, or have
5 you or any member of your immediate family ever been
6 represented by any of the individuals that Ms. Hines just
7 mentioned? If so, please come forward. Please come
8 forward.

9 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

10 THE COURT: Hi, come on right here, and tell me. I
11 should remember your last name. I apologize. Tell me.

12 JUROR: Yes, ma'am, Lawson.

13 THE COURT: Ms. Lawson, who do you know?

14 JUROR: McDaniel. I worked with him at the Department
15 of Public Safety.

16 THE COURT: How long ago was that?

17 JUROR: Three years ago, three or four years.

18 THE COURT: And did you all visit in each other's
19 homes?

20 JUROR: No, no.

21 THE COURT: The extent of your relationship was
22 professional in terms of you worked together?

23 JUROR: Yes.

24 THE COURT: As a result of that professional
25 relationship, might that, could that in any respect

1 interfere with your ability to be completely fair and
2 impartial to the state, as well as to Mr. Bantan and Mr.
3 Spears?

4 JUROR: No.

5 THE COURT: Can you set that relationship as you have
6 described it completely aside and make up your mind based
7 upon what you hear in court while court is in session?

8 JUROR: Yes.

9 THE COURT: Ms. Lawson, please stay with us.
10 Come on forward. Hi. If you will come right here for
11 me. Tell me your last name.

12 JUROR: Shaver.

13 THE COURT: Shaver. Ms. Shaver, who do you know?

14 JUROR: Mr. McDaniel, the investigator.

15 THE COURT: And how do you know Mr. McDaniel?

16 JUROR: I hired him one time.

17 THE COURT: All right, and how long ago was that?

18 JUROR: Not quite a year. Not quite a year ago.

19 THE COURT: And do you have an ongoing business,
20 professional relationship, or has it ended?

21 JUROR: That has ended.

22 THE COURT: It has ended. As a result of that
23 business relationship, might that, could that in any regard
24 interfere with your ability to be completely fair and
25 impartial to the state, as well as to Mr. Bantan and Mr.

1 Spears?

2 JUROR: No, ma'am.

3 THE COURT: Can you set that relationship aside as you
4 have described it and make up your mind based upon what you
5 hear in court while court is in session?

6 JUROR: Yes, ma'am.

7 THE COURT: Thank you so much. Please stay with us.

8 Hi. Come on right here. Tell me your last name.

9 JUROR: Hendricks.

10 THE COURT: Yes, sir, Mr. Hendricks.

11 JUROR: Brent.

12 THE COURT: Yes.

13 JUROR: My stepson is in Calhoun County now. Been to
14 jail.

15 THE COURT: Okay.

16 JUROR: Stole my vehicle and I'm not sure what he was
17 charged with right now in Calhoun, but he's been in
18 Calhoun, Orangeburg, Lexington, different ones, and I know
19 defendant -- public defenders, defenders have all been
20 representing him, and I, I don't know if I'd know.

21 THE COURT: I understand.

22 JUROR: Anything about that.

23 THE COURT: All right.

24 JUROR: I just wanted to present it.

25 THE COURT: You, you were right without question. Let

1 me ask this of you. As a result -- well, I'll begin by
2 asking. Are there any of the public defenders that come to
3 mind that you know of?

4 JUROR: No.

5 THE COURT: And as a result -- well, let me ask this
6 question of you. Have you had any sort of interaction with
7 the solicitor's office either in Orangeburg or here in
8 Calhoun?

9 JUROR: I have not.

10 THE COURT: All right, and have you had any
11 interaction with the public defender's office either here
12 in Calhoun or in Orangeburg?

13 JUROR: Personally I haven't, no.

14 THE COURT: Okay, very well. As a result of those
15 events, as a result of the fact that you have, you are
16 currently handling another matter here in Calhoun County,
17 might that, could that in any way impact your ability to be
18 completely fair and impartial to the state, as well as to
19 Mr. Bantan, as well as to Mr. Spears?

20 JUROR: Well, I'm not sure.

21 THE COURT: And I appreciate your candor. Yes.

22 JUROR: I know I'm against people that steal.

23 THE COURT: Yes.

24 JUROR: And do drugs because he does both, so.

25 THE COURT: Okay.

1 JUROR: Well.

2 THE COURT: Right. You know what I think is that you
3 have an active case currently is what you're telling me.

4 JUROR: He's being prosecuted on that. He broke into
5 a place in Swansea.

6 THE COURT: Okay.

7 JUROR: And he had so many other charges over there,
8 they're going to prosecute him.

9 THE COURT: Okay, okay, I understand. I just think, I
10 really think it's best, Mr. Hendricks, and so I'm going to
11 ask you to sit this one out. Thank you so much.

12 (END OF CONFERENCES AT SIDEBAR.)

13 THE COURT: Anyone else? Very well.

14 Ladies and gentlemen, I now have certain names to
15 mention to you. This is Mr. Charlie Johnson. My question
16 with regards to Charlie Johnson is are you related by blood
17 or marriage or acquainted with, or have you or any member
18 of your immediate family ever been represented by Charlie
19 Johnson? If so, please stand at this time. And I find no
20 one standing.

21 Now, I want to have to introduce you, please, to Mr.
22 Bantan. And come on, Mr. Bantan, could you just turn and
23 face our jury panel? Thank you so much, and this is Mr.
24 Titus Alexander Bantan. Thank you, Mr. Bantan, and you may
25 be seated. My question is are you related by blood or

1 marriage or acquainted with Mr. Titus Alexander Bantan? If
2 so, please stand at this time. And I find ---

3 MR. JOHNSON: Your Honor, if I could interrupt? I
4 just wanted you to make the jury aware that I don't
5 represent this individual.

6 THE COURT: Absolutely, absolutely. Of course, Ladies
7 and gentlemen, just so you all are very clear and that I
8 have been clear, Ms. Hines and Mr. Brown represent Mr.
9 Bantan. And I'll introduce you to Mr. Spears in just a
10 minute, who is represented by Mr. Johnson. Very well. And
11 I find no one standing with regards to an acquaintanceship
12 with Mr. Bantan.

13 Now, allow me to introduce you to Mr. Spears, and this
14 is Mr. Spears, who's represented by Mr. Johnson. My
15 question with regards to Mr. Spears is are you related by
16 blood or marriage or acquainted with Mr. Phillip Spears?
17 If so, please stand at this time. Thank you, Mr. Spears,
18 thank you, and I find no one standing.

19 Now, ladies and gentlemen, I'm going to be reading to
20 you a list of potential witnesses, and my question as to
21 each and every one of these individuals is are you related
22 by blood or marriage or acquainted with any of these
23 individuals? Any of these folks, if you happen to be in
24 the courtroom at this time, I'm simply going to ask you to
25 stand as your name is called because sometimes, quite

1 frankly, it's easier to put a face with a name than it is
2 just a name sometimes. Again, ladies and gentlemen, this
3 is a list of potential witnesses. All right, Natasha
4 Rivers, and this is Ms. Rivers. Thank you, Ms. Rivers.
5 You may be seated, thank you. Mr. Bourgeois, Mr. J.K.
6 Bourgeois and this is Mr. Bourgeois. You kind of almost
7 got to do a twirl. There you go, thank you, Mr.
8 Bourgeois. You may be seated. Mr. Cleveland Williams.
9 You know, I'm from Dillon and may not pronounce this:
10 Iskier. No telling what I said earlier. Iskier Prezzie,
11 Iskier Prezzie, Tanesha Adams, Chris Golden, Sean Murphree,
12 Bill Cartwright, Tim Stevenson, Stanley Graham, Keith
13 Johnson, Claude "Chip" Stepp, Ora Lee Murray, Lieutenant
14 Butler, Chris Johnson, Marc Hall, Greg Whetstone, and this
15 is Mr. Whetstone. Thank you. Todd Williams, and Earl
16 Kinnerly [sic], Earl Kinnerly. Are you related by blood or
17 marriage or acquainted with any of those individuals? Come
18 on up.

19 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

20 THE COURT: Hi.

21 JUROR: How are you?

22 THE COURT: I'm fine. Tell me your last name. Come
23 on right in here.

24 JUROR: Haynes.

25 THE COURT: Of course, lovely.

1 JUROR: Yes, Haynes.

2 THE COURT: Haynes. Yes, ma'am, tell me who you know.

3 JUROR: I know Chris Golden and Mr. Whetstone.

4 THE COURT: Tell me how you know them.

5 JUROR: Through church and through just ---

6 COURT REPORTER: Excuse me, Judge.

7 THE COURT: Our court reporter says shush. She cannot
8 hear.

9 THE COURT: And through church?

10 JUROR: And through our work. Like Chris, I know him
11 through work because we have to use them for our security
12 stuff at the bank.

13 THE COURT: All right, and do you visit each other's
14 house?

15 JUROR: No.

16 THE COURT: How often do you see each other?

17 JUROR: Not very often.

18 THE COURT: All right, and that's Chris Golden?

19 JUROR: And Mr. Whetstone

20 THE COURT: Mr. Whetstone, all right, and do you ever
21 visit Mr. Whetstone's home?

22 JUROR: No.

23 THE COURT: How often do you see him?

24 JUROR: Probably just for the security. Not very
25 often.

1 THE COURT: Well, as a result of the relationship that
2 you have described, could there, might that in any respect
3 interfere with or impact your ability to be completely fair
4 and impartial ---

5 JUROR: No.

6 THE COURT: --- to the state, as well as to Mr.

7 Bantan, as well as to Mr. Spears?

8 JUROR: No.

9 THE COURT: Can you set those relationships as you
10 have described them completely aside and make up your mind
11 based on what you hear in court while court is in session?

12 JUROR: Yes, ma'am.

13 THE COURT: Okay, please stay with us.

14 Yes, sir. Hi. This is -- tell me your last name.

15 JUROR: Crider.

16 THE COURT: Yes, sir, Mr. Crider, who do you know?

17 JUROR: Cartwright is married to my cousin, cousin.

18 THE COURT: He's married to your cousin?

19 JUROR: Yes, ma'am.

20 THE COURT: Do y'all visit in each other's home?

21 JUROR: No, ma'am.

22 THE COURT: How often do you see Mr. Cartwright?

23 JUROR: Every blue moon.

24 THE COURT: Every blue moon or two?

25 JUROR: Yeah.

1 THE COURT: Do you visit each other's homes?

2 JUROR: No, ma'am.

3 THE COURT: All right. As a result of that
4 relationship as you have described it, could that, might
5 that in any respect interfere with or impact in any regard
6 your ability to be completely fair and impartial to the
7 state, as well as to Mr. Bantan, as well as to Mr. Spears?

8 JUROR: No, ma'am. I, I just, you know, wanted to let
9 you know that's the relationship. He's married to my
10 cousin.

11 THE COURT: And you did right; you did right. And can
12 you set that relationship as you've described it aside and
13 make up your mind based upon what you hear in court while
14 the court is in session?

15 JUROR: Yes, ma'am.

16 THE COURT: Thank you. Stay with us. Thank you for
17 sharing that with us.

18 Ms. Snider, come on forward. Hi, come right here.
19 Yes, ma'am.

20 JUROR: It have to do with the same thing.

21 THE COURT: Okay.

22 JUROR: With a family member. We was together on
23 Saturday at the birthday celebration.

24 THE COURT: With who, the Rivers?

25 JUROR: Earl Kinnerly [sic].

1 THE COURT: Mr. Kinnerly, Earl Kinnerly? Did you see
2 him on Saturday, Mr. Kinnerly?

3 JUROR: I don't remember.

4 THE COURT: Okay. Do you visit each other's homes?

5 JUROR: No, ma'am.

6 THE COURT: You don't? Is his relationship with you
7 similar the Rivers' relationship as you've described it?

8 JUROR: Did...

9 THE COURT: Mr. Kinnerly's relationship.

10 JUROR: From my daddy's side, that side of the family.
11 What it is, my grandma and his, Earl grandfather, that's
12 how that is.

13 THE COURT: I understand. How would you describe your
14 relationship with Mr. Kinnerly? In other words, how often
15 do you see each other?

16 JUROR: Maybe by and by, whatever, but to say
17 conversation, no, because I basically stay to myself.

18 THE COURT: Okay, and do you believe that that
19 relationship that you have described with Mr. Kinnerly in
20 any way could impact on your ability to be fair and
21 impartial to the state, to Mr. Bantan, or Mr. Spears?

22 JUROR: I say it again. I believe in telling the
23 truth. I was working for the State of South Carolina for
24 over thirty years. Retired almost four years, and I was
25 working for the state and I returned back to work March the

1 2nd. So, I believe in doing the right thing whether it's
2 my child or not.

3 THE COURT: All right.

4 JUROR: I'm going to tell the truth.

5 THE COURT: You're going to tell the truth, and what
6 does that mean?

7 JUROR: If my child, if my child's wrong, they're
8 wrong. If they're right, if I feel they did right, that's
9 how I feel.

10 THE COURT: Could you make up your mind based on what
11 you hear in court while court is in session? Meaning,
12 meaning could you make up your mind based upon the
13 witnesses ---

14 JUROR: That's right.

15 THE COURT: --- who testify and the exhibits admitted
16 into evidence? Could you make up your mind based upon what
17 you hear in the court while court is in session unaffected
18 by that relationship?

19 JUROR: I believe in telling the truth.

20 THE COURT: Yes, ma'am.

21 JUROR: Would I make my mind up? Yes, ma'am.

22 THE COURT: Could you make up your mind based upon
23 what you hear in court while court is in session?

24 JUROR: Yes, ma'am. That's what I would have to go
25 by, the court.

1 THE COURT: And that's what you mean when you believe
2 in telling the truth?

3 JUROR: Yes, ma'am.

4 THE COURT: Okay. Thank you, Ms. Snider. Be seated.

5 Hi. Tell me your last name.

6 JUROR: Bozard.

7 THE COURT: MS. Bozard, who do you know?

8 JUROR: Greg Whetstone.

9 THE COURT: Greg Whetstone. How do you know him?

10 JUROR: Painting his home.

11 THE COURT: How long ago?

12 JUROR: Long time ago.

13 THE COURT: Do you have any other relationship that
14 you know of?

15 JUROR: I think his sister was my -- Karen Whetstone
16 was married to my nephew, but they're now divorced and
17 remarried.

18 THE COURT: As a result of the relationship as you
19 have described it, do you believe that that might or could
20 in any regard impact your ability be completely fair and
21 impartial ---

22 JUROR: No.

23 THE COURT: --- to the state, to Mr. Bantan?

24 JUROR: Huh-uh.

25 THE COURT: And Mr. Spears?

1 JUROR: Uh-uh.

2 THE COURT: Can you make up your mind based upon what
3 you hear in the court while court is in session?

4 JUROR: Yes.

5 THE COURT: Very well. Thank you. Please stay.
6 Hi. Tell me your last name.

7 JUROR: Robinson.

8 THE COURT: Yes, ma'am, Ms. Robinson, who do you know?

9 JUROR: Chris Golden.

10 THE COURT: Tell me how you know Mr. Golden.

11 JUROR: Well, I met Mr. Golden in Town and Country.

12 THE COURT: All right.

13 JUROR: And I asked him to be Santa Claus, which he
14 was, and then we had him speak at our club.

15 THE COURT: All right, and when did those events
16 occur?

17 JUROR: Last year and the year before.

18 THE COURT: And as a result of that, is that the
19 extent of the relationship?

20 JUROR: That's it. That's it.

21 THE COURT: As a result of that relationship, do you
22 believe that it might or could in any respect interfere
23 with or ---

24 JUROR: No.

25 THE COURT: --- impact on your ability to be fair and

1 impartial to the state, as well as to Mr. Bantan, as well
2 as to Mr. Spears?

3 JUROR: I believe so.

4 THE COURT: And can you set that relationship as
5 you've described it aside and make up your mind based upon
6 what you hear in court while present in court?

7 JUROR: I forgot what you said.

8 THE COURT: This is a long question. Can you decide
9 for yourself ---

10 JUROR: Yes.

11 THE COURT: --- based upon what you hear in court
12 while court is in session?

13 JUROR: Yes.

14 THE COURT: Completely unaffected by that
15 relationship?

16 JUROR: Yes.

17 THE COURT: Stay with us, please.

18 (A PAUSE.)

19 THE COURT: Have to say your name one more time.

20 JUROR: Strock.

21 THE COURT: Strock. Yes, sir, Mr. Strock.

22 JUROR: I know Earl Kinnerly [sic].

23 THE COURT: How?

24 JUROR: I just know he was a policeman in Elloree.

25 THE COURT: Okay.

1 JUROR: And I'm from Elloree.

2 THE COURT: Do you visit each other's homes?

3 JUROR: No.

4 THE COURT: You are acquaintances?

5 JUROR: I just know him when I see him, that's it.

6 THE COURT: As a result of that relationship, could
7 that, might that interfere with your ability ---

8 JUROR: No.

9 THE COURT: --- to be completely fair and impartial,
10 and can you set that relationship aside and make up your
11 mind based upon what you hear in court while court is in
12 session?

13 JUROR: Yes, ma'am.

14 THE COURT: Thank you, Mr. Strock.

15 (END OF CONFERENCES AT SIDEBAR.)

16 THE COURT: Ladies and gentlemen, I ask this in an
17 abundance of caution. Are you or any member of your
18 immediate family employed by Sprint, Sprint?

19 (NO ONE STANDS.)

20 THE COURT: Very well. Now, ladies and gentlemen, are
21 you related by blood or marriage or acquainted with the
22 following individuals: Joe -- oh, we had a juror out. Yes,
23 ma'am, I just need to ask you a quick question. Are you or
24 any member of your immediate family employed by Sprint?
25 Thank you, all right, and you heard the names of the folks?

1 Yes, ma'am, you heard the names of the individuals that I
2 mentioned? You heard them all before you had to step out?
3 Very well.

4 Ladies and gentlemen, are you related by blood or
5 marriage or acquainted with the following individuals:
6 Joanna Miranda, Dr. Valerie Hallstorm.

7 MS. HINDS: Holmstrom.

8 THE COURT: Dr. Brian Cutler, and Dan McDaniel. We
9 talked about Mr. D, already talked about Mr. McDaniel. Dr.
10 Brian Cutler, Dr. Valerie Holmstrom, and Joanna Miranda,
11 related by blood or marriage or acquainted with any of
12 those individuals, if so please stand. And I find no one
13 standing.

14 Now, ladies and gentlemen, I have some questions to
15 ask of you. Ladies and gentlemen, are you related by blood
16 or marriage or a close, personal friend, and let me tell
17 you what I mean by close, personal friend. You know there
18 are those folks who are friends in your life who really are
19 so close to you that they are really like a member of your
20 family. When I say close, personal friend, that's what I'm
21 talking about. Someone who, you know, when you start
22 thinking about people who are really in your family, even
23 though they may not be related, they are so close to you
24 that they really are like family. That's who I'm talking
25 about. So, I would ask are you, are you related by blood

1 or marriage or close, personal friends with any member of
2 law enforcement? That would be like city police officer or
3 a sheriff or SLED or FBI or the new TSA, but law
4 enforcement.

5 Mr. Knight, who?

6 JUROR: My stepson is with TSA.

7 THE COURT: He's with TSA. Thank you so much.

8 Yes, sir, your name again?

9 JUROR: Ronnie Crim.

10 THE COURT: Yes, sir, Mr. Crim.

11 JUROR: I know Chris through the sheriff's department
12 through marriage

13 THE COURT: Who do you know?

14 JUROR: Him.

15 THE COURT: And y'all are like family?

16 JUROR: By marriage, yes.

17 THE COURT: Oh, y'all are related by, you're related
18 by marriage, and what is that? What is the relationship,
19 family relationship? Who is he married to?

20 JUROR: He's married to my stepsister.

21 THE COURT: He's married to your stepsister, all
22 right. Do you visit each other's house?

23 JUROR: Yes.

24 THE COURT: Will y'all please come forward?

25 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR.)

1 THE COURT: Hi. You're Mr. Kindard, right?

2 JUROR: Crim.

3 THE COURT: Crim, Crim. All right, now do you all
4 visit in each other's homes?

5 JUROR: Yes. He rents from my dad.

6 THE COURT: He rents from your dad, and

7 you visit each other's homes. As a result, as a result ---

8 The court reporter says shhhh.

9 As a result of that relationship, do you believe that
10 the fact that he is present and he's present through
11 security -- but I do not believe he is in this.

12 MS. FRYAR: No, ma'am, no.

13 THE COURT: But he is present. Do you believe that
14 that might in any regard interfere with your ability to be
15 completely fair and impartial to the state, as well as to
16 Mr. Bantan, and as well as to Mr. Spears?

17 JUROR: Not at all.

18 THE COURT: Not at all? Do you believe you could set
19 that relationship aside and make up your mind based upon
20 what you hear in the walls of the courthouse?

21 JUROR: Yes, ma'am.

22 THE COURT: Thank you so much. Thank you so much, Mr.
23 Crim.

24 Let me talk to you. If, if he is selected to serve on
25 this jury, I will not allow Chris to be security in the

1 court. We have court security outside. I would ask him to
2 sort of stay there. That way he won't be attached to the
3 jury. But y'all have got to remind me.

4 (END OF CONFERENCE AT SIDEBAR.)

5 THE COURT: Is any member of our jury panel related
6 by, related by blood or marriage, or close, personal
7 friends of anyone employed by the Attorney General or any
8 prosecuting attorney's office like a district attorney's
9 office in another states in the country? If so, please
10 stand. I find no one standing.

11 Has any member of our jury ever been employed by, been
12 employed by any civilian or military law-enforcement
13 agency? In other words, have you ever been employed by a
14 civilian or military law-enforcement agency? If so, please
15 stand.

16 (NO ONE STANDS.)

17 THE COURT: All right, do you have any members of our
18 jury panel who is a member of or a contributor to groups
19 such as CAVE, CADRE, MADD, or SADD? CAVE, CADRE, MADD, or
20 SADD or any other similar group whose primary concern is
21 promotion of law enforcement or victims' rights? If so,
22 please stand.

23 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

24 THE COURT: Tell me your last name again.

25 JUROR: Houck.

1 THE COURT: Mr. Houck, you were once a civilian or
2 military law-enforcement agency person?

3 JUROR: I was employed by Orangeburg Public Safety.

4 THE COURT: Orangeburg Public Safety? How long ago?

5 JUROR: From '87 to '92.

6 THE COURT: '87 to '92. Where are you now?

7 JUROR: I'm a construction worker now.

8 THE COURT: Terrific. Thank you so much.

9 JUROR: Yes, ma'am.

10 MR. JOHNSON: Your Honor.

11 THE COURT: Yes.

12 MR. JOHNSON: Ms. Lawson, when she came up earlier,
13 she stated she hired somebody from the PD's office to work
14 for her when she worked at the Department of Public Safety,
15 and you just asked if anybody worked with law enforcement.
16 She didn't stand up.

17 THE COURT: No, I think what she was, I think what she
18 was saying is that -- oh, wasn't she with a bank?

19 MS. FRYAR: I think he's right. Worked with McDaniel
20 at Public Safety.

21 MR. JOHNSON: Public Safety.

22 THE COURT: Oh.

23 MR. JOHNSON: Ms. Lawson.

24 THE COURT: Worked with McDaniel, oh, okay. That's
25 how she knew him.

1 MR. JOHNSON: Yeah. She said she hired him.

2 THE COURT: Where is Ms. Lawson? Can you come forward
3 just a moment? I need some clarity. Hi, come right here,
4 Ms. Lawson. Ms. Lawson, this says has everyone ever been
5 employed by any civilian or military law-enforcement
6 agency. Did I hear right? Did I hear that you had been
7 employed by the Department of Public in Orangeburg?

8 JUROR: No. No. Shop Road in Columbia.

9 THE COURT: What did you do for them?

10 JUROR: Worked at the DMV.

11 THE COURT: Okay, so you worked with drivers licenses.
12 About how long ago was that?

13 JUROR: That was about four or five years ago.

14 THE COURT: Four or five years ago. All right, the
15 Department of Public Safety is one of those entities that
16 has dual purposes.

17 JUROR: Well, I worked ---

18 THE COURT: One is the Highway Patrol and is licenses,
19 and yours was to do licenses, not -- you didn't work for
20 the Highway. You worked at the licensing?

21 JUROR: Yes, ma'am.

22 THE COURT: Okay, gotcha. That was not really fair to
23 you. That was difficult because it had to do with
24 licenses, but that was for clarity. Thank you.

25 (END OF CONFERENCE AT SIDEBAR.)

1 THE COURT: Has any member of our jury panel ever been
2 a witness in a criminal trial, and if you were a witness in
3 a trial and you don't know what kind of trial it was, step
4 up. Come forward and we'll talk about it. If you've ever
5 been a witness in a criminal trial, please stand. I find
6 no one standing.

7 Have you formed any opinion about this case? If so,
8 please stand.

9 (NO ONE STANDS.)

10 THE COURT: Ladies and gentlemen, I am going to ask
11 you, I'm going to ask you three questions together. I
12 don't want you to respond to any of the questions until I
13 have asked them all. Ladies and gentlemen, the first
14 question is have you or any member of your immediate family
15 or close, personal friends ever been the victim of an armed
16 robbery, a kidnapping, an assault, or any other crime
17 involving a weapon? That's question number one.

18 Question number two is is there anything in the nature
19 of the allegations in this case which would cause you, any
20 members of our jury panel, any problem, any concern about
21 sitting as an impartial juror? That's number two and
22 here's number three. Well, that's enough. If you need to
23 respond to either of those questions, come on forward.

24 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

25 THE COURT: Hi. Tell me your last name again.

1 JUROR: Knotts, K-n-o-t-t-s.

2 THE COURT: Mr. Knotts, which question are you
3 responding to?

4 JUROR: Well, when I, when I -- my parents owned a
5 small motel and my dad was robbed twice at gunpoint. We
6 lived there at the motel, and so we lived right there in
7 the office that's connected to the motel.

8 THE COURT: How long ago was that, Mr. Knotts?

9 JUROR: It's probably been I guess thirty years.

10 THE COURT: Okay. As a result of that experience, do
11 you believe that that experience could or might in any
12 regard interfere with or impact on your ability to be
13 completely fair and impartial?

14 JUROR: Yeah, I think it might.

15 THE COURT: I am so grateful for your candor. I will
16 ask you to sit this one out, but stay with us for some
17 instructions.

18 JUROR: All right.

19 THE COURT: Thank you, Mr. Knotts.

20 Out, excused.

21 Hi. How are you? Tell me your last name again.

22 JUROR: Hartley.

23 THE COURT: Ms. Hartley, I'm going to ask you, can you
24 come back here for me? Thank you. Which question are you
25 responding to?

1 JUROR: Armed robbery.

2 THE COURT: Tell me.

3 JUROR: December 19, 1990, I was a victim of armed
4 robbery in a convenience store.

5 THE COURT: Where?

6 JUROR: In Woodruff, South Carolina.

7 THE COURT: Do you believe that that experience might
8 ---

9 JUROR: It probably would.

10 THE COURT: All right, thank you so much. Thank you
11 so much for your candor. I'd ask you to sit this one out.

12 JUROR: Okay. All right.

13 THE COURT: Thank you.

14 Hartley, excused.

15 Hi. Come around. Come on.

16 JUROR: Oh, I'm sorry.

17 THE COURT: Just for our record, I need you to state
18 your name.

19 JUROR: Armour Griffin.

20 THE COURT: Tell me, Mr. Griffin.

21 JUROR: I had a first cousin who was murdered a few
22 years ago.

23 THE COURT: All right, sir, where?

24 JUROR: In Newberry County, in the City of Newberry.

25 THE COURT: All right, sir.

1 JUROR: He was stabbed to death.

2 THE COURT: As a result of that, of that, might that,
3 could that in any regard, any regard impact on your ability
4 to be completely fair and impartial to the state, as well
5 to Mr. Bantan, as well as Mr. Spears?

6 JUROR: I don't think it will.

7 THE COURT: Can you set that experience aside and make
8 up your mind based upon what you hear in court while court
9 is in session?

10 JUROR: With this not being a murder case, yes, I
11 think I could. If it were a murder trial, I don't think I
12 could.

13 THE COURT: Okay. All right, very well. Do you
14 believe that -- I had told -- well, you know because
15 you heard me read the allegations. There are allegations
16 ---

17 JUROR: There was a gun or a knife.

18 THE COURT: Yes, yes.

19 JUROR: Or something being drawn or something like
20 that.

21 THE COURT: Yes. Do you believe that that might or
22 could have an affect on your ability to be fair and
23 impartial to the state, to Mr. Bantan, and/or Mr. Spears?

24 JUROR: I wouldn't think that it would be a problem.

25 THE COURT: Do you believe you can set that aside and

1 make up your mind based on the witnesses in this case,
2 based upon the exhibits that are admitted in evidence, and
3 of course the law as I submit it to you?

4 JUROR: I feel I could.

5 THE COURT: Thank you so much, Mr. Griffin.

6 Hi. Tell me your last name.

7 JUROR: Lore, L-o-r-e.

8 THE COURT: Which question are you responding to?

9 JUROR: Number one.

10 THE COURT: Okay. Tell me.

11 JUROR: My aunt was robbed.

12 THE COURT: When was that, Mr. Lore?

13 JUROR: That was five years ago.

14 THE COURT: And where was that?

15 JUROR: The B.P. that's out on -- out by 26.

16 THE COURT: Here in Calhoun County? All right, sir,
17 and as a result of that experience, do you believe that
18 that experience could impact on your ability to completely
19 be fair and impartial? You believe it could? You're
20 nodding yes and you're concerned about that, Mr. Lore?

21 JUROR: Yeah. I done made up my mind on that.

22 THE COURT: Mr. Lore, I'm going to ask you two things.
23 First of all, please don't discuss this with your fellow
24 jurors. Please sit this one out, but stay with us for
25 further instructions, okay?

1 JUROR: All right.

2 THE COURT: Hang loose but don't discuss it.

3 JUROR: Go back to where I was sitting?

4 THE COURT: Exactly.

5 JUROR: All right.

6 THE COURT: Lore, Mr. Lore.

7 MS. HINDS: He's going to stay?

8 THE COURT: No.

9 MR. JEFFRIES: He was robbed?

10 THE COURT: His aunt was robbed at the B.P. at the
11 interstate.

12 Your last name again?

13 JUROR: Shaver.

14 THE COURT: Shaver. Ms. Shaver, which question are
15 you responding to?

16 JUROR: My sister was the victim of a armed robbery.

17 THE COURT: When was that, Ms. Shaver?

18 JUROR: Like thirteen, fourteen years ago.

19 THE COURT: All right, a little bit about the
20 circumstances as you understand them.

21 JUROR: What happened?

22 THE COURT: Yes. Where was she?

23 JUROR: In Calhoun County.

24 THE COURT: Where in Calhoun County?

25 JUROR: Used to be the Blue Diamond Casino.

1 THE COURT: Okay. All right.

2 JUROR: Her boyfriend was killed and she was shot.

3 THE COURT: And as a result of that experience, do you
4 believe that that experience could impact on your ability
5 to be completely fair and impartial to the state, as well
6 as to Mr. Bantan, as well as Mr. Spears?

7 JUROR: I'm concerned.

8 THE COURT: You're concerned there could be an impact?
9 You're nodding yes?

10 JUROR: Yes, ma'am.

11 THE COURT: Is that right? I do understand. I am
12 going to ask you to sit this one out and not discuss this
13 with anyone, okay?

14 JUROR: I'm so sorry.

15 THE COURT: That's all right.

16 Let the record reflect that as she was telling me, as
17 she was describing to me what happened to her sister, her
18 eyes welled up with tears.

19 Who's next? Hi, hello. I should ask you first. Tell
20 me your last name.

21 JUROR: Mickens.

22 THE COURT: Mickens. Yes, sir, which question are you
23 responding to, Mr. Mickens?

24 JUROR: The one about being charged with a gun.

25 THE COURT: Oh, that's right. Tell me about that.

1 JUROR: I got about a twenty-three year-old son. He's
2 incarcerated now. He's been charged with having an
3 automatic weapon.

4 THE COURT: In his possession?

5 JUROR: Yes. He had it in the car.

6 THE COURT: Where did that happen? Where is he now?

7 JUROR: He's in, I think, Edgefield.

8 THE COURT: Yes, sir, in which jurisdiction did that
9 happen?

10 JUROR: In Greenville County.

11 THE COURT: In Greenville County. When did that
12 happen?

13 JUROR: About six, six, seven years.

14 THE COURT: And has he been locked up for that period
15 of time?

16 JUROR: Yes.

17 THE COURT: Okay, and how much longer does he have?

18 JUROR: I think about, I think about three to four
19 more years.

20 THE COURT: Okay. As a result of that experience, do
21 you believe that that might in any regard impact on your
22 ability to be completely fair and impartial to the state,
23 as well as to Mr. Bantan, as well as to Mr. Speaker?

24 JUROR: I don't think so.

25 THE COURT: Do you believe, do you believe that you

1 can set that experience aside and make up your mind based
2 upon what you hear in court while court is in session?

3 JUROR: Yes, ma'am.

4 THE COURT: All right, thank you so much. Stay with
5 us.

6 MS. FRYAR: He's staying?

7 THE COURT: Staying. Anyone else?

8 (END OF CONFERENCES AT SIDEBAR.)

9 THE COURT: Ladies and gentlemen, two more questions
10 together. Number one, do you subscribe to any personal or
11 religious beliefs which prohibit the drinking of alcoholic
12 beverages? That's number one. Number two, have you ever
13 served on a jury panel before? If you can respond to
14 either of those questions, please stand. And I find no one
15 standing. Oh, come on down.

16 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR.)

17 THE COURT: Hello. Come on, stand right here. Tell
18 me your last name.

19 JUROR: Shaver.

20 THE COURT: Ms. Shaver, my maiden name. Ms. Shaver,
21 which of these two questions are you responding to?

22 JUROR: The jury panel.

23 THE COURT: And do you remember the date you served on
24 the panel?

25 JUROR: Several years ago.

1 THE COURT: And now long ago? Do you remember how
2 long?

3 JUROR: About seven years.

4 THE COURT: About seven years ago. Anything about
5 that experience that would affect your ability to be a
6 juror in this?

7 JUROR: I don't think so.

8 THE COURT: Thank you, Ms. Shaver. Please stay with
9 us.

10 JUROR: All right.

11 MS. FRYAR: Is Ms. Shaver staying?

12 MR. JOHNSON: Yes, she's still in.

13 THE COURT: Hi, Ms. Robinson, which question are you
14 responding to, Ms. Robinson?

15 JUROR: I've served on jury panel before.

16 THE COURT: Do you know if it was civil matter or
17 criminal matter?

18 JUROR: It was criminal.

19 THE COURT: It was criminal. How long ago was that?

20 JUROR: About ten years ago in Charleston.

21 THE COURT: In Charleston. Federal court?

22 JUROR: Yes.

23 THE COURT: Is there anything about that experience
24 that could impact on your ability to be a juror in this
25 case?

1 JUROR: No.

2 THE COURT: Thank you. Thank you, Ms. Robinson.

3 CLERK OF COURT: Is she staying?

4 THE COURT: She's good to go. Thank you for reminding
5 me. I'm sorry, Claudia.

6 CLERK OF COURT: That's okay.

7 Hi. Tell me your last name.

8 JUROR: Cokely.

9 THE COURT: Cokely. Which question are you responding
10 to?

11 JUROR: I sat on a jury before.

12 THE COURT: Do you remember if it was civil or
13 criminal?

14 JUROR: Criminal.

15 THE COURT: Criminal. Is there anything about that
16 experience that could impact on your ability to be a juror
17 in this matter?

18 JUROR: No, I don't know.

19 THE COURT: What does that mean, I don't know? If you
20 don't know, I don't know who knows. In other words, was
21 there anything that occurred in that experience that would
22 impact on your ability to be able to serve?

23 JUROR: No.

24 THE COURT: No? Thank you. Please stay with us.

25 CLERK OF COURT: We have two Cokelys.

1 THE COURT: Artie or Chad?

2 JUROR: Artie.

3 CLERK OF COURT: Mr. Hendricks has already been
4 excused.

5 THE COURT: Got you, Mr. Hendricks? We've already got
6 you. You're good to go. I've already excused you.

7 JUROR: I've been on a jury before.

8 THE COURT: Come on right up here. Your name is
9 Kolberg?

10 JUROR: Kolberg.

11 THE COURT: Yes, ma'am, which question?

12 JUROR: I was on a jury.

13 THE COURT: Do you remember if it was a criminal
14 matter or civil matter?

15 JUROR: They were all traffic related.

16 THE COURT: Okay. Anything happen those experiences
17 that could impact on your ability to serve here?

18 JUROR: No.

19 THE COURT: Thank you.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: Mr. Houck, where is Mr. Houck? Mr. Houck?
22 Hi, Mr. Houck. Come on right here, Mr. Houck. Mr. Houck,
23 help me. I need some clarification. Have you ever worked
24 for any kind of law-enforcement agency?

25 JUROR: Yeah.

1 THE COURT: Where?

2 JUROR: Orangeburg.

3 THE COURT: When?

4 JUROR: Department of Public Safety.

5 THE COURT: Department of Public Safety. In what
6 capacity?

7 JUROR: I went there in '87 as a fire fighter.

8 THE COURT: Yes, sir.

9 JUROR: Orangeburg converted to Public Safety, and I
10 had to become a police officer in about '89.

11 THE COURT: How long did you do that?

12 JUROR: Until October of '92.

13 THE COURT: Until October of '92?

14 JUROR: And then I came to St. Matthews fire
15 department, where I dispatched law enforcement for a few
16 more years.

17 THE COURT: A few more years, okay. Can I ask why you
18 didn't share that information?

19 MS. FRYAR: He did share it, ma'am. We just also
20 found out that he knows Mr. Whetstone.

21 THE COURT: When you came up earlier, you told us
22 something. I thought you told us -- tell me what you told
23 us.

24 JUROR: I told you that I worked for Department of
25 Public Safety from '87 to '92.

1 THE COURT: And did you mention anything else? Do you
2 know, do you know Mr. Whetstone?

3 JUROR: Yes, ma'am.

4 THE COURT: How do you know him?

5 JUROR: I went to high school with him.

6 THE COURT: How long ago is that?

7 JUROR: Gosh, I graduated in '72. He was a couple of
8 years behind me.

9 THE COURT: And have you seen him since then?

10 JUROR: I, I may have spoken to him one time in the
11 last five years, so and it's -- we're not close, personal
12 friends.

13 THE COURT: I got that from what you told me.
14 Anything about that relationship that would impact on your
15 ability to be fair and impartial?

16 JUROR: No.

17 THE COURT: I'll remember that just in case, but thank
18 you for bringing that to our attention.

19 (END OF CONFERENCES AT THE BENCH.)

20 (A PAUSE.)

21 THE COURT: Ladies and gentlemen, I have three
22 questions to ask you and I'll ask them together, and these
23 are the final questions. Ladies and gentlemen, has any
24 member of our juror panel ever received assistance from the
25 Victim Advocacy Program? Have you ever received assistance

1 from the Victim Advocacy Program? That's number one.

2 Number two, have you or any member of your immediate
3 family ever been prosecuted here or anyone else? If you
4 have already told me about a family member who has had some
5 difficulty, please, I don't need to hear that again. But
6 if you haven't discussed it with me, I need to know that.

7 The last question is this. Do you know any reason,
8 any reason why you ought not, should not, could not be a
9 juror in this case being ready, willing, and able to listen
10 to the evidence and to make up your mind based upon what
11 you hear in court while court is in session unaffected by
12 any extraneous -- that means anything outside the courtroom
13 -- without being affected by any extraneous matters? It's
14 a broad question. It's supposed be broad.

15 In other words, if anything has happened in your life.
16 You know, were you shy yesterday, but we've been together a
17 long time, but you need to tell me now if you were a little
18 bit shy to tell me yesterday. Did Ed McMahon come to your
19 house last night with that big old check and those balloons
20 and you can't think about anything except where you're
21 going and what you're going to do with that check? Were
22 the tickets to Tahiti in the drawer beside the refrigerator
23 and you forgot you're supposed to go to Tahiti, and now you
24 don't know how to tell me? Ladies and gentlemen, now is
25 the time for you to tell me anything that you have any

1 concerns whatsoever about your ability to serve on this
2 jury or respond to the other questions that I asked.

3 Ladies and gentlemen, if you need to respond, please stand
4 at this time. Come forward.

5 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

6 THE COURT: Hi. Tell me your last name.

7 JUROR: Rivers.

8 THE COURT: Yes, sir.

9 JUROR: I have been involved in the Victim's Advocate.
10 Somebody stole some money from me and my wife, and we went
11 to the victim's advocate to get it back.

12 THE COURT: Anything about that experience that might
13 impact on your ability to be completely fair and impartial
14 to the state, Mr. Bantan, or Mr. Spears?

15 JUROR: Could

16 THE COURT: Could?

17 JUROR: Yes.

18 THE COURT: Could? All right, what I'm going to do,
19 Mr. Rivers, I'm going to ask you to sit this one out.
20 Don't leave me. I've got some further instructions later.
21 Okay, thank you for coming forward.

22 JUROR: Thank you.

23 THE COURT: Yes, sir.

24 CLERK OF COURT: I didn't get his name.

25 THE COURT: Mr. Rivers.

1 CLERK OF COURT: Are you excusing him?

2 THE COURT: Yes, I am.

3 Hi. Yes, sir, good afternoon, and your last name is?

4 JUROR: McDonald, Robert.

5 THE COURT: McDonald. Yes, sir.

6 JUROR: About six months -- I've been a missionary

7 thirty-two years overseas living in foreign countries. I

8 just came back to the United States about eight years ago.

9 I've been a student of the Old Testament, New Testament
10 Bible over forty years.

11 Recently six months ago, a good friend of mine was
12 sent to prison. He's a pastor of a church and knows me
13 personally. He's, he's never done anything wrong, but the
14 U.S. Government has a problem with him.

15 Over the last six months, I've been receiving a lot of
16 communication with him, and in the communication he has
17 shared his thoughts with a lot things about the injustice
18 of prisons, sentencing, incarcerations. In the Old
19 Testament there's no -- and in the New Testament, of
20 course, there's nothing printed anywhere where someone who
21 is guilty of a crime has to be put to jail. All the
22 punishment from the Old and New Testament is either severe
23 punishment, physical punishment, and/or fines or paying
24 back.

25 THE COURT: Yes.

1 JUROR: So.

2 THE COURT: I hear what you're saying.

3 JUROR: Am I guilty? I mean, you know, would I be
4 someone who would be the right person -- if say, for
5 example, these people are guilty, I'm wondering if my
6 convictions would be -- they should just be severely
7 punished.

8 THE COURT: Yes.

9 JUROR: And/or severely fined.

10 THE COURT: Yes.

11 JUROR: I'm leaning more towards the tendency of
12 imprisonment is a cruel form of punishment.

13 THE COURT: Yes.

14 JUROR: I believe in punishment strictly.

15 THE COURT: Yes. Let me ask you this question.
16 Punishment is not for the jury; punishment is for the
17 court. The jury listens to the evidence. Finds the facts
18 as they find them to be.

19 JUROR: Yes.

20 THE COURT: The word verdict comes from the Latin
21 *verdicto*, which means to speak the truth. The jury's
22 responsibility is to find the facts, and the jury takes the
23 law as I give it to them. They must take the law exactly
24 as I give it to them and apply that law to those facts. In
25 doing that, the jury decides whether or not the state has

1 met its burden.

2 JUROR: I understand.

3 THE COURT: And that burden is to prove the defendant
4 guilty beyond a reasonable doubt of the offense.

5 JUROR: That is my duty as to the law.

6 THE COURT: Yes.

7 JUROR: I understand. The conviction part is someone
8 else's.

9 THE COURT: No, the conviction is the finding of
10 whether or not the defendant is guilty or not guilty. The
11 punishment is for the court.

12 Having said that, oftentimes of course a juror must not,
13 cannot allow what may or may not be a consequence to enter
14 into the juror's determination of whether or not the state
15 has met its burden, and that is what the determination is.
16 Has the state met its burden beyond a reasonable doubt.

17 JUROR: Okay, I understand. I understand, yes, ma'am.

18 THE COURT: But again, I will say it is critically
19 important that a juror not allow, not allow the
20 consequences for the finding of guilt or not guilty, either
21 way, to enter into the juror's deliberation.

22 JUROR: Yes, ma'am. Yes, ma'am. I am the father of
23 ten children. We have a lot of discipline in my house, and
24 so I do believe in discipline. I do believe in you reap
25 what you sow. In fact, I just wanted to let you know my

1 feelings.

2 THE COURT: All right, and with that in your mind, do
3 you believe those feelings that you have as you have so
4 marvelously articulated, do you believe those feelings
5 might and could in any regard, in any regard interfere with
6 or impact on your ability to listen ---

7 JUROR: Your answer is no, they will not.

8 THE COURT: The answer is ---

9 JUROR: I just want to be a good juror if I'm chosen.

10 THE COURT: Absolutely. I take this as your desire to
11 be one hundred percent candid. I understand and I
12 appreciate that. What is important of course is you can
13 set those things about consequences aside in your mind and
14 base it solely upon the evidence in this court.

15 JUROR: Well, we live in a very secular world now, so
16 I understand what you're saying.

17 THE COURT: Thank you.

18 JUROR: You're welcome.

19 (END OF CONFERENCES AT SIDE BAR.)

20 THE COURT: Anyone else? Ladies and gentlemen, let me
21 tell you what is happening next. This is actually one of
22 my favorite parts. I'm not quite sure why, but I love it.
23 It's called hopper turning, and what is actually occurring,
24 your names, ladies and gentlemen, you are now qualified and
25 your names are placed on little pieces of paper and they go

1 into capsules. They go into capsules and a little top is
2 screwed on top of the capsules, and then they go into the
3 hopper and we have hopper turning. And then in a moment I
4 am going to describe to you what will happen, and I want to
5 talk to you for a moment about that, ladies and gentlemen.

6 Before I do that, though, on behalf of the state, do
7 you waive the selection of the jury by use of a child or
8 blind person?

9 MS. FRYAR: Yes, we do, Your Honor.

10 THE COURT: On behalf of Mr. Bantan?

11 MS. HINDS: I do.

12 THE COURT: And on behalf of Mr. Spears?

13 MR. JOHNSON: I do.

14 THE COURT: Now, ladies and gentlemen, here is what
15 happens next. In a moment after we've had hopper turning,
16 there will be names selected one at the time. You, if your
17 name is called, you will come through the swinging gate and
18 you will stand here. I'm happy to tell you about fifteen
19 years ago I sat -- not exactly where you're sitting --
20 where you're sitting in Dorchester County and my name was
21 called. I remember walking up here and thinking oh, I wish
22 I didn't have to bring my hands with me. It's okay. Bring
23 your hands. I didn't know what to do with them. Bring your
24 hands. Stand here, and this is what you're going to hear.

25 You will first hear from one of the attorneys from the

1 state, from the solicitor's office, and you will hear one
2 of two things. You hear either present the juror, or you
3 will hear excuse the juror. I want you to know that the
4 selection of our juries in criminal matters is as old as
5 our state. The elements that go into that are many, many,
6 many, many, many, many, fold. And, I want you to know that
7 these lawyers absolutely mean you no embarrassment
8 whatsoever if you are excused, so please take none. Please
9 take none. If you hear please excuse the juror, if you
10 would just take your seat back out in the audience
11 immediately because we do have further instructions for
12 you.

13 If you hear the solicitor say present the juror, then
14 you will first hear from Ms. Hinds, Mr. Brown. You will
15 hear them say either present the juror or excuse the juror.
16 If you hear excuse the juror, please again take no, take no
17 embarrassment because I promise you there is none intended.
18 But just take your seat back out in the audience. If you
19 hear present the juror, you will hear from Mr. Johnson, and
20 you will hear either seat the juror or excuse the juror.
21 And again if you hear excuse the juror, please take no
22 embarrassment because I promise you there's none intended.
23 If you hear seat the juror, then if you would come and take
24 your seat. I think probably you'll want to go as you enter
25 -- what do they say, go as far as you can to the left. So,

1 just proceed down and take your seat, if you would be so
2 kind.

3 We're just about there? Very well, we're just about
4 there and we'll have hopper turning. Is anyone -- in
5 Beaufort they call it comfort break. Anyone need a comfort
6 break? Everybody's okay? Wonderful, wonderful. I am now
7 going now to turn it over to you. Ten, ten, ten and two
8 alternates.

9 (A PAUSE.)

10 THE COURT: All right.

11 CLERK OF COURT: Kenneth Lee Keels.

12 THE COURT: And what juror number?

13 CLERK OF COURT: Juror number 95. What says the
14 state?

15 MR. JEFFRIES: Please present Mr. Keels.

16 CLERK OF COURT: What says the Defense Bantan?

17 THE COURT: Bantan, Mr. Bantan.

18 MS. HINDS: Please excuse Mr. Keels.

19 CLERK OF COURT: Number 87, Elizabeth Jamison. What
20 says the state?

21 MR. JEFFRIES: Please present Ms. Jamison.

22 CLERK OF COURT: What says the Defense Bantan?

23 MS. HINDS: Please present Ms. Jamison.

24 CLERK OF COURT: What says Defense Spears?

25 MR. JOHNSON: Please seat the juror.

1 CLERK OF COURT: Please be seated in the jury box.
2 Looks like juror 07, Marcia Kohlberg -- 101. What says the
3 state?

4 MR. JEFFRIES: Please present Ms...

5 CLERK OF COURT: Kohlberg.

6 MR. JEFFRIES: Kohlberg. I'm sorry.

7 CLERK OF COURT: What says the Defense Bantan?

8 MS. HINDS: Please excuse Ms. Kohlberg.

9 CLERK OF COURT: 194, Shirley S. Wilson. What says
10 the state?

11 MR. JEFFRIES: Please present Ms. Wilson.

12 CLERK OF COURT: What says Defense Bantan?

13 MS. HINDS: Please present Ms. Wilson.

14 CLERK OF COURT: What says the Defense Spears?

15 MR. JOHNSON: Please excuse the juror.

16 CLERK OF COURT: Juror 82, Ronald Houck. What says
17 the state?

18 MR. JEFFRIES: Please present Mr. Houck.

19 CLERK OF COURT: What says Defense Bantan?

20 MS. HINDS: Please excuse Mr. Houck.

21 CLERK OF COURT: Juror 19, John H. Buckland. What
22 says the state?

23 MR. JEFFRIES: Please present Mr. Buckland.

24 CLERK OF COURT: What says Defense Bantan?

25 MS. HINDS: Please present Mr. Buckland.

1 CLERK OF COURT: What says the Defense Spears?

2 MR. JOHNSON: Please seat the juror.

3 CLERK OF COURT: Please be seated. Juror 46, Katina
4 Pondexter. What says the state?

5 MR. JEFFRIES: Please present Ms. Pondexter.

6 CLERK OF COURT: What says the Defense Bantan?

7 MS. HINDS: Please excuse Ms. Pondexter.

8 CLERK OF COURT: Jury 106, Joyce Koffler. What says
9 the state?

10 MR. JEFFRIES: Please present Ms. Koffler.

11 CLERK OF COURT: What says the Defense Bantan?

12 MS. HINDS: Please present Ms. Koffler.

13 CLERK OF COURT: And says the Defense Spears?

14 MR. JOHNSON: Be seated, please.

15 CLERK OF COURT: Be seated, please. Juror 176,
16 Gilbert Strock. What says the state?

17 MR. JEFFRIES: Please present Mr. Strock.

18 CLERK OF COURT: What says Defense Bantan?

19 MS. HINDS: Please excuse Mr. Strock.

20 CLERK OF COURT: Juror 105, John Knotts. What says
21 the state?

22 MR. JEFFRIES: Please present Mr. Knotts.

23 CLERK OF COURT: What says the Defense Bantan?

24 MS. HINDS: Excuse me, I thought he had been excused.

25 THE COURT: Yes. I'm so sorry, Mr. Knotts.

1 CLERK OF COURT: I'm sorry. Juror 76, Crystal Hewitt.
2 What says the state?

3 MR. JEFFRIES: What juror number was that?

4 CLERK OF COURT: 76.

5 MR. JEFFRIES: Please excuse the juror for the trial
6 of this case.

7 THE COURT: You're not one of jurors that needs to
8 pick up someone.

9 CLERK OF COURT: She is.

10 THE COURT: Then you must go. If you will, call the
11 clerk's office in the morning.

12 CLERK OF COURT: Juror 49, L.D. Gibson. What says
13 state?

14 MR. JEFFRIES: Please present Mr. Gibson.

15 CLERK OF COURT: What says the Defense Bantan?

16 MS. HINDS: Please present Mr. Gibson.

17 CLERK OF COURT: What says the Defense Spears?

18 MR. JOHNSON: Please seat the juror.

19 CLERK OF COURT: Be seated in the jury box, please.

20 Juror 159, Kathy Saxon. What says the state?

21 MR. JEFFRIES: Please present Ms. Saxon.

22 CLERK OF COURT: What says Defense Bantan?

23 MS. HINDS: Please present Ms. Saxon.

24 CLERK OF COURT: What says the Defense Spears?

25 MR. JOHNSON: Please seat the juror.

1 CLERK OF COURT: Please be seated in the jury box.

2 Juror 51, Bernard Gladden. What says the state?

3 MR. JEFFRIES: Please present Mr. Gladden.

4 CLERK OF COURT: What says the Defense Bantan?

5 MS. HINDS: Please present Mr. Gladden.

6 CLERK OF COURT: What says the Defense Spears?

7 MR. JOHNSON: Please seat the juror.

8 CLERK OF COURT: Please be seated in the jury box.

9 Juror 112, Joy Lawson. What says the state?

10 MR. JEFFRIES: Please present Ms. Lawson.

11 CLERK OF COURT: What says the Defense Bantan?

12 MS. HINDS: Please excuse Ms. Lawson.

13 CLERK OF COURT: Juror 132, Jimmy L. Mitchell. What
14 says the state?

15 MR. JEFFRIES: Please present Mr. Mitchell.

16 CLERK OF COURT: What says the Defense Bantan?

17 MS. HINDS: Please present Mr. Mitchell.

18 CLERK OF COURT: What says Defense Spears?

19 MR. JOHNSON: Please excuse the juror.

20 CLERK OF COURT: You're excused. Juror 66, James H.
21 Hampton. What says the state?

22 MR. JEFFRIES: Please excuse the juror from the trial
23 of this case.

24 CLERK OF COURT: Juror 31, Artie Cokely. What says
25 the state?

1 MR. JEFFRIES: Please present Mr. Cokely.

2 CLERK OF COURT: What says the Defense Bantan?

3 MS. HINDS: Please excuse Mr. Cokely.

4 CLERK OF COURT: Juror 93, Rosella S. Jones.

5 MR. JEFFRIES: What number?

6 CLERK OF COURT: 93. What says the state?

7 MR. JEFFRIES: Please present Ms. Jones.

8 CLERK OF COURT: What says the Defense Bantan?

9 MS. HINDS: Please present Ms. Jones.

10 CLERK OF COURT: What says the Defense Spears?

11 MR. JOHNSON: Please seat the juror.

12 CLERK OF COURT: Juror 64, Tina P. Haigler. What says
13 the state?

14 MR. JEFFRIES: Please present Ms. Haigler.

15 CLERK OF COURT: What says the Defense Bantan?

16 MS. HINDS: Please present Ms. Haigler.

17 CLERK OF COURT: What says the Defense Spears?

18 MR. JOHNSON: Please seat the juror.

19 CLERK OF COURT: Be seated, please. Juror 171, Furman
20 L. Stanfield. What says the state?

21 MR. JEFFRIES: Please present Mr. Stanfield.

22 CLERK OF COURT: What says the Defense Bantan?

23 MS. HINDS: Please present Mr. Stanfield.

24 CLERK OF COURT: What says the Defense Spears?

25 MR. JOHNSON: Please seat the juror.

1 CLERK OF COURT: Be seated in the jury box. Juror 37,
2 Julian L. Cumbee. What says the state?
3 MR. JEFFRIES: Please present Mr. Cumbee.
4 CLERK OF COURT: What says the Defense Bantan?
5 MS. HINDS: Please present Mr. Cumbee.
6 CLERK OF COURT: Says the Defense Spears?
7 MR. JOHNSON: Please seat the juror.
8 CLERK OF COURT: Have a seat in the jury box. Juror
9 147, Ina Pondexter-Snider. What says the state?
10 MR. JEFFRIES: Please present Ms. Snider.
11 CLERK OF COURT: What says the Defense Bantan?
12 MS. HINDS: Beg the court's indulgence.
13 THE COURT: Sure.
14 MS. HINDS: Please present the juror.
15 CLERK OF COURT: Says the Defense Spears?
16 MR. JOHNSON: Please seat the juror.
17 CLERK OF COURT: Be seated in the jury box. Juror 12,
18 Daniel Bolin. Says the state?
19 MR. JEFFRIES: Please present Mr. Bolin.
20 CLERK OF COURT: What says the Defense Bantan?
21 MS. HINDS: Please present Mr. Bolin.
22 CLERK OF COURT: Says the Defense Spears?
23 MR. JOHNSON: Please excuse the juror.
24 CLERK OF COURT: Juror 153, Barbara Robinson. What says
25 the state?

1 MR. JEFFRIES: Please present Ms. Robinson.

2 CLERK OF COURT: What says the Defense Bantan?

3 MS. HINDS: Please excuse Ms. Robinson.

4 CLERK OF COURT: Juror 113, Donna Lloyd. What says the
5 state?

6 MR. JEFFRIES: Please present Ms. Lloyd.

7 CLERK OF COURT: What says the Defense Bantan?

8 MS. HINDS: Please present Ms. Lloyd.

9 CLERK OF COURT: What says the Defense Spears?

10 MR. JOHNSON: Please seat the juror.

11 CLERK OF COURT: Be seated.

12 THE COURT: Alternates.

13 CLERK OF COURT: Two?

14 THE COURT: Two alternates, please: one, two, and two
15 per alternate.

16 CLERK OF COURT: Juror 142, Kevin Pierce.

17 MR. JOHNSON: What number is that?

18 CLERK OF COURT: 142. What says the state?

19 MR. JEFFRIES: Please present Mr. Pierce.

20 CLERK OF COURT: What says the Defense Bantan?

21 MS. HINDS: Please seat Mr. Pierce.

22 CLERK OF COURT: Says the Defense Spears?

23 MR. JOHNSON: Please seat the juror.

24 CLERK OF COURT: Be seated.

25 THE COURT: Alternate two. One, two, and two.

1 CLERK OF COURT: Juror 122, Arthur McFadden. What says
2 the state?

3 MR. JEFFRIES: Please excuse the juror from the trial of
4 this case.

5 CLERK OF COURT: Juror 9, Shirley Benjamin. What says
6 the state?

7 MR. JEFFRIES: Sorry, what number was that?

8 CLERK OF COURT: Number 9.

9 MR. JEFFRIES: Please seat Ms. Benjamin.

10 CLERK OF COURT: What says Defense Bantan?

11 MS. HINDS: Please present Ms. Benjamin.

12 CLERK OF COURT: What says the Defense Spears?

13 MR. JOHNSON: Please seat the juror.

14 CLERK OF COURT: Be seated.

15 THE COURT: Are there any matters regarding the
16 qualification or the selection of the jury from the state?

17 MR. JEFFRIES: None from the state, Your Honor.

18 THE COURT: From Defendant Bantan?

19 MS. HINDS: No, Your Honor.

20 THE COURT: And Defendant Spears?

21 MR. JOHNSON: None from Mr. Spears, Your Honor.

22 THE COURT: Very well. Ladies and gentlemen, you all
23 who are in our audience are known as our remaining jurors.

24 What I am going to ask you to do for me is please call the
25 Juror Information Line after 6:00 tomorrow night, tomorrow

1 night. Not tonight but tomorrow night, and please follow
2 the instruction on that line for you. You will either be
3 asked to return or given some instruction on the line.

4 Ladies and gentlemen, do you all know the juror
5 information number? Do you have that? It should have come
6 to you in your packet. Yes? No? All right, any of you
7 that needs an extra number or you don't -- if it was me, I
8 wouldn't have a clue where it was if it had come in my
9 packet, and I would need to have the juror information
10 number especially given, and I'm so hopeful that we have
11 those. Ms. Claudia, do we have those that we can give to
12 our jurors if they need them? Great. Now, just if you
13 need one, please take one in just a moment as you leave.

14 Now, you can call at 6:01 or 7, or if you are up
15 walking the floor Wednesday morning at 3, please fill free
16 to call at that point, but please follow whatever the
17 instruction is for you.

18 Y'all have been wonderful and so kind and generous
19 with your time, your dear and precious time as we have gone
20 through this process this afternoon, ladies and gentlemen,
21 and I thank you ever so much. And if you will just collect
22 those cards that you need and when you've done that, you
23 are free to go. If you would, do so quietly for us,
24 please. Thank you so much.

25 Ladies and gentlemen, if you all could kind of keep it

1 down for me, I wanted to proceed on and talk to our jury
2 panel.

3 (THE JURY PANEL EXITS.)

4 THE COURT: Now, first of all, ladies and gentlemen, I
5 want to talk about -- has somebody got a pocketbook?

6 JUROR: Yes, my keys.

7 ~~THE COURT: Your keys? Go get your keys.~~

8 Ladies and gentlemen, first of all I want to talk
9 about seating, your seating, and I want to begin by asking.
10 Mr. Pierce, you and Ms. Benjamin, you are our alternates.
11 You've got a whole row of seats to pick from. If you like
12 a seat, keep it; if you don't, try one of these other
13 seats. But I am going to ask both of you, both Mr. Pierce
14 and Ms. Benjamin, if you would just stay there for me on
15 the third row just so I can keep up with you as our
16 alternates. I sure would appreciate that.

17 And, ladies and gentlemen, our law provides that there
18 should be one of our twelve who is our presiding juror.
19 The presiding juror has three additional tasks of our
20 jurors, and they are as follows. The presiding juror will
21 actually take physical possession of the verdict form and
22 write the verdict of the jury on the form following the
23 deliberations, and we will talk more about that when that
24 time has come.

25 The presiding juror is also the jury's spokesperson,

1 and that means that if the jury needs to communicate with
2 me for whatever reason, the presiding juror will take that
3 down, probably in writing, and then give that to our
4 bailiff, who will then give that to me.

5 And finally, the presiding juror presides in the jury
6 room just to be sure that during the deliberations, each
7 and every juror has an opportunity to participate in the
8 deliberation. And those are the additional tasks of the
9 presiding juror.

10 Ladies and gentlemen, the presiding juror will take
11 this seat here closest to the door and keep that seat
12 throughout our trial so that I can keep up with you as our
13 presiding juror. And, Ms. Rosella Jones, Jones -- that's
14 right? -- would you please be so kind as to serve as our
15 presiding juror? Just when you return tomorrow, if you
16 will take that seat and keep it throughout the balance of
17 the trial. I will be so grateful.

18 Now, a little bit of instruction before I release you
19 for the evening. Ladies and gentlemen, each and every time
20 that we leave each other here in the courtroom, I will give
21 you this instruction. Do not discuss this matter and do
22 not allow anyone to discuss it with you. Now, why would I
23 give you such an instruction? It's for this reason.

24 Ladies and gentlemen, we've been trying cases in the
25 United States by juries for well over two hundred years.

1 What we have learned through that experience is that
2 apparently the way that we are put together is that when we
3 begin to talk about something, we begin to make up our
4 mind; we begin to form opinions about it. Ladies and
5 gentlemen, it is absolutely essential that you listen open-
6 mindedly to all of the evidence because obviously it will

7 come in one piece at the time. And it is critical to our
8 system that you are able to listen open-mindedly to
9 everything, to all the evidence and not make up your mind
10 until you have heard all the evidence, the arguments of
11 these lawyers, and of course my charge on the law. So,
12 that's the reason for the instruction, is just to support
13 your ability to listen open-mindedly to all the evidence.

14 Now, you are going to be going home. There is going
15 to be somebody curious about what you have been up to
16 today. Please feel free to tell them yes, you showed back
17 up for your jury service today. Didn't need one of those
18 chauffeur-driven rides to the courthouse. And yes, you
19 were selected to serve on a jury, and yes it is a criminal
20 matter as opposed to a civil matter. But, ladies and
21 gentlemen, beyond that you must not discuss this matter or
22 allow anyone to discuss it with you. But don't you take
23 any upset. You put it on the judge and you tell them that
24 the judge said you can't talk about it.

25 Ladies and gentlemen, don't do any kind of

1 investigation about this matter because you must receive
2 all of the information from which you will make up your
3 mind here in court while court is in session. And that
4 means, ladies and gentlemen, don't do any Colombo. Don't
5 look on the Internet. Don't be looking for information.
6 You will get all the information from here in court while
7 court is in session.

8 Now, I must, and I tell you this in an abundance of
9 caution because I don't know if there will be any kind of
10 publicity about this matter. I don't have any knowledge
11 about that whatsoever. But in an abundance of caution,
12 please do not read anything about this matter. Do not
13 listen to anything about this matter, and that means --
14 let's see, you know we've added the Internet so I have to
15 say in the newspaper, on the radio, on the television, and
16 now we have to say on the Internet. Don't read or listen
17 to something on the Internet. Again, you must receive all
18 of the information from which you will make your decision
19 here in court while court is in session.

20 Now, I do want to tell you about how we're going to be
21 proceeding tomorrow because you all were waiting because I
22 was continuing to do the work that I must do. I must tell
23 you I have not completed my work, ladies and gentlemen, and
24 I must have additional time to do that. So, we are going
25 to begin tomorrow at 11:30, at 11:30.

1 What I am going to ask is I'm going to ask our
2 esteemed bailiff today as you leave just to show you, just
3 to show you the jury room, your jury room, and then to show
4 you how you will come and go from your jury room. And I am
5 going to ask you to please be in your jury room in the
6 morning at 11:30.

7 When you come to court tomorrow, I'm going to give to
8 you some preliminary remarks, and then we are going to get
9 right into the trial of this case, ladies and gentlemen.

10 Now, please be mindful. Do not, do not bring a cell
11 phone or a beeper with you tomorrow or PDA or whatever
12 other communication devices we have today. No iPhones,
13 none of those things because you must not have a cell phone
14 with you or beeper with you while you are serving on the
15 jury. Ladies and gentlemen, we are human. If you forget
16 and you have them with you in the morning, please let me
17 know and Ms. Claudia or Mr. Hasty will take possession of
18 your cell phone. I promise they will not make more than
19 two or three international phone calls.

20 I think Mr. Hasty's daughter just went off to New
21 Hampshire, so that could be a bit of a stretch. But
22 anyway, please if you forget, let us know. We'll just keep
23 it until lunch, and then you all can take it with you and
24 leave it in your car or wherever at lunch.

25 Ladies and gentlemen, I think I've given you the

1 information that I need to. I know that when I say to you
2 do not discuss this matter or allow anyone to discuss it
3 with you, you're going to say well, I haven't heard
4 anything. Well, you've heard a little bit of information.
5 I've read you some of the allegations in the indictment.
6 I've introduced some folks to you, so you've got a tiny bit
7 of information. Because you have that information and a
8 little bit of allegations, I must instruct you: do not
9 discuss this matter or allow anyone to discuss it with you.
10 And please know that I look forward to seeing you in the
11 morning at 11:30.

12 If you will, please show our jury the jury room, and
13 then how to come and go from the jury room. I'll see you
14 at 11:30. You've got to guide them out. You've got to
15 show -- just show our jurors, just show them the jury room
16 and how to come and go. That will be wonderful. Thank
17 you, ladies and gentlemen.

18 (THE JURY EXITS AT 5:36 P.M.)

19 THE COURT: Ladies and gentlemen, it is not my policy
20 to keep court staff late; it's just not. I don't think
21 it's appropriate. It is twenty till 6. We will reconvene
22 in the morning at 9:30, and we will get these matters done
23 by 11:30. Thank you all. Have a good evening.

24 (WHEREUPON, THE CASE IS AT EASE.)

25 WEDNESDAY, OCTOBER 3, 2007

1 (COURT RESUMES AT 9:42 A.M.)

2 THE COURT: Good morning, everyone. When we concluded
3 yesterday with our motions, we were still in the
4 suppression hearing and we had turned to the defense. And
5 I want to be sure that of course you've called all of the
6 witnesses that you wish to call for the suppression
7 hearing. So, Ms. Hinds, Mr. Johnson, I turn it over to
8 you.

9 (A PAUSE.)

10 THE COURT: All right, Ms. Hinds. Yes, Mr. Brown.

11 MR. BROWN: I don't think -- we have no more
12 witnesses. We just have the second motion at this point
13 about the evidence and what we talked about.

14 THE COURT: Absolutely. Mr. Johnson.

15 MR. JOHNSON: Yes.

16 THE COURT: Wouldn't you have any witnesses to present
17 on behalf of Mr. Spears?

18 MR. JOHNSON: I have none as it relates to the search
19 warrant.

20 THE COURT: Yes. I know that there's another
21 suppression hearing that you have witnesses for, or that
22 you've brought.

23 MR. JOHNSON: Right.

24 THE COURT: All right. Very well, you all want to
25 argue, go ahead and argue this suppression hearing? Shall

1 we do that?

2 MS. HINDS: Yes, ma'am.

3 THE COURT: Okay, I'm listening to you.

4 MR. BROWN: Thank you, Your Honor. May it please the
5 court? I think I'm going to start off on the first issue
6 is the entry of the residence of [REDACTED] which
7 was testified to by both Officer Golden and Anna Miranda.
8 Obviously this entry into this residence was a warrantless
9 entry; there was no real warrant to gain entry into this
10 residence.

11 THE COURT: Yes.

12 MR. BROWN: But the testimony of Officer Golden was
13 that he shows up at [REDACTED] knocks on the
14 door. Ms. Miranda comes to the door and he has a
15 conversation with her, and she's the one that consents to
16 him going into the residence. We have a couple of problems
17 with that.

18 First off is I don't believe there's any testimony
19 from Officer Golden that he asked her or inquired whether
20 she was the owner of the house or lived there. So, we have
21 a problem with him having any knowledge or thinking that
22 she had actual ability or authority or any apparent
23 authority to grant him access or consent to access of the
24 house.

25 Besides that, Your Honor, I believe -- at this point I

1 might -- I have an evaluation, psychological evaluation
2 done by Dr. Holmstrom that I'd like to have as a court
3 exhibit for this hearing.

4 THE COURT: Any objection?

5 MR. JEFFRIES: No, Your Honor.

6 THE COURT: Very well.

7 (PSYCHOLOGICAL EVALUATION MARKED AS COURT'S EXHIBIT
8 NUMBER 10.)

9 MR. BROWN: And unfortunately, Your Honor,
10 unfortunately I highlighted some of the things, but I guess
11 those are the things that I want to pay close, close
12 attention to as far as Ms. Miranda.

13 This is an evaluation of Ms. Miranda. A more
14 pertinent point is that Dr. Holmstrom graded her on this,
15 on a full scale of 57. Part of her findings were that her
16 -- the lower end of the upper functioning on her verbal,
17 expressive, and comprehension of social norms and social
18 judgment fall in the 6 to 7 lower level. Also that with
19 regard to her adaptive functioning, that she is not able to
20 engage in normal, normal manner, engage in a normal manner
21 of personal -- that her -- that also that her, some of her
22 deficits have effective -- have an effect in her verbal
23 reception, her understanding of, of what's coming in. I'm
24 assuming that that's what that means.

25 I believe Officer Golden's testimony is that he didn't

1 perceive any sort of mental deficit with her when he talked
2 to her. He had no idea. I think, Your Honor, her
3 demeanor, her testimony yesterday, I find that's a little
4 unbelievable. She does function at extremely low level;
5 her understanding is very low. It would be our position
6 that any consent given by this young lady to enter a house
7 would between, would be, you know, involuntary. Would be
8 taking advantage of a young person or a -- young person,
9 excuse me, but a person of mental deficit to get into the
10 home. She certainly doesn't have the capacity to allow
11 this, and it would be a violation of the client's rights.

12 What is if he -- when he gets in the house -- that's
13 before they actually do the search. The problem we have
14 with it, Your Honor, is once they get in the house, they do
15 obtain some evidence. They, they take, they seized my
16 client. They go into a house, and what our position would
17 be improperly. They seize him. They say they inform him
18 he's a suspect and from that initial entry, they put him on
19 a six-person lineup to show to one of the, one of the
20 alleged victims.

21 That would be kind of our objection to the entry, what
22 we want to suppress. So, I think that that would be, that
23 would be our motion as to the entry of the residence.

24 THE COURT: Just, do you have any position regarding,
25 do you have any concern that Officer Golden and Officer, is

1 it Murphy?

2 MR. BROWN: Murphy.

3 THE COURT: Is it McMurphy or Murphy?

4 MS. FRYAR: It's Murphree.

5 THE COURT: Murphree, Murphree.

6 MS. FRYAR: Yes, ma'am.

7 THE COURT: We have a county counsel member who is
8 Murphree in Dorchester County, and Officer Murphree was
9 from Calhoun.

10 MR. BROWN: As far as knocking on the door.

11 THE COURT: Yes, and entering a house.

12 MR. BROWN: I think with the entering the house,
13 that's, that's probably another issue, but the issue as far
14 as asking for consent to enter two people that don't have
15 jurisdiction, either the county or the Town of Orangeburg,
16 yeah, we'd have a problem with that. They'd be outside
17 their jurisdiction to even ask for a consent, yes, Your
18 Honor.

19 THE COURT: All right, please go ahead.

20 MR. JEFFRIES: Thank you, Your Honor. As to whether
21 or not the officers had authority, I think the testimony
22 was there was also Orangeburg County deputies present when
23 they arrived at the home, asked for a consent to come in.

24 Your Honor, I think what is interesting in this
25 scenario, when we first set out, you know, it was the

1 state's contention that the young lady, Ms. Miranda, gave
2 consent to search, consent to come in. But, in fact, what
3 we found out after the testimony from her was that she
4 actually went and called the defendant and asked if he
5 would consent to have these people come in. The police are
6 at the door. What do you want me to do? Well, let him in.
7 That was their witness who testified that he then told her
8 to let them in. So, in this case we actually have consent
9 from the defendant himself as well as the witness, Ms.
10 Miranda.

11 Your Honor, there's absolutely no authority that says
12 that a Calhoun County deputy cannot in a case like this
13 where they're in almost hot pursuit cannot come to the
14 door, especially when they're assisted by deputies of the
15 jurisdiction when the house is being -- when they're
16 approaching. So, I don't think it's any problem with them
17 coming to the door, ask her whether or not Ms. Miranda is
18 competent.

19 You know, we heard her testimony yesterday. I think
20 that she was more than competent to give consent to come
21 into the house. In fact, she testified that she pays bills
22 at that house. She pays rent. She pays her own bills.
23 She takes care of these children all day, and the court
24 will recall she was savvy enough to be even somewhat coy as
25 Ms. Fryar asked her if she knew the co-defendant Mr.

1 Spears. You know, she was very coy as to how she knew him,
2 and only when asked specifically how she knew him would she
3 finally say yeah, I know him. I know him as Dee. So, I
4 think there's no question that, first of all, she was
5 competent to search.

6 And even further, there's absolutely no reason to
7 believe that Officer Golden would have had any reason to
8 think she was not competent to search. She had the
9 presence of mind to get the children out of the home, the
10 same children that she testifies that she takes care of for
11 the most part. So, as far as her, I don't know that
12 there's any authority that would say that she wouldn't be
13 competent to consent to search.

14 And further, the court accepted testimony Mr. Bantan
15 himself gave consent. He told her to tell them to come on
16 in the house. I don't think there's any question that they
17 had a right to come on in the home.

18 THE COURT: All right. Yes, sir, Mr. Brown.

19 MR. BROWN: Thank you, Your Honor. As far as hot
20 pursuit, I think the testimony was they sat two hours in a,
21 in a hospital parking lot and had no reason to go to this
22 house besides some guy that they don't know his name told
23 them to go there.

24 As far as her being coy, I would just repeat for the
25 record that she has very low, a very difficult type of

1 verbal reception in her understanding and her social -- her
2 understanding and her ability to engage in social skills is
3 a severe deficit.

4 Other problem I have, Your Honor, bringing up about
5 her saying that my client told, told her to let them in.
6 There was no testimony from Officer Golden that there was
7 any interaction between Ms. Miranda and Mr. Bantan. But
8 again our position would be that her testimony may have
9 been affected by her severe mental deficit. That would be
10 it, Your Honor.

11 THE COURT: I think that the entry into the house by
12 the officers was within compliance and would not suppress
13 on that basis for this reason. Interestingly enough, of
14 course under 601 when Ms. Miranda testified yesterday,
15 incompetent witness is not allowed to testify. And the
16 challenge to competency of course must be done by the
17 person offering or opposed to the witness testifying on the
18 basis of competency. So, at least inferentially yesterday
19 both sides thought she was competent to testify, and of
20 course she is presumed competent to testify. So, that
21 would be my first observation.

22 But beyond that, I had an opportunity to listen to her
23 yesterday, and I did so very carefully. I will tell you in
24 all candor, and I realize that I am a *juris* doctor and not
25 a medical doctor and certainly not a psychologist, but I

1 had an excellent opportunity to observe her yesterday. And
2 I agree that once you have listened to her for a while, you
3 certainly notice that there is a -- and she herself
4 described herself as being a little slow, being slow, and
5 she receives SSI for that. While I might describe her as
6 being a little slow, I found her to be very articulate. I
7 found her perceptions to be very clear. I found her
8 testimony, in all candor, to be reliable. So, while I have
9 received as a court's exhibit the evaluation, I think that
10 she was quite capable of giving consent.

11 And while the officers may have noticed that she was a
12 little slow, all of her reactions I thought were very, very
13 reasonable and responsible. One of the things that she was
14 immediately concerned about were those children, protecting
15 those children. And she talked on cross-examination that
16 she was in charge of those children and cared for those
17 kids, and certainly knew who they were, and could go
18 through the little bit of elaborate commentary of who
19 everybody was and the connection with these children and
20 who lived there.

21 I found her quite clear and, in all candor, I found
22 her testimony to be quite reliable. And I would share with
23 you that I think you will see going forward that I have
24 some reliance and have placed some reliance on her
25 testimony as I have thought and considered the events that

1 happened and was, I think, pretty glad she was there
2 because her testimony helped me quite a lot yesterday.

3 So, with regards to her ability to give consent, I
4 think she can give consent; I think she had apparent
5 authority. And certainly beyond that, she did testify
6 yesterday that she got, sought the guidance and help of Mr.
7 Bantan, who gave consent additionally, and she communicated
8 that to the police officers. So, insofar as their entering
9 into the house, I don't find that that was violative.

10 Move along, though, Mr. Brown. Move along in terms of
11 the next step. Not move along in terms of speed it up, but
12 to the next step.

13 MR. BROWN: Your Honor, the next step would be the,
14 the warrantless search, which apparently the testimony was
15 search was done by consent. I think it's clear from the
16 testimony that -- from Todd Williams that -- and from
17 partially Mr. -- from Officer Golden when he entered the
18 house, he entered with -- he didn't, Golden didn't testify
19 that the guns were pointed but they were at least drawn.
20 I'm assuming they were pointed as they entered into the
21 house and they told my client to exit the bedroom, back up
22 down the hallway, put his hands behind his back. They
23 handcuff him, then sit him on the couch.

24 The next step in the testimony is very clear that they
25 asked for the consent to search. And only when he gives

1 the consent to search do they take the handcuffs off. I
2 think clearly that that is coercion.

3 THE COURT: Are you saying, is your argument that that
4 would have overcome Mr. Bantan's will?

5 MR. BROWN: That's correct, Your Honor.

6 THE COURT: Let me hear from the solicitor about that.

7 MR. JEFFRIES: Thank you.

8 THE COURT: What about that?

9 MR. JEFFRIES: Your Honor, first of all, there's been
10 absolutely no testimony there was any coercion in this case
11 from either side. What we heard from one of the witnesses
12 was that he was uncuffed as soon as they realized that he
13 was not the person they were looking for, which was Phillip
14 Spears.

15 THE COURT: No, sir.

16 MR. JEFFRIES: That, that came from Chris Golden.

17 THE COURT: Yes, sir.

18 MR. JEFFRIES: But Todd Williams's testimony would
19 have contradicted that. I don't agreed with that.

20 THE COURT: No, it goes beyond that. Officer Golden
21 admits that he told counsel that the handcuffs were removed
22 after he gave consent. He testified to that yesterday and
23 on cross-examination pretty pointedly: Did you tell counsel
24 that those handcuffs were removed after he gave consent to
25 search? And he said yes. So, I've got two police officers

1 telling me that they had him handcuffed until he gave
2 consent to search.

3 And again Ms. Miranda, when she testified yesterday,
4 she testified a little bit differently because she's got
5 him lying on the sofa with the handcuffs on while they're
6 back in the bedroom. So, I do understand that Officer
7 Golden, one of his stories, one of his stories yesterday
8 was that he had consent to search the bedrooms, yes.

9 MR. JEFFRIES: And, Your Honor, I will also point out
10 that we, talking about what Ms. Miranda said as far as her
11 testimony, one thing Mr. Brown brought up was the question
12 of whether or not there was guns drawn. She clearly said
13 the guns were in the holsters; she said they weren't out.

14 THE COURT: The police officers told me that they were
15 out, and she was outside.

16 MR. JEFFRIES: Well, Your Honor, I point that out
17 because there are inconsistencies on both sides.

18 THE COURT: But I don't know that it's an
19 inconsistency because really to everyone's credit, to the
20 police officers' credit also, they had three children in
21 that mobile home. They had the good sense, and it's one of
22 the things that you're so grateful that everybody stopped
23 long enough to get those children out of the mobile home.
24 And apparently Ms. Miranda and the police officers had the
25 good mind to get those children out. I think the police

1 officers didn't know what they were dealing with. They had
2 the children come out. She took the children out and so,
3 and she talks about the fact that when they came in, she
4 was out. And both police officers told me told me that,
5 you know, they had guns drawn.

6 MR. JEFFRIES: Your Honor, I'd also point out the fact
7 that although the officer testified that they uncuffed him
8 once he gave consent, there's absolutely no testimony that
9 they uncuffed him because he gave consent and said we'll
10 uncuff you if you give consent. There's no testimony there
11 was any coercion. Your Honor, looking at the totality of
12 the circumstances which the court is tasked with, I don't
13 think you can infer coercion just from the fact that they
14 were being detained, or he was being detained.

15 I have case law I would submit to the court along
16 those lines. I beg the court's indulgence. I will point
17 first at State vs. Wallace. It's a Supreme Court case.
18 May I approach, Your Honor?

19 THE COURT: Sure.

20 MR. JEFFRIES: And in State vs. Wallace, a Supreme
21 Court case, the court decided whether a consent to search
22 was voluntary or from duress or coercion, expressed or
23 implied, is a question of fact to be determined from the
24 totality of the circumstances. This was a case in which
25 the testimony indicated that the defendant was -- felt like

1 he was under arrest at the time when he consented because
2 he was not told of his right to refuse consent before he
3 gave it. And the court in that case decided that the
4 search warrant was valid and was not suppressed.

5 Your Honor, I'd also point you to the case of State
6 vs. Battle.

7 THE COURT: Yes, I just read Battle. Now, was the
8 first one you were talking about was ---

9 MR. JEFFRIES: State vs. Wallace.

10 THE COURT: Let me get there real quick. This is
11 great. I have three copies of State vs. Battle; I have
12 four copies of State vs. Battle. I'll bet you meant to
13 give me four cases instead of...

14 MR. JEFFRIES: Oh, I gave you all three copies.

15 THE COURT: I have four of them.

16 (A PAUSE.)

17 MR. JEFFRIES: The reason in that case is it didn't
18 matter whether it was custodial or not custodial. It was
19 still a matter of the totality of the circumstances.

20 THE COURT: Sure.

21 MR. JEFFRIES: And I think the question here is
22 whether or not it's custodial or not custodial, whether he
23 was in cuffs or not. There is absolutely no evidence in
24 record he was coerced. The only question about coercion is
25 the fact that he was cuffed or not cuffed. And I would,

1 you know, maintain that that means he was either in custody
2 or not in custody. And that case indicates that it doesn't
3 matter. It's just a matter of the totality of the
4 circumstances.

5 THE COURT: Yes, this says that the appellant, the
6 defendant, was under arrest. They note he was not under
7 the detention of an illegal arrest. They talk about that,
8 which really isn't relevant here, but it goes on to say
9 custody itself is not enough to invalidate a consent to
10 search. And then it goes on to say:

11 We also note the absence of a show of force here
12 upon arrest, the appellant was not placed in a
13 cell. Nor was he handcuffed. He was merely told
14 to go sit in a designated room. There was no
15 testimony by appellant that he was surrounded by
16 policemen when his consent was requested. The
17 absence of these or similar type factors
18 militates against a finding of coercion.

19 Here's what concerns me. Based on what police
20 officers have told me, we're in a small mobile home. Based
21 on their testimony, both officers have had their guns
22 drawn. They order him to back out and down the hall. He's
23 not the person they think they are looking for. When he
24 comes down the hall with his hands up, they tell him to
25 kneel. Their guns are drawn. Keep his hands up. He

1 apparently complies. They handcuff him, they put him on
2 the sofa, and they are both there. And in accordance with
3 what Officer Williams tells me and then -- I must say there
4 were three stories told by Officer Golden that I counted.
5 There may be more, but I certainly counted three. But
6 certainly after those three stores, he does tell us that he
7 shared with counsel for the defense that he told, that he,
8 Officer Golden, told them that the handcuffs remained on
9 Mr. Bantan until consent to search was obtained. I think
10 that's a pretty strong case of coercion. Yes, sir?

11 MR. JEFFRIES: Your Honor, I'd just point out that
12 wasn't his testimony. It was -- what he was -- Ms. Hinds
13 was asking if that was what he was told -- she was told
14 previously.

15 THE COURT: Right.

16 MR. JEFFRIES: He admitted that he did.

17 THE COURT: Right.

18 MR. JEFFRIES: He admitted that he said some other
19 things that he had then come to them to try to rectify
20 would be his testimony. So, I mean, I think the testimony
21 in this hearing is that he was not cuffed during that
22 period. Now, how that corroborates or doesn't corroborate
23 with Officer Williams I'll leave to the discretion of the
24 court. But I would point out that that wasn't his version
25 as he testified this week.

1 MR. BROWN: And I believe when he told us that, it was
2 the handcuffs were removed after consent, that was during
3 his rectification of the Wednesday statement on Friday.

4 THE COURT: Okay, all right, if I find, Mr. Brown,
5 that there was no consent or that the consent was
6 involuntarily obtained, where are we then?

7 MR. BROWN: Well, we would, first we move to suppress
8 all evidence found or obtained directly during that
9 consent. We would say it was not voluntary consent.

10 Second of all, the other problem we have is that they
11 used the evidence obtained during that consent period --
12 that our position was not voluntary -- to obtain a search
13 warrant, partially obtain a search warrant to search the
14 rest of the house. So, that's where we are. We move to
15 suppress first the evidence that was obtained from during,
16 during the consent period. And that we would want to
17 attack the search warrant and say it's invalid because the
18 items that have been -- the search warrant was improperly
19 obtained.

20 THE COURT: You know what I need to see is I need to
21 see the affidavit. I saw the search warrant but not the
22 affidavit.

23 MR. JEFFRIES: Your Honor, can I respond to that?
24 That's actually right where I'm going.

25 THE COURT: Certainly. Certainly. I want to hear.

1 MR. JEFFRIES: The search warrant return, is that what
2 you said?

3 THE COURT: You know what? I need to see the
4 affidavit.

5 MR. JEFFRIES: The affidavit.

6 THE COURT: Because I haven't seen that.

7 MR. JEFFRIES: And, Your Honor, I'll hand up the
8 affidavit.

9 THE COURT: Okay.

10 MR. JEFFRIES: And my response to that would be first
11 as to the evidence taken during the -- state's position,
12 evidence taken during the consent-to-search period would be
13 the Bi-lo receipt.

14 Now, both officers testified that they also saw
15 several other things in the home, but the only thing they
16 actually retrieved during that search while he consented
17 would be our position was the Bi-lo receipt. They then
18 swear out the affidavit. On the affidavit it lists
19 evidence consistent with the robbery. One of those items
20 is the receipt. You also heard boots. You also heard, I
21 think, the gun. So, those were all items consistent. They
22 then get the search warrant and recover these other items
23 that are listed in the return.

24 It would be the state's position as to the Bi-lo
25 receipt under the legal theory of inevitable discovery is

1 they may -- they've seen this item. They chose to take it
2 at that point, thinking it was taken during the consent.
3 The court believes that they couldn't rightfully take it
4 during that consent period because consent wasn't legally
5 given, they've still taking notice of this. And when they
6 come back with the search warrant, there's no reason to
7 believe they wouldn't have recovered that item after having
8 a valid search warrant. So, it's the state's theory all
9 the evidence comes in anyway from the valid search warrant
10 and inevitable discovery of that receipt.

11 And I apologize. I said the shotgun. I believe it
12 was the boots and the BDUs, the black BDUs that were seen.
13 And I think somebody also testified to seeing some coins.

14 And, Your Honor, also on that affidavit as to probable
15 cause for the search warrant, it's also listed that there's
16 a, you know, two photo lineup identifications, one as to
17 the resident or the individual right there in the home,
18 Titus Bantan. So, again that's more probable cause to
19 support the search warrant when they come back and get
20 everything.

21 THE COURT: Let me point this out also. There is a
22 recent case from the Court of Appeals, and the name of the
23 case is State vs. Davis. The citation for State vs. Davis
24 is 371 SC 412 639, SE 2 d 457. It is a Court of Appeals
25 decision from 2006. State vs. Davis, in that case there

1 was a search warrant that was obtained with -- the court
2 found that:

3 The statement that Davis was positively
4 identified was a deliberate falsehood, or made
5 with the reckless disregard for the truth.

6 And it talks about that satisfies the first element of
7 Franks.

8 But the court went on to say that the remedy when
9 there has been an intentional falsehood, a reckless
10 disregard for the truth, is you simply excise that
11 information from the request for a search warrant. And
12 then you look at the remainder of the information requested
13 for the search warrant. If the remainder is acceptable,
14 then it is a valid search warrant.

15 So, this is what I think would be left in this search
16 warrant:

17 An armed robbery occurred at Bell's Bait and
18 Tackle Shop in Elloree, South Carolina, and a
19 suspect, Phillip Spears, was positively
20 identified by a store clerk from a six photo
21 lineup compiled by SLED. Information was
22 received by officers from the Calhoun County
23 Sheriff's Office that suspect sometimes stayed at
24 [REDACTED] in the City of Orangeburg,
25 so officers responded to that location.

1 Upon arriving at [REDACTED] a second
2 suspect, Titus Bantan, was located and had also
3 been positively identified from a six photo
4 lineup compiled by SLED as one of the armed
5 robbery suspects. Suspect gave verbal consent
6 for officers to search the mobile home where he
7 resides. And after items were found that were
8 consistent with items from the armed robbery, he
9 rescinded the consent.

10 You take out the last sentence in accordance with
11 State vs. Davis, and you are left with the first part of
12 the affidavit. Does that get you where you think you want
13 to be?

14 MR. JEFFRIES: Absolutely, Your Honor. It's the
15 state's position that if you take out that last sentence,
16 you've still have more than enough evidence to support
17 probable cause in order to execute this search warrant at
18 [REDACTED] The search warrant is executed and
19 these are the items found, and it would be the state's
20 position they should come in.

21 THE COURT: Yes, Mr. Brown.

22 MR. BROWN: Beg the court's indulgence.

23 THE COURT: Sure.

24 (COUNSELORS CONFER.)

25 THE COURT: Yes.

1 MR. BROWN: And, Your Honor, here's where it gets
2 really, really confusing because nothing really sits right
3 with me. We have lineup issues also, but I think that, I
4 think we need to put that in front of the court. There are
5 some serious lineup issues.

6 THE COURT: Do you think what I need to do is just
7 withhold my ruling until I've heard that?

8 MR. BROWN: I think so.

9 THE COURT: Because you are concerned that ---

10 MR. BROWN: I don't want to leave that out and then
11 have a ruling.

12 THE COURT: I'm happy to do that; we can do that.

13 MR. JEFFRIES: And, Your Honor, I understand the
14 reason behind that, but I guess the question we're looking
15 at is was there probable cause. Let's, let's assume, and
16 I'm certain. I'm certain, but let's assume both photo
17 lineups are bogus. The question is still is when the judge
18 has probable cause, two photo lineups wherein the suspects
19 have been identified, in that case does that justify a
20 probable cause issue itself? I mean, I think that's what
21 we're looking at when we look at whether or not a search
22 warrant, whether or not from photo IDs, are competent
23 evidence. That's a totally separate issue. While I
24 understand the reasoning, I think it's two separate issues.
25 The question is whether or not the probable cause was

1 existing to justify the search warrant.

2 THE COURT: Let me say this to you. I think you're
3 absolutely correct; I agree with you completely, I really
4 do, Mr. Jeffries. I've got one problem with all of that is
5 I am so concerned about the testimony of Officer Golden and
6 I don't think, I don't know that I would connect those dots
7 except I am so concerned about his testimony, and he was
8 the affiant.

9 Because of that concern that I have, I think that I
10 must hear the underlying evidence with regards to those
11 lineups. I don't know that I would do that except that I
12 am so concerned about that testimony. And that is the sole
13 reason that I think it is appropriate at this point that I
14 would hold my determination really. So, that's where we
15 are.

16 So, I think what I want to do is I know that we need
17 to have the hearings with regards to the lineups. I know
18 we've got the suppression hearing on the gun. Mr. Johnson,
19 you shared that with me. I know we've got some folks here
20 from SLED, is that right, for that?

21 MR. JOHNSON: That's correct, Your Honor.

22 THE COURT: And we've got to get to all of it, so I'm
23 going to leave it to you all what is appropriate to go
24 next. You want to do the SLED folks next, or do you want
25 to go into the lineup?

1 MR. JEFFRIES: It would be the state's position we'd
2 like to take up Mr. Johnson's motion on the suppression
3 hearing.

4 THE COURT: Sure. Sure.

5 MR. JOHNSON: If it pleases the court?

6 THE COURT: Yes.

7 MR. JOHNSON: Your Honor, my motion on the gun is that
8 there was a gun when my client was arrested in North
9 Carolina. There was a gun found under a bed in the bedroom
10 where my client was arrested. The state has brought the
11 gun back and is implying, or the assumption that they
12 intend to say that this is the gun that was used during the
13 robbery.

14 My client was not arrested until the 9th, which is
15 three days after. There was a young lady at the residence
16 where my client was located who told the police that the gun
17 belonged to her, and that my client may have had access to
18 the gun.

19 And it's our position that if the state enters the gun
20 in this case, it's just an attempt by the state to then
21 indicate to the jury that this is the gun that was used in
22 the robbery. It would be our position that it would be
23 overly prejudicial; it would serve no probative value.
24 That the prejudicial effect outweighs the probative.

25 As well, Your Honor, there's also a standing issue

1 that my client was not charged with an unlawful possession
2 of a handgun because if he was charged with that, then that
3 would be a charge for North Carolina because that's where
4 the gun was found near my client. And, therefore, there is
5 no issues of fact that relates to that, to the
6 jurisdictional issue as far as the gun at the scene.

7 But there is clear evidence that, even if the state
8 puts up the SLED agent, he would testify that he found the
9 gun under a bed out of sight in the area where my client
10 was. But short of that, there are two different
11 descriptions of the gun. And our position, once again,
12 that the probative value is -- that the prejudicial effect
13 outweighs the probative value.

14 THE COURT: Okay. Yes, sir.

15 MR. JEFFRIES: Your Honor, I will just disagree as the
16 probative value versus the prejudicial effect and say I
17 understand what Mr. Johnson is saying. But I think it all
18 goes to the weight of the evidence more so than it does to
19 admissibility. It would be the state's position, kind of
20 going back to where we started on Monday with regard to the
21 search warrant. Again, I know they're entitled to a
22 suppression hearing, and you have to articulate specific
23 factual, legal grounds.

24 It's state's position that the gun was found at Kim
25 Cherry's at a place the defendant -- connected the

1 defendant to. The gun was found within arm's reach of
2 where the defendant was then located and taken into
3 custody. We have a witness available to testify that the
4 -- actually, I won't go into that.

5 But, Your Honor, I think the gun matches the general
6 description of the gun used. The gun is found in close
7 proximity to the defendant in a location where he's found
8 based on cell phone research. All that being said, any
9 question as to whether or not that's his gun, and I have
10 questions as to whether or not that's his gun, goes to the
11 weight more so than admissibility.

12 All of the court's -- all of the state's evidence is
13 prejudicial. That's the nature of the state's evidence.
14 As far as it being more prejudicial, I just don't see how
15 it would be in this case where he's charged with robbing a
16 store with a gun, is found with a gun.

17 THE COURT: Let me ask you this question. Is the fact
18 that Mr. Spears is found with a gun no more, no less
19 relevant to this case?

20 MR. JEFFRIES: I believe it is, Your Honor. I believe
21 it's relevant from the standpoint of -- the inference could
22 be made that that's the gun used in the robbery.

23 THE COURT: Because ---

24 MR. JEFFRIES: It matches the general description of a
25 semiautomatic.

1 THE COURT: Now, that's different; see, I think that's
2 different. I think at the point in time when you say that
3 this gun matches the general description of a gun used,
4 that's a different circumstance, and you've tied it back.
5 Do you see what I'm saying? I mean, I don't know that the
6 fact he has a gun when he is found in and of itself is
7 relevant to these issues. But I do think when you tie that
8 back to the fact that it, the gun, matches the general
9 description, that's an entirely different situation.

10 MR. JEFFRIES: I understand what you're saying.

11 THE COURT: You see what I'm saying?

12 MR. JEFFRIES: I understand what you're saying.

13 THE COURT: Because otherwise you're just -- it's like
14 you know that you want the jury to get a sense that this is
15 a dangerous person versus this is the weapon that involved.
16 And what you are telling me is that the gun that he's found
17 with matched the general description. What about that, Mr.
18 Johnson?

19 MR. JEFFRIES: The point I was making by saying how
20 close in proximity was just that it inferred ownership of
21 that gun and not so much that, oh, he had a gun. He was
22 going to harm the police as much as an inference to be made
23 that he possessed that gun that was so close.

24 THE COURT: Possession.

25 MR. JOHNSON: It's, Your Honor, my position that it

1 doesn't match the description of the gun. My client is
2 alleged to be first that -- the two individuals that robbed
3 the store, the witnesses, Mr. J.K. -- how do you pronounce
4 it?

5 MS. FRYAR: Bourgeois.

6 MR. JOHNSON: Bourgeois, he -- the person that
7 they're, that the state has implicated as my client, Mr.
8 Bourgeois called the person, the person who goes in the
9 back and bring them out of the back, he says that in his
10 own, in his own statement says that that person had a
11 silver automatic with black trim. If you look at the gun,
12 the gun is a black gun. It doesn't match the description.
13 It is not -- as he said, he has some questions about it,
14 and that's my point, Your Honor. It requires the jury to
15 speculate, and the jury is not allowed to speculate. It
16 has no inference.

17 The state -- the charges brought against my client is
18 unlawful possession of a handgun during the commission of a
19 crime. The state can prove that by, supposedly by the
20 eyewitness testimony that the person had a gun. The gun
21 has no relevant issue here except to be prejudicial towards
22 my client.

23 THE COURT: I understand.

24 MR. JEFFRIES: Your Honor, again I think the arguments
25 Mr. Johnson makes goes to the weight of the evidence. Just

1 for the record, this gun: black gun, silver trim. So, I
2 mean, it's consistent with what he just said.

3 MR. JOHNSON: I said it was a silver gun with black
4 trim.

5 MR. JEFFRIES: And this is a black gun with silver
6 trim. Again, that goes to the weight of the evidence. I
7 feel quite certain Mr. Johnson's going to get up there and
8 want to put this gun in and tell the jury how it doesn't
9 match that. So, that's fine, but the question is whether
10 or not it's admissible. I don't ---

11 THE COURT: Can you do me a favor? Hold it like
12 you're holding, but go ahead and hold the handle and let me
13 see the end of it. There you go.

14 MR. JEFFRIES: You want to see the end?

15 THE COURT: There you go. Okay, yes. Got it. Have
16 you got a trigger lock?

17 MR. JOHNSON: I've got case law on how to handle that
18 that I need to review before we do anything in court.

19 THE COURT: I got it.

20 MR. JOHNSON: Your Honor, if I could just address the
21 court on one other point?

22 THE COURT: Sure. Of course, Mr. Johnson.

23 MR. JOHNSON: There was no fingerprints found. There
24 was shells in the gun; there was no ballistics done. There
25 is nothing else connecting my client to that gun at all, as

1 well as I think the testimony is that the young lady stated
2 that that's her gun.

3 THE COURT: I understand. Well, this will be the
4 ruling of the court. I'm not going to exclude it at this
5 juncture. I think, based upon what I have heard, there is
6 sufficient evidence if it all comes to fruition that the
7 state will be able to establish a foundation, and it is
8 relevant and I would allow it. So, I won't exclude it with
9 a motion to suppress and a motion *in limine*. If that
10 changes during the time of trial, let me know, gentlemen.
11 In other words, if they can't lay the foundation, then it
12 isn't going to come in.

13 MR. JOHNSON: My only concern, Your Honor, is that the
14 state is its opening would say that they found a gun with
15 my client.

16 THE COURT: Yes, and I'll bet if that happens and it
17 doesn't come in, that you will be telling that jury in your
18 closing that they told you they were going to do some
19 things, and they didn't do it. And you'd probably argue
20 that in and of itself is reasonable doubt.

21 MR. JOHNSON: Your Honor, it's my position that I ask
22 the court to reconsider or at least allow the SLED agent to
23 testify concerning the gun and where it was found, as well
24 as allow the witness who identified the gun to identify it,
25 what he said. And I think -- my point is that once the

1 jury hears a gun, it in effect is the gun, Your Honor. I
2 can argue all I want, but they've heard that there's a gun.

3 THE COURT: That's true. I've had a proffer from
4 counsel with regard to the victim. I've had a proffer of
5 counsel and I, of course, I am allowed to rely on that
6 proffer, and you have a statement from the witness. And
7 what I'm hearing from you all is that that's consistent.
8 That the victim will say that he saw a silver gun.

9 MR. JOHNSON: No. No, Your Honor.

10 THE COURT: Okay.

11 MR. JOHNSON: The victim, I have the statement here
12 and I would like the court to read.

13 THE COURT: Okay.

14 (A PAUSE.)

15 THE COURT: Yes, okay.

16 MR. JOHNSON: And it's my position, Judge, that this
17 statement as stated, that it's a silver automatic.

18 THE COURT: With black trim.

19 MR. JOHNSON: With black trim. That gun is clearly,
20 when you hold it in your hand, it's all black.

21 THE COURT: No, it's not. It has trim; it has silver
22 on it.

23 MR. JOHNSON: As I said, when you hold it in your
24 hand, Your Honor, there's no...

25 MR. JEFFRIES: Your Honor, again it would be my

1 position it goes to the weight of the evidence, not the
2 admissibility.

3 THE COURT: I agree. I agree.

4 MR. JOHNSON: Thank you, Your Honor.

5 THE COURT: Yes, yes, and again if I may just mention
6 we've got to put a trigger lock on the gun. And I
7 apologize because I usually in my little handy, dandy black
8 bag, I normally carry the trigger lock. And let me tell
9 you what I'm satisfied with are those little plastic -- you
10 know, young people hold all their wires together and all
11 their computer stuff oftentimes, and it's just one of those
12 little plastic things that goes through and you can pull
13 it. We put up Chanukah decorations around my house with
14 it, but I usually have those with me. I apologize but I
15 don't, and that is certainly sufficient. We ought to be
16 able to pick up one of those from the Five & Dime right
17 here in town. It's very simple, but I do want to have a
18 gun, a trigger lock on it.

19 The other thing, let me just instruct everyone,
20 particularly the solicitor because I'm less concerned about
21 defense counsel doing that, and I do this in an abundance
22 caution. Don't point it at the jury. I know I don't have
23 to worry about that with you guys, but I just, I really do
24 that as a reminder.

25 MR. JEFFRIES: I'm trying to think the last trial, the

1 last case I tried involved a weapon, and we actually pulled
2 the law that I wasn't aware of: not pointing it at the
3 jury. Also I think anyone intends in using it in closing,
4 court needs to be aware of it first, and I'll bring the
5 case with me tomorrow. There's some other pretty specific
6 law as to having a weapon in the courtroom.

7 THE COURT: That was me, and I have guidelines about
8 having a weapon in the courtroom, and it is printed and I
9 had about fifteen of them in my hand on Friday and did I
10 put them with my briefcase? I did not, but that's the
11 major part of what concerns me, and if I can just share it?
12 I don't want the jury to have an independent emotional
13 reaction to the gun. That's why I say don't point it at
14 them because that, I think that injects extraneous matters
15 to the jury. I think once it's opened, the breach is
16 opened. I just saw Investigator Whetstone do that. And
17 once you have got a trigger lock on it, as long as nobody
18 points it at them, we're fine.

19 (A PAUSE.)

20 THE COURT: All right, and I'm noting the exception of
21 the defendant to me not excluding it in limine and
22 suppressing it.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: But of course you renew that at the time
25 of trial certainly if the foundation fails.

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1 All right, next. Now, we're going to do?

2 MS. FRYAR: Do you need to hear from the SLED agents
3 on that or not, Your Honor?

4 THE COURT: As I understand the proffer, the proffer
5 has been that this weapon was located within arm's reach of
6 Defendant Spears at the time of the arrest has been the
7 proffer.

8 MR. JOHNSON: I disagree with that assessment, Your
9 Honor.

10 THE COURT: All right, well then I will call him.
11 I'll be happy to receive him and be sure that I have a
12 proffer. Go ahead and call him.

13 MR. JEFFRIES: The state calls Keith Johnson,
14 Lieutenant Keith Johnson, of the South Carolina Law
15 Enforcement Division.

16 *PROFFERED TESTIMONY*

17 DONALD KEITH JOHNSON, BEING DULY
18 SWORN, TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Please state your full name for the
20 record.

21 WITNESS: Donald K. Johnson.

22 THE COURT: Your witness.

23 MR. JEFFRIES: Thank you, Your Honor.

24 DIRECT EXAMINATION BY MR. JEFFRIES:

25 Q. Lieutenant Johnson, where are you employed?

1 A. State Law Enforcement Division.

2 Q. Is that commonly known as SLED?

3 A. Yes, sir.

4 Q. And what type of agency is the South Carolina Law
5 Enforcement Division?

6 A. We basically investigate, see if we can provide
7 resources, assets, resources, manpower to local and county
8 jurisdictions that request assistance.

9 Q. And how long you been with SLED?

10 A. 12th of this month is twenty-nine years.

11 Q. And let me cut right to it. Did you have the
12 opportunity to assist in the investigation of an armed
13 robbery of the Wagon Wheel in Elloree, South Carolina?

14 A. I did, sir.

15 Q. And was that back in October of -- November of 2006?

16 A. It was, sir.

17 Q. And tell the court what your involvement in the
18 investigation was.

19 A. We were contacted by Captain Tim Stephenson, who
20 requested assistance with the location and apprehension of
21 a fugitive.

22 Q. And what was the name of the fugitive y'all were ---

23 A. Mr. Spears.

24 Q. Did you have a name?

25 A. Mr. Spears.

D.K. JOHNSON - DIRECT EXAMINATION BY MR. JEFFRIES

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1 Q. Okay, and what steps did you take to try to locate and
2 apprehend Mr. Spears in general?

3 A. We began with historical information in the cell phone
4 records is where we began. We were able to identify
5 through some of those records and some independent sources
6 that Mr. Spears has an acquaintance or an associate in
7 Charlotte, North Carolina.

8 Q. Without going through the entire investigation, did
9 you ultimately locate the suspect, Phillip Spears?

10 A. We did that.

11 Q. And where was that?

12 A. At Ms. Kimberly Cherry's residence in Charlotte, North
13 Carolina.

14 Q. And did you speak to Ms. Cherry at that location?

15 A. I did. We, we obviously had no arrest record in
16 Charlotte. We coordinated and contacted Mecklenburg
17 Sheriff's Office, who most graciously always provides us
18 numerous people.

19 We went there. Ms. Cherry was initially contacted by
20 Mecklenburg County Sheriff's Office with us in attendance.
21 She agreed to talk to law enforcement, agreed to speak to
22 me specifically.

23 Q. And if you could, tell the court how you went about
24 apprehending the suspect, Mr. Spears.

25 A. I showed Ms. Cherry a photograph of Mr. Spears from

1 the warrant and asked her if she knew Mr. Spears. She said
2 that she did, in fact, know him. Asked if he was there in
3 the residence. She said he was; he was in the back of the
4 residence in the bedroom.

5 Q. And did you find him in that bedroom?

6 A. He was, sir.

7 Q. And was he taken into custody?

8 A. He was by Mecklenburg County Sheriff's Office.

9 Q. And what, if anything else, was found on that bedroom?

10 A. On entering the bedroom, as -- in conversation with
11 Ms. Cherry, who was most gracious through the whole thing,
12 but in conversation with Ms. Cherry, I asked if there was a
13 weapon in the room, and said yes, there was. And asked her
14 where it was, and she said it was in the bed.

15 When we walked into the room, Mr. Spears had a towel
16 around him. Said that he had been in the shower. He
17 initially was seen by other deputies and other agents at
18 the back window as if he were attempting to go out the back
19 window. So, it expedited things a little bit. Mecklenburg
20 County, we moved at little faster than we normally would,
21 knowing that the weapon was in the, was in the room with
22 him.

23 On getting into the room, Mecklenburg County was ahead
24 of me in getting into the room. Mr. Spears was there. Had
25 a towel around him. He was standing right inside the door

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1 of the bathroom. His cell phone was dismantled and sitting
2 on the chest of drawers right in front of him. The battery
3 was out; the back was off of it. It was essentially
4 dismantled, and then standing right there next to the bed,
5 we're trying to separate him from where she told me the
6 weapon was. Mecklenburg County took him into custody, and
7 I picked up a pillow, and pistol was just up underneath
8 that.

9 Q. And where was he in relation to that pillow where the
10 gun was found?

11 A. Arm's length, that far.

12 Q. And you testified that Ms. Cherry was the one that
13 actually told you that there was a gun back there?

14 A. Yes, she did. I asked her, and she specifically
15 answered that.

16 Q. Did you inquire her as to whose gun it was?

17 A. I did not, but she said that she -- somewhere in
18 conversation, she said it was hers.

19 Q. And did she -- did you inquire as to whether or not
20 the suspect, Phillip Spears, had access to that weapon?

21 A. He had ready access to it. There's no question. It
22 was my understanding that he lived there, and that was the
23 room in which he slept in.

24 Q. Okay, and that's my next question. Was that the room
25 that he indicated ---

1 A. His things were there.

2 Q. Okay. What, if you recall, what, if any, personal
3 items were in that room?

4 A. Clothes.

5 Q. And that spot where you indicated he was seated next
6 to the window, where is that in relation to the -- where
7 the pistol was found?

8 A. The bed's here, the bathroom door's here, and the
9 window, you're looking out the window. It's not three feet
10 from where the -- the window's between the bed and the
11 bathroom door.

12 Q. And I think you indicated he had a towel on. How else
13 did he present himself when you found him?

14 A. He wasn't wet. I just remember, I just recall he
15 wasn't wet. He said that he'd been in the shower, but he
16 wasn't wet.

17 Q. Now, when you arrived at the location that you
18 testified you spoke to Ms. Cherry and you didn't have an
19 arrest warrant because you were out, out of your
20 jurisdiction?

21 A. No question. Mr. Spears had been entered into NCIC,
22 though, as a wanted person.

23 Q. Okay. Did you ask Ms. Cherry for consent to come in?

24 A. She did. She readily offered it.

25 Q. And did you ask her after you had taken custody of the

D.K. JOHNSON - CROSS-EXAMINATION BY MR. JOHNSON

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1 gun, did she indicate it was hers?

2 A. She did.

3 Q. Did she consent to give you the gun?

4 A. She did, right then.

5 MR. JEFFRIES: That's all I'd have. Please answer any
6 questions anybody may have.

7 THE COURT: Cross-examination, Mr. Johnson?

8 MR. JOHNSON: Thank you, Judge.

9 CROSS-EXAMINATION BY MR. JOHNSON:

10 Q. Good morning, Officer.

11 A. How are you, sir?

12 Q. Officer, I'm going to ask you to remember. You
13 actually arrested my client twice.

14 A. That's correct.

15 Q. At the same location.

16 A. That's correct.

17 Q. Could you please think about this? Isn't the second
18 time that you arrested him was the time that he was
19 actually coming out of the shower?

20 A. No, sir, I don't think so.

21 Q. Isn't the first time you arrested him when he was
22 actually standing in the bathroom with all his clothes on?

23 A. No, sir. I think I would have remembered that.

24 Q. But the first time -- you arrested him twice. The
25 second time you arrested him, he was in the house. Is that

1 correct?

2 A. He was in the house both times, yes, sir.

3 Q. Where was he the second time?

4 A. I think he was in that same room, but keep in mind,
5 Mr. Johnson. I'm behind Mecklenburg County. They're in
6 the house. You know, they were taking custody and control
7 of him right then. You know, I wouldn't have, I wouldn't
8 see him until they walked him back out.

9 Q. I understand, but I'm just asking you because it's
10 kind of important you were saying about the -- he had a
11 towel on.

12 A. Yes, sir.

13 Q. And I'm trying to see if you may have gotten confused
14 whether it was the first or the second time.

15 A. No, sir. The second time he resisted, he resisted
16 with, you know, some substance the second time and had to
17 be, had to be restrained by Mecklenburg County. He wasn't
18 wearing a towel then.

19 Q. Let me ask you this.

20 A. Yes, sir.

21 Q. The gun was under -- was in the bed?

22 A. Yes, sir.

23 Q. And it was under the mattress?

24 A. Yes, sir.

25 Q. He was standing by a window?

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1 A. Yes, sir.

2 Q. And the window was between the mattress, was between
3 -- was under the mattress and he was standing on the other
4 side of the window, and the window was between him and the
5 bed?

6 A. Yes, sir, and I think, and I think we're talking about
7 exactly the same thing, Mr. Johnson, is if, if you're
8 facing it, if this is the bed.

9 Q. Right.

10 A. This is the bed here. This is the bathroom door.

11 Q. Right.

12 A. And then there's a window in the wall right here.

13 Q. Right there?

14 A. Yes, sir.

15 Q. So, it was more than an arm-length away?

16 A. No, sir, not at all.

17 Q. What's the standard length of a window?

18 A. I wouldn't have any idea, sir.

19 Q. Was it a standard window?

20 A. To my knowledge, it would be a standard window.

21 Q. And he was clearly on the other side of the window?

22 A. I'm telling you it's an arm-length away. I mean, I
23 could touch the bathroom door and I could touch the bed
24 with, with both hands.

25 Q. And the gun was up under the mattress?

1 A. That's correct.

2 Q. And the young lady that was there, Kimberly Cherry.

3 A. Yes, sir.

4 Q. She -- let's, let's explain this. You actually
5 arrested him first, and you didn't get a gun right then,
6 did you?

7 A. No. I took it right then just as soon as they brought
8 it back out of there. We picked the gun up while the --
9 but it was for officer safety at the time.

10 Q. No, what I'm saying is as soon as you took him out,
11 you talked to Ms. Cherry and she told you there was a gun
12 back there?

13 A. No, sir. She told us the gun was there before we went
14 into the house.

15 Q. And she told -- did she tell you that he had taken a
16 gun, that she knew he had a gun?

17 A. No, sir. She did not.

18 Q. And did she indicate that she had seen him leave with
19 the gun?

20 A. She did not.

21 Q. Did she indicate that he had the gun?

22 A. She told me there was a, there was a gun in the room.

23 Q. In the room?

24 A. Yes, sir.

25 Q. And she told you it was her gun?

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1 A. She did.

2 Q. You said that, you mentioned that he wasn't wet when
3 he was with the towel?

4 A. Yes, sir.

5 Q. What did he use the towel for?

6 A. I have no idea.

7 Q. Do you dry yourself off when you take a shower?

8 A. The towel wasn't wet; nothing was wet.

9 Q. You didn't mention the towel wasn't.

10 MR. JOHNSON: No other questions.

11 WITNESS: I appreciate your refreshing my memory, sir.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION BY MR. JEFFRIES:

14 Q. Let me just be clear. Was the gun found under the
15 mattress or under the pillow?

16 A. Under the mattress.

17 Q. Okay, and the gun we're referring to, let me show you.

18 (PISTOL MARKED AS STATE'S EXHIBIT NUMBER 6 FOR ID.)

19 COURT REPORTER: State's 6 for ID.

20 THE COURT: Thank you.

21 BY MR. JEFFRIES:

22 Q. Well, I'm going to first ask you. The weapon we're
23 referring to, let me ask you. Do you recognize this,
24 State's Exhibit Number 6?

25 A. It appears to be same type of weapon that I took from

1 underneath the mattress.

2 Q. What, if anything, would assist you in being sure if
3 it's the gun or not?

4 A. Just the serial number from the case file.

5 (A PAUSE.)

6 Q. Let me show you this and ask if you recognize it.

7 A. This is the chain of custody filled out by me in my
8 handwriting.

9 Q. And would that document assist you in refreshing your
10 recollection as to the serial number on the gun?

11 A. It will, sir.

12 Q. And let me ask you to refer to that and refresh
13 yourself and ask if that's the same weapon you took custody
14 of that day back in October -- November of 2006.

15 MR. JOHNSON: Your Honor? Well, I guess it's a motion
16 hearing, so I guess I need to make the objection that this
17 is not in direct evidence of my cross that he's talking
18 about now. He talking to a whole different area that
19 wasn't related to his direct.

20 THE COURT: Overruled.

21 BY MR. JEFFRIES:

22 A. It is, sir.

23 MR. JEFFRIES: Your Honor, I apologize. I didn't hear
24 if you ruled or not.

25 THE COURT: Overruled.

D.K. JOHNSON - RECROSS-EXAMINATION BY MR. JOHNSON

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1 MR. JEFFRIES: All right.

2 BY MR. JEFFRIES:

3 Q. I'm sorry, and your answer to that question?

4 A. That's the, that the same pistol I retrieved from
5 under the mattress in the bedroom.

6 MR. JEFFRIES: Thank you. That's all I have.

7 THE COURT: Recross?

8 RECROSS-EXAMINATION BY MR. JOHNSON:

9 Q. Officer, when you, when you went, when you went into
10 the room, you actually wasn't the arresting officer because
11 Mecklenburg County officers actually went ahead of you,
12 right?

13 A. That's correct.

14 Q. So, you don't know how close he was standing when you
15 first got there because you had officers in front of you.

16 A. In the length of a room. I could see his feet. I
17 could see -- no, sir, I'm confident of where he was
18 standing when we came in, but you are correct. Mecklenburg
19 officers were there in front of us, but I saw where he was
20 standing.

21 Q. But they was actually, they entered the room before
22 you, so you don't know where he was standing initially
23 before the officers came in, do you?

24 A. He wouldn't have had time to move at all; it was that
25 quick. I'm confident of where he was standing when we

1 entered the room.

2 Q. But you have no personal knowledge yourself. You just
3 base this on your belief in your confidence. You didn't
4 see.

5 A. Sir, he had no time to move from where he was.

6 Q. That's not what I asked you. You didn't see, did you?

7 A. Of where he was standing when we came in the room?

8 Q. When the officer -- that first officer that wasn't
9 you?

10 A. Right.

11 Q. You didn't see where he was standing, did you?

12 A. He could move, and I'm a step behind him.

13 Q. That is not what I'm asking. I'm asking you if he ---

14 A. Mr. Johnson, I get -- I understand what you're asking
15 me, but I'm confident in my answer.

16 Q. I'm asking you did you see him?

17 A. Okay, I saw where he was standing when we entered the
18 room.

19 Q. When you got into the room, but there was officers ---

20 A. Yes, sir.

21 Q. --- that went before you?

22 A. Two. That's correct.

23 Q. Into that room?

24 A. That's correct.

25 Q. That would have seen him before you?

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1 A. Okay.

2 Q. And you did not see where he was standing. You could
3 not have seen where he was standing because of the officers
4 that went in before you.

5 A. Okay, well, it's a good point, but I'm confident in my
6 answer.

7 MR. JOHNSON: No other questions.

8 THE COURT: All right, thank you. You may come down.

9 (THE WITNESS EXITS THE STAND.)

10 *END OF PROFFERED TESTIMONY*

11 THE COURT: Anything further?

12 MR. JEFFRIES: Nothing from the state on this matter,
13 Your Honor.

14 THE COURT: All right, very well. Yes, sir, Mr.
15 Johnson, anything further?

16 MR. JOHNSON: Just, just for the record, Your Honor.

17 THE COURT: Sure.

18 MR. JOHNSON: My motion is this. That there is
19 evidence that the gun was up under the bed belonged to
20 another individual. She did not indicate that he had the
21 gun. There is no indication that he had the gun. There's
22 no fingerprints found. There's nothing.

23 There's officers that went into the room prior to this
24 officer. This officer based his observations on what he
25 observed when he entered the room and where my client was

1 at that time. To say then that he was in a arm reach of a
2 gun I think is a stretch. And as he said, he's quite
3 certain.

4 And once again, Your Honor, that's my whole point
5 about allowing the gun in. It allows the jury then to
6 speculate, and I think the jury should not be allowed to
7 speculate. This gun has no relevance to -- it, it's not,
8 it definitely is not a significant issue for the state to
9 prove their case. And it can only prejudice, prejudice my
10 client, and it has no probative value.

11 THE COURT: Thank you, Mr. Johnson. I think it goes
12 to the weight rather than the admissibility, and I would
13 deny your motion to suppress it *in limine*.

14 What else do we have? We've got the lineup. Let's do
15 them.

16 MS. FRYAR: May Lieutenant Johnson be excused from
17 SLED, Your Honor?

18 MR. JOHNSON: I have no objection.

19 THE COURT: Okay.

20 MS. FRYAR: Not excused entirely. Just for today.

21 THE COURT: Not forever. Just for now.

22 LIEUTENANT JOHNSON: Yes, ma'am. Yes, ma'am.

23 THE COURT: Thank you.

24 MS. FRYAR: Your Honor, I understand that the, that
25 the defense is making a motion that the photo lineups be

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1 suppressed and ask that -- we're prepared to go forward
2 with the Neil vs. Biggers hearing at this time.

3 THE COURT: Yes.

4 MS. FRYAR: Our first witness would be Ms. Natasha
5 Rivers.

6 THE COURT: Very well.

7 NATASHA C. RIVERS, BEING DULY
8 SWORN, TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please have a seat. State your full
10 name for the record.

11 WITNESS: Natasha C. Rivers.

12 CLERK OF COURT: Okay, if you would pull the mic close
13 to you.

14 THE COURT: Your witness.

15 MS. FRYAR: Thank you, Your Honor.

16 DIRECT EXAMINATION BY MS. FRYAR:

17 Q. Ms. Rivers, where were you working on November 6,
18 2006?

19 A. Bell's Wagon Wheel.

20 Q. All right, we're going to have a little trouble
21 hearing.

22 THE COURT: Yes.

23 Q. We'll have to get you -- get right up there for us.
24 Thank you, and what were you doing that morning? Where
25 were you working?

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1 A. Right behind the counter putting up inventory we just
2 got in.

3 Q. Okay. Are you the cashier of this establishment?

4 A. Yes, ma'am.

5 Q. All right. Could you tell the judge what happened
6 that morning and about what time?

7 A. About between 9 and 10 that morning, we was just --

8 Mr. Bourgeois and his other workers just returned to the

9 store. It was an inventory they picked up from H.D.

10 Hackney and ---

11 Q. Go slow, please, Ms. Rivers.

12 MR. JOHNSON: Excuse me, Your Honor, we're ---

13 THE COURT: You're having trouble hearing?

14 MR. JOHNSON: Well, I can't see her very well, and
15 that's...

16 THE COURT: Yes, I agree. What do you think we can do
17 to remedy?

18 MR. JOHNSON: I guess, Your Honor, I'd have to, I
19 guess I can stand. I guess I can stand behind when they
20 testify, but my -- I guess it's too late to bring it up
21 now, but my concern is I think my client has a right to be
22 able to see her as well.

23 MS. FRYAR: Scoot up, Ms. Rivers.

24 THE COURT: Let me ask you this question. I noticed
25 that the computer is there. Is that blocking? If we

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1 remove the computer on this desk, how would that work?

2 MR. JOHNSON: It might help, but I think the main
3 thing that I'd have a problem with is the height of the ---

4 THE COURT: The height of the bench, all right. Well,
5 let's just see. Ms. Rivers, I'm sorry, you're kind of
6 being our model here as we go through this. Would this
7 chair move? Does the chair move?

8 CLERK OF COURT: No, ma'am. It is stationary.

9 THE COURT: It doesn't move. That's tough.

10 MR. JOHNSON: I think I'll attempt to stand, Your
11 Honor, and if my client needs to, if it's okay with the
12 court, maybe he can just stand if he wants to. But I can
13 stand in the back back there.

14 THE COURT: Well, I don't, you know, obviously want
15 him walking around the courtroom.

16 MR. JOHNSON: Right.

17 THE COURT: And, but ---

18 MR. JOHNSON: I'll ---

19 THE COURT: --- he ought to be able to see from where
20 he is. Now, that computer may be blocking his view. Just
21 ask him if the computer is blocking. It is blocking your
22 view, isn't it?

23 MR. JOHNSON: Well, he says he's okay if I stand
24 behind him.

25 THE COURT: He's okay? Would it help if we moved the

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1 computer, Mr. Spears, you think?

2 MR. JOHNSON: No. He says he's fine.

3 THE COURT: He's fine? Great.

4 MR. JOHNSON: I'll, I'll just stand over here, Your
5 Honor.

6 THE COURT: Great, great, and if you want me to share
7 with the jury that if they see Mr. Spears or looks like
8 he's straining, this is the best we can do and he's agreed
9 to, you know, kind of make himself, put himself in a
10 position where he can see. If you want me to mention that
11 to the jury, you let me know. Maybe talk to them, and I'm
12 happy to do that. Say if they see him looking like he's
13 moving a little bit, it's because he's got to do that to
14 see so they'll understand. If you want me to do that, I
15 will.

16 MR. JOHNSON: That's, that's fine.

17 THE COURT: You want me to do that?

18 MR. JOHNSON: Yes.

19 THE COURT: Remind me and I will.

20 MR. JOHNSON: I will. Thank you.

21 THE COURT: Great. All right.

22 BY MS. FRYAR:

23 Q. Ms. Rivers, I think you were telling the judge around
24 10:00 something happened that morning. Could you please
25 tell her what happened?

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. Yeah. I was standing behind the counter proceeding to
2 put up the inventory Mr. Bourgeois ---

3 THE COURT: You'll have to slow down because our court
4 reporter has got to take down everything you're saying, and
5 I am so sorry that's not working well. Keep your voice up
6 for me.

7 A. Once again, I was proceeding to put up inventory that
8 Mr. Bourgeois had just brought back to the store from H.T.
9 Hackney, and I noticed a male walked in the store and --
10 because when you walk by the front door, the bell tends to
11 ding and it just makes you look up where I'm at. So, the
12 male, he proceeded to walk to my right, then left, and what
13 would you call casing the store. He walked around and then
14 came back and walked to my left. So, I looked up and I
15 heard the bell ding again because any time you pass the
16 front door, the bells tends to ding. And I noticed that he
17 went back, so I continued doing what I was doing.

18 The next thing I know, that same male that just
19 entered the store jumped the counter. He's basically
20 pushing me out the way, and I'm noticing what's going on
21 and when I look up, there's another man standing in front
22 of me with a ski mask pointing a gun, telling me to get
23 down on the floor.

24 So, during that time, I'm reaching for my two-year-old
25 son at the time. I'm getting him out of the way and he,

1 the first male that jumped the counter which I now know to
2 be Mr. Phillip Spears, is bringing Mr. Bourgeois, Mr.
3 Williams, and Mr. Prezzie back in the store. During that
4 time, I'm headed over to get my ten-month-old son.

5 THE COURT: Slow down.

6 A. I'm heading over on the other side to get my ten-
7 month-old son because he's over there in his little cereal
8 pan or whatever, and they're proceeding, they're asking Mr.
9 Bourgeois ---

10 THE COURT: Slow down.

11 A. They're asking Mr. Bourgeois where's the safe, where
12 is the videotape, where's his gun. He's telling them
13 constantly that there is none. But before he got Mr.
14 Bourgeois on that counter, he ordered him to open the
15 regi -- I mean, before he got him on the floor, he ordered
16 him to open the register. During that time, he's fussing
17 with Mr. Bourgeois.

18 THE COURT: You've got to slow down. You have to slow
19 down.

20 A. During that time, he's arguing with Mr. Bourgeois,
21 which is the first guy that went on the back to get them
22 out. He's arguing with him knowing that -- he's no,
23 there's more money in here than that. So, during that time
24 I'm pulling the file cabinet where we keep the money to pay
25 our vendors at. Mr. Bourgeois always keeps extra money

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1 that pays the vendors, so I pulled that.

2 THE COURT: She have -- she can't, she can't keep up
3 with you. She can't keep up.

4 MR. JOHNSON: Your Honor, I can't even hear her as
5 well.

6 (A PAUSE.)

7 BY MS. FRYAR:

8 A. At that time he's, he already ordered -- Mr. Phillip
9 Spears, he ordered Mr. Bourgeois ---

10 THE COURT: Slow down.

11 A. --- Mr. Bourgeois to open the register. Mr. Bourgeois
12 then open the register. Then he begins argue ---

13 THE COURT: Slow down.

14 A. Then he begins to argue with Mr. Bourgeois that he
15 knows that it's more money in the store. So, I then
16 proceed to open the file cabinet which we usually keeps
17 money for the vendors. At that time he grabs the \$200 out
18 of the file cabinet I just opened. At that time, I go over
19 to a left-hand corner and hover over my kids. They then
20 argue with Mr. Bourgeois about where's the videotape,
21 where's the safe, where's his gun. Mr. Bourgeois keeps
22 pulling his head up, telling them that there's no safe,
23 there's no gun, there's no more money, there's no
24 videotape. He then refers to me as Shortie, where's his
25 gun.

1 Q. When you say he, who is that, Ms. Rivers?

2 A. Mr. Phillip Spears. He then asks me where's the
3 videotape, where's the safe. I then tell Mr. Spears there
4 is no such that in the store whatever. He then walks over
5 to me. I told him he could look in the two back rooms that
6 we have over there. He then looks in the backs rooms or
7 whatever.

8 Then Mr. -- the guy that I now know to be Mr. Titus

9 Bantan comes around the corner and picks up a big box of
10 change that we keep for spare money in the store. He then
11 places the money on top of the counter. He jumps across
12 the counter, takes the big box of change on the outside.

13 How did I know he was outside? Because I heard the
14 bell ding. Any time they play around that front door, the
15 bell tends to ding.

16 He then comes back, and I heard a big rumble over the
17 top of my head. I'm looking up because I'm then hovering
18 over my kids. I don't want anything to fall on us. I look
19 over, over and he's knocking over the big case where we
20 keeps our cigarettes, Newport cigarettes.

21 Q. When you say he, which one was that?

22 A. Mr. Titus Bantan.

23 Q. Okay.

24 A. He knocks over the cigarette case, takes a couple
25 packs of cigarettes. He then says: Dog, we got to go. I

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1 guess referring to the guy came in the store. Then Mr.
2 Spears, Phillip Spears walks back around the counter, then
3 says to me: Shortie, count to twenty. I pretended to count
4 to twenty. He walks out the door. I heard the bell ding,
5 and then it was over.

6 Q. All right. Ms. Rivers, when the man first walked in
7 the door, how long was he in the store?

8 A. Could have been about a minute just to walk from one
9 side to the next.

10 Q. Okay.

11 A. The store's not that big.

12 Q. Okay. Did you watch what he did while he was in the
13 store?

14 A. When I saw him came in, I just saw him. I turned and
15 I continued doing what I was doing. I'm, I'm assuming he
16 was in the store shopping, so that's why I just looked up
17 to see him, then went back to what I was doing.

18 Q. Okay. When he first walked in the door and the bell
19 rang and you looked up, how far were you from him?

20 A. About twenty, twenty-five feet.

21 Q. Okay, and did he proceed towards the counter at that
22 time?

23 A. No, ma'am.

24 Q. All right, he just went to the left and the right at
25 the back of the store?

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1 A. Yes, ma'am.

2 Q. And then exited. Is that correct?

3 A. Yes, ma'am.

4 Q. All right. You've testified that he reentered the
5 store?

6 A. Yes, ma'am.

7 Q. Tell the judge what that man did when he reentered the
8 store.

9 A. When the guy that I now know to be Mr. Phillip Spears
10 reentered the store, he then jumped the counter, then
11 proceeded out the back to pull in the guys that were out
12 the back packing up the trash from the stuff we just put
13 out in the store. It was a lot.

14 Q. Okay. When you say he jumped the counter, is there a
15 counter in front of you while you've being a cashier?

16 A. Yes, ma'am.

17 Q. And that is the counter he is jumping?

18 A. Yes, ma'am.

19 Q. Is that correct, and you were saying that he went out
20 the back door. How far is the back door from the counter?

21 A. Well, about ten.

22 Q. Okay, and so he walked, jumped past you and walked out
23 the back door. Is that correct?

24 A. Yes, ma'am.

25 Q. And then you indicated that there was another

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1 gentleman?

2 A. Yes, ma'am.

3 Q. Did the second gentleman or person, did he -- how far
4 behind him was he from the first person?

5 A. Like on to him.

6 Q. Okay. So, basically they entered the store together.

7 A. Together.

8 Q. Is that correct? Okay. What did the second gentleman
9 look like?

10 A. At first I didn't see anything because he had on a ski
11 mask when he first entered.

12 Q. Okay, so the first gentleman had on a ski mask when he
13 entered. Is that correct?

14 A. The second gentleman entered the store, he on a ski
15 mask when he first entered the store.

16 Q. Okay. When the first person entered the store, did he
17 have on a mask?

18 A. No, ma'am.

19 Q. Could you please describe to the judge what that first
20 guy looked like?

21 A. When he came in the store, he had on a ball cap that
22 was pulled down to this eye level. I mean, if you didn't
23 really get in his face, you couldn't really see his face.
24 It was just a dark ball cap.

25 Q. How far were you from his face?

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1 A. When he jumped the counter, he, like, blew right past
2 me.

3 Q. All right. When he came back in the door, did he
4 address you directly?

5 A. No, ma'am, not by name. It was just slang, talking
6 about me as Shortie.

7 Q. Called you Shortie?

8 A. Yes, ma'am.

9 Q. Was -- at any time, did you look into this man's face?

10 A. Yeah, when he came -- during the time he was blowing
11 past me, I looked at his face and recognized who he was. I
12 didn't know him personally, but I recognized him from the
13 neighborhood.

14 Q. You had seen that person before, and you knew that
15 when he jumped over the counter?

16 A. Yes, ma'am.

17 Q. Is that correct? Is that your testimony?

18 A. Yes, ma'am.

19 Q. All right, and so when he came back in, did you have
20 occasion to look at his face again?

21 A. Yes, ma'am.

22 Q. Please tell the judge when you saw his face again.

23 A. When I saw his face again is when he was banging Mr.
24 Bourgeois in the back of his head with a pistol asking him
25 was there a safe, where's the videotape. And that's when

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1 he referred to me as Shortie: where's the videotape, where
2 is the safe, and where is his gun. That's when I looked
3 back from over my kids and reassured him that there wasn't
4 anything such in the store.

5 Q. So, you were having a conversation with him?

6 A. Yes, ma'am.

7 Q. Talking to him, looking in his face?

8 A. Yes, ma'am.

9 Q. Is that correct? All right, and if you would, please
10 describe for the judge what he looked like.

11 A. That would be the gentleman that's sitting to my far
12 left over there.

13 Q. Okay, you're identifying Phillip Spears as the person
14 you saw. Is that correct?

15 A. Yes, ma'am.

16 Q. Describe what he looked like on that day.

17 A. He was a kind of fair-skinned black male with, you
18 could say, bad acne or blackheads, black pimples on his
19 face.

20 Q. And what, if anything, were you saying about his head?

21 A. Yeah, he had, like, braids hanging out the back. He
22 had on a dark ball cap that was pulled down to eye level,
23 which if you didn't, wasn't really up on him, couldn't
24 really see who he was.

25 Q. Okay, and what kind of facial hair did he have?

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1 A. He had, like, a small blemish mustache that was, like,
2 barely -- could be, like, two days of not shaving it
3 though.

4 Q. Okay, so it's a thin mustache?

5 A. Yes, that's ---

6 Q. Or a raggy mustache, all right, and so what was his
7 clothing like?

8 A. He had on a gray hoodie and some blue jeans, like
9 faded blue jeans.

10 Q. And when you -- when did you realize that you'd seen
11 this person before?

12 A. When -- after he jumped the counter and I saw his
13 face, and then when I was laying on my kids, it really
14 registered and I started back, I started thinking back how
15 I knew him. And that's when it registered to me.

16 Q. Okay. So, while he was still in the store, you knew
17 that you had seen him before?

18 A. Yes, ma'am.

19 Q. Can you tell the judge how you'd seen him before and
20 how you knew him?

21 A. I knew him from some of the relatives. His aunt was a
22 Pastor Mood. I attended her church on several occasions,
23 and that's the relation I have between those two. I've
24 seen him from being around her.

25 THE COURT: And who is that, say?

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1 WITNESS: Pastor Mood.

2 THE COURT: Pastor Mood, okay.

3 WITNESS: The one that's in the far back.

4 THE COURT: Okay. All right.

5 BY MS. FRYAR:

6 A. And I've seen him come to basketball, and she attended
7 some of my basketball games when I played in high school,
8 and he used to be with his family all the time.

9 Q. So, you had seen him at Pastor Mood's church?

10 A. Yes, ma'am.

11 Q. And you had seen him attend some basketball games when
12 you were playing basketball in high school?

13 A. Yes, ma'am.

14 Q. Did you have a personal relationship with him?

15 A. Didn't even know his name.

16 Q. Did not even know his name, all right, and so after
17 this conversation that you had with him, were you trying to
18 cooperate with him?

19 A. Yes, ma'am.

20 Q. You indicated that he went past you to go to two other
21 rooms.

22 A. Yes, sir. It would be the storage room and the
23 bathroom.

24 Q. Okay, and where were you? How close in proximity were
25 you and your children to the storage room and the bathroom?

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1 A. Like three feet.

2 Q. Three feet?

3 A. Yes, ma'am.

4 Q. And did he check those doors?

5 A. Yes, ma'am.

6 Q. Did you watch him do that?

7 A. Yes, ma'am.

8 Q. What happened after that?

9 A. He then walked back around, and the guy who I know now
10 as Titus Bantan told him that: Dog, we got to go. And
11 that's when he went back around the counter, pulled up the
12 till out of the register and took, like, 3 or \$400 from ---

13 THE COURT: Slow down a little bit and keep your voice
14 up because I can't hear or understand you, and I want to
15 hear you.

16 BY MS. FRYAR:

17 A. That's, after that, he walked back around. After
18 that, he walked back around the counter. That's when the
19 guy I know now to be Mr. Titus Bantan told him: Dog, we got
20 to go. And on that, he walked back around the counter,
21 took his sleeve of his shirt and pulled the till out of the
22 register and took, like, 3 or \$400 we have in there. It's
23 just, like, money left over, money that falls in the back
24 of the till.

25 Q. How far were you from the register?

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1 A. About six or seven feet.

2 Q. Okay. Is the area behind, behind the counter, how far
3 is that, that area? Can you measure that area
4 approximately?

5 A. It's very closed in. Like, what, seven, eight feet
6 each way.

7 Q. Okay.

8 A. The cigarette rack's there. The counter's there.
9 There's a TV that sits on the counter up there. The
10 register, from where I was lying, I could have stuck my arm
11 out and touched the bottom of the counter. We're in close
12 spaces.

13 Q. All right, and as to the door ---

14 A. The doors?

15 Q. --- in the back?

16 A. The door in the back from the front counter is, what,
17 like six or seven feet at the most.

18 Q. And how was the lighting in the store? What kind of
19 lighting did you have?

20 A. Very bright light.

21 Q. Very bright light. Did you have any difficulty seeing
22 his face?

23 A. Not at all.

24 Q. All right. Following him you indicated was a man with
25 a mask on. Is that correct?

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1 A. Yes, ma'am.

2 Q. Please tell the judge what you can describe about that
3 gentleman. When he entered, he had on a mask?

4 A. Yes, ma'am.

5 Q. What happened after that?

6 A. After that, I noticed -- well, during that time after,
7 when Mr. Spears jumped the counter, the second guy is
8 standing at the counter with a gun pointed at me saying get
9 down. That one at this time, he has on a mask. But after
10 I'm leaning back to tell Mr. Spears that there's no safe or
11 videotapes in the store, I looked back at the guy and the
12 mask was removed. So, during that time I'm thinking he
13 took his mask off, and I can see his face and recognize who
14 it is if I were to see him again.

15 Q. How far was he when you looked to see his face without
16 that mask on, Ms. Rivers?

17 A. About four feet.

18 Q. Okay.

19 A. Because I'm at the back by the bathroom and the
20 storage door, and he's on the other side of the counter, on
21 the side.

22 Q. Okay, not in front?

23 A. No. On the side part.

24 Q. To the right of you?

25 A. Correct.

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1 Q. Is that what you're describing, ma'am? Okay, and did
2 you look into his face?

3 A. Yes, ma'am.

4 Q. And did you have a conversation with him? Did he tell
5 you anything directly?

6 A. No, ma'am.

7 Q. All right, when you looked into his face, if you could
8 please describe for the judge what he looked like?

9 A. He was just a guy with hair on his face and looked
10 like he had some braids that he had in for months that
11 were, like, nappy braids I would say.

12 Q. All right. Had you ever seen that gentleman before?

13 A. No, ma'am.

14 Q. All right, and so could you describe to the judge what
15 that gentleman was wearing?

16 A. He had on a black hoodie and black BDUs and some
17 wheat-like, orange-looking Timberland boots.

18 Q. Now, you indicated that both of them had guns?

19 A. Yes.

20 Q. Did you, can you describe the guns? Can you describe
21 the gun of the first person?

22 A. I didn't really see his gun because at the time, he's
23 jumping the counter. But I could -- I'm not big on guns,
24 but when the gun was pointed at me, it was a black gun. It
25 was trimmed with silver on the top of it, but verbatim,

1 perfectly? No.

2 Q. Okay, so you just couldn't testify about that?

3 A. Not for sure.

4 Q. All right, and so did the second person have a gun?

5 A. Yes, ma'am.

6 Q. All right, and so you indicated that you saw the
7 second person who you now have indicated you believe to
8 be Mr. Bantan. When you looked up and he was to your
9 right.

10 A. Yes, ma'am.

11 Q. Did you look into his face?

12 A. Yes, ma'am.

13 Q. Did you look into his eyes?

14 A. Basically for a split second.

15 Q. For a split second, all right, and did you have any
16 other interaction with Mr. Bantan?

17 A. No.

18 Q. When these perpetrators left, did y'all call the
19 police?

20 A. Mr. Bourgeois did.

21 Q. Mr. Bourgeois called the police, and when the police
22 got there, did you give them the same description that

23 you've just given the judge of the people who were involved
24 in ---

25 A. Yes, ma'am.

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1 Q. --- this armed robbery? All right, what did you tell
2 officers that you knew about the first perpetrator?

3 A. I told him that I knew him from being in the area and
4 knowing him through his family members, but to know him
5 personally in a person way, I didn't.

6 Q. Okay. Did you indicate that you could recognize him
7 if you saw him again?

8 A. Yes, ma'am.

9 Q. Did you indicate that you could recognize the second
10 person if you saw him again?

11 A. Yes, ma'am.

12 Q. All right. How sure were you that you could do that?

13 A. A hundred percent sure.

14 Q. All right, and so later on that day, did someone come
15 get you to take a look at a photo lineup?

16 A. Yes, ma'am.

17 Q. Tell the judge how that happened.

18 A. I was -- well, my grandma's house was directly behind
19 the store, so Mr. Graham, Officer -- Sergeant Graham came
20 and told me that they wanted me to do a photo lineup to see
21 if I could identify the guy that would be the first guy
22 that came in the store, and I told him yes. And he took
23 me, and I think it was Mr. Tim or someone named Mack that
24 asked me to identify him, and I pointed him out. And
25 that's when I first learned of his name because I always

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1 knew him by -- didn't know his name. I knew his face.

2 Q. Okay, and so you did not know his name until after you
3 selected him from the photo lineup, and that's when you
4 were told what his name was?

5 A. That's correct.

6 Q. Is that correct? All right, and so if you could,
7 describe this process for the judge. You indicated that
8 Investigator Graham came and got you. Y'all didn't go to a
9 station house or anything, did you?

10 A. No, ma'am.

11 Q. And another officer is going to be Investigator Bill
12 Cartwright. Did -- where did y'all meet, ma'am?

13 A. That would be, I think that's another bait and tackle
14 store in Highway 33.

15 Q. Okay, and did you have an opportunity, and was this
16 done -- where was this done? In a store or outside?

17 A. We done it on the back of the police car.

18 Q. On the back of the police car. So, you drove up with
19 Mr. Graham and Investigator Bill Cartwright drove up. And
20 when Investigator Cartwright got out of his car, what, if
21 anything, did he say to you?

22 A. He said aren't you here -- you know what you're here
23 for, and he said we have a --

24 Q. Speak slowly and loud, Ms. Rivers.

25 A. He said do you know what you're here for, and I said

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1 yes. We're here to do a photo lineup. And he said take
2 your time, and I would like you to identify, if you can,
3 the first guy you say that came to the store.

4 Q. All right, and was this around 2:15 to your
5 recollection, Ms. Rivers?

6 A. Somewhere in that time, yes.

7 Q. I'm going to show you what's been marked as State's
8 Number 2 for identification, ask you have you seen before?

9 A. Yes, ma'am. That's the lineup that they used to
10 identify Mr. Spears.

11 Q. Okay, and when you looked at this photographic lineup,
12 how was it displayed for you?

13 A. If was just laid out like that.

14 Q. Okay, and when you looked at this photographic lineup,
15 what did you do?

16 A. I immediately pointed to Mr. Spears.

17 Q. Okay. Was there any doubt in your mind that it was
18 Mr. Spears?

19 A. Not one.

20 Q. All right, this was -- if the store got robbed around
21 10, 10:30, this was 2:15 when you did this. Is that
22 correct?

23 A. Yes, ma'am.

24 Q. All right. Following that, Ms. Rivers, what did you
25 do?

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1 A. Mr. Graham then took me back to my grandma's
2 residence, and I sat there for a couple of hours.

3 Q. Okay.

4 A. Then Investigator Graham came to me again; he said
5 that he wanted me to do another lineup to see if I could
6 positively identify the second guy.

7 Q. Okay. Did they meet you on the side of the road this
8 time?

9 A. No, ma'am.

10 Q. Where did y'all have to go?

11 A. They came and got me. We went over here to the
12 sheriff's office.

13 Q. And when you went to the sheriff's department, tell
14 the judge what happened when you got there.

15 A. When I got to the sheriff's department, they walked me
16 in a back room and it was computerized, and they asked me
17 could I positively identify the second guy that I thought
18 came in the store. They sat me down to a computer and ---

19 Q. So, you looked at a computer screen?

20 A. Yes, ma'am.

21 Q. Is that correct?

22 A. Yes, ma'am.

23 Q. And when we looked at those first photographs, they
24 were all in color. Is that correct?

25 A. Yes, ma'am.

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1 Q. When you looked at the computer screen this time ---

2 A. Yes, ma'am.

3 Q. --- were they all color?

4 A. Yes, ma'am.

5 Q. All right, and so tell the judge how you came to look
6 at that screen.

7 A. Investigator Graham got me again and brought me over
8 here to the sheriff's office, and they escorted me to a
9 back room, and I sat down in front of a computer screen.
10 And they asked me if I could positively identify the second
11 guy I thought came in the store.

12 Q. Okay. Now, let's talk about that. That second guy
13 wasn't the same guy who was on the side of the road with
14 you, was he?

15 A. No. No.

16 Q. Was the second guy Investigator Tim Stephenson or do
17 you know?

18 A. I, I didn't know his name.

19 Q. You don't know his name?

20 A. No.

21 Q. All right, and what did he ask you to do?

22 A. To identify, could I positively identify the second
23 guy that I thought had came in the store.

24 Q. And so what did you -- and so when you looked at the
25 computer screen, did it look like this?

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1 A. Yes, ma'am.

2 Q. All right, we didn't have this printout, did we?

3 A. No, ma'am.

4 Q. You were looking at a computer screen?

5 A. Yes, ma'am.

6 Q. All right, you looked at this photographic lineup, and
7 what did you do?

8 A. I pointed to Mr. Brown.

9 Q. How long did it take you to point him out?

10 A. As soon as I sat down.

11 Q. How sure were you that it was him?

12 A. A hundred percent.

13 Q. What made you know it was him?

14 A. Because of the facial hair. I mean, it's just the
15 same guy. I looked in his face.

16 Q. All right, and so he doesn't have puffy, nappy braids
17 in this picture, does he?

18 A. No, ma'am.

19 Q. All right, and could that have taken place around 6:50
20 in the evening? Would that be correct? About 6:30 to 7,
21 or can you give us a time?

22 A. I'm, I'm not perfect on the time, but in that area.

23 Q. All right, ma'am. Did you have the opportunity and
24 did -- after you identified this, the -- this person as
25 being the second gunman, did they tell you what his name

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1 was?

2 A. Yes, ma'am.

3 Q. Okay, and was that the first time you ever knew his
4 name?

5 A. That's the first time I actually knew his name, yeah.

6 Q. That's the first time -- you'd never seen him ---

7 A. Never, not ---

8 Q. --- before this day?

9 A. Not, not before that day.

10 Q. All right. After that, did you have an opportunity in
11 March to go to the Orangeburg courthouse?

12 A. Yes, ma'am.

13 Q. And did you go to the Orangeburg courthouse for a bond
14 reduction hearing for Mr. Titus Bantan?

15 A. Correct.

16 Q. Someone called you and informed you that that was
17 going to be done?

18 A. Yes, ma'am.

19 Q. Is that correct? Who was that person? Me?

20 A. Yes, ma'am.

21 Q. All right, and so when you went over to the
22 courthouse, please tell the judge. Who did you go to the
23 courthouse with?

24 A. When I went to the courthouse, I went with my two
25 kids. Those were the same two kids that were involved in

1 the robbery.

2 Q. All right.

3 A. And my mom.

4 Q. Okay.

5 A. As we were walking up the front and went in the

6 courthouse, I noticed Mr. Bantan unloading from the

7 transport van and it's, like, we caught eye contact, and he

8 looked at me, like, oh girl, you're here. I'm here.

9 Q. All right, and when you saw Mr. Bantan that second
10 time, was he the only person coming off that transport van?

11 A. No, ma'am.

12 Q. Okay.

13 A. Other inmates.

14 Q. Other inmates. Were there other black inmates?

15 A. Yes, ma'am.

16 Q. All right, and so that was the second time you had
17 seen Mr. Bantan. Is that correct?

18 A. Yes, ma'am.

19 Q. Let me back up one more time, though. In between
20 those two times, had you any opportunity to see any
21 photographs in the newspaper?

22 A. Yes, ma'am.

23 Q. Tell the judge when you saw any photographs in the
24 newspaper.

25 A. I think was, like, a couple of days after the robbery

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1 look place, and they had a write up in the newspaper about
2 it.

3 Q. All right, and did they have a picture Mr. Bantan in
4 the newspaper?

5 A. Yes, ma'am.

6 Q. And when you looked at that picture after you
7 positively identified, did it sway or change your mind in
8 any way that that was the person?

9 A. Not one way or the other.

10 Q. All right, and so after the bond reduction hearing,
11 have you had the opportunity to see Mr. Bantan again?

12 A. Not before this.

13 Q. Okay. Do you see the second person who came in and
14 robbed you at the Wagon Wheel that day in the courtroom?

15 A. Yes, ma'am.

16 Q. Could you point him out for the judge?

17 A. It'd be that guy sitting there in the brown dress
18 shirt.

19 MS. FRYAR: Please let the record reflect that she's
20 identified positively Titus Bantan as the second
21 perpetrator.

22 BY MS. FRYAR:

23 Q. As to the first guy, Ms. Spears -- Ms. Rivers. Excuse
24 me, Ms. Rivers. I sincerely apologize for that. Do you
25 see the first guy you now know to be Mr. Phillip Spears in

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1 the courtroom?

2 A. Yes, ma'am.

3 Q. And where is he?

4 A. He would be the young gentleman in the white dress
5 shirt right there.

6 MS. FRYAR: Please let the record reflect that she has
7 positively identified Mr. Phillip Spears as being the first
8 person who entered the store and robbed her.

9 I don't have any further questions, Ms. Rivers. Thank
10 you.

11 THE COURT: Cross-examination at this time.

12 CROSS-EXAMINATION BY MS. HINDS:

13 Q. Good morning, Ms. Rivers.

14 A. Good morning.

15 Q. I apologize in advance, but I'm probably going to be
16 asking a lot of the same questions, but some of it was
17 flying by really too fast, and I know want to make sure I
18 heard right.

19 A. Okay.

20 MS. FRYAR: And, Your Honor, we're having a little
21 trouble understanding Ms. Hinds. She's got her back to us,
22 so if she could turn sideways, we would greatly appreciate
23 that.

24 BY MS. HINDS:

25 Q. You were inside the store that day, correct?

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1 A. Yes, ma'am.

2 Q. Do you normally work there?

3 A. Occasionally he gets me to help him out. Sometime
4 when he has outside work to do, I'll go in and help him
5 with it, but every day, I don't work there every day.

6 Q. And what time did you get there that morning?

7 A. About 8.

8 Q. Was there anyone else inside the store with you?

9 A. Me and my two kids.

10 Q. Nobody else?

11 A. No.

12 Q. When -- at about what time did you first hear the
13 bell?

14 A. Could have been in, what, a little after 10.

15 Q. Had anybody else come in the store that morning?

16 A. Yes, ma'am.

17 Q. About how many people?

18 A. About five or six.

19 Q. Okay, but nobody was in the store when, when this
20 incident started?

21 A. Nobody but Mr. Bourgeois and Mr. Cleveland Williams
22 and Mr. Iskier Prezzie.

23 Q. Okay, were they ---

24 A. And my two kids.

25 Q. Were they actually in the store?

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1 A. Mr. Iskier was always outside. He just pulled the
2 truck around. Mr. Bourgeois was making his way outside,
3 and Mr. Williams was making his way outside. They were
4 taking boxes out back.

5 Q. All right, so the first guy comes in and he walks past
6 you?

7 A. No. He walks on the back side of the store by the
8 coolers. Well, it would be front of the store end, but it
9 would be the back side from where I'm working from.

10 Q. Okay, and I believe it was your testimony you looked
11 up because the bell had rung ---

12 A. Yes, ma'am.

13 Q. --- to see, but you didn't really pay a lot of
14 attention at that point?

15 A. No, ma'am.

16 Q. Okay. About how much, how, how much time passed
17 before he left?

18 A. Which time?

19 Q. The first, the first time.

20 A. The first time, about a minute or so. Just the time
21 it takes him to walk from one side of the store to the
22 next.

23 Q. Okay, and did he go back out the front door?

24 A. Yes, ma'am.

25 Q. Okay. How long did it take him to come back in?

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1 A. It wasn't even a whole minute.

2 Q. Pretty much immediately he came back in?

3 A. Correct.

4 Q. And did he immediately jump on the counter?

5 A. Yes, ma'am. He rushed the counter when he came in.

6 When I heard the bell ding, then he rushed the counter.

7 Q. Okay, and he immediately ran out the back door?

8 A. Yes, ma'am.

9 Q. And what were you doing at that point?

10 A. When he's passing me, I'm reaching forward because I
11 noticed that the second guy was behind him with a mask and
12 a gun pointed directly in my face. So, I'm reaching for my
13 two-year-old son, getting him out of the way.

14 Q. And the second guy had a ski mask on?

15 A. Yes, ma'am.

16 Q. The kind of mask that covers the whole face?

17 A. No, ma'am. The ones with the eyes cut out and mouth.

18 Q. Okay, but pretty much everything else covered?

19 A. Yes, ma'am.

20 Q. All right, what did the second guy do then?

21 A. The second guy is pointing the gun at me, telling me
22 to get down because I'm pleading with him don't hurt my
23 kids. So, I'm reaching for my two-year-old son, and Mr.
24 Spears is bringing the other guys back in. And the last
25 time I seen him go, when I'm looking at the guy pointing

1 the gun at me, I'm reaching for my son, and I'm seeing him
2 standing at the counter. So, at that time I'm grabbing my
3 son out of the way. And the next time I see the second
4 guy, he's on the back side of the counter.

5 Q. Okay, and you're down on the floor?

6 A. Yes, ma'am.

7 Q. And how tall is the counter?

8 A. The counter is, when I'm standing up, is only some --
9 tall to here. About a little above my waist.

10 Q. About how long did this whole incident take from the
11 time they first walked in until the time they told you to
12 count to twenty and walk out the door?

13 A. Couldn't have been more than ten minutes, ten, fifteen
14 minutes.

15 Q. And how long an opportunity did you have to view the
16 second guy with the mask on?

17 A. The second guy, when I'm looking back and Mr. Phillip
18 Spears is asking me about the safe and the videotape, I'm
19 looking back and during that time I'm catching eye contact
20 with the guy that's standing behind on the back side of the
21 counter.

22 Q. With his mask on or off?

23 A. Off.

24 Q. What I'm trying to get to is how long a period of time
25 did you observe him with the mask on?

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 A. With the mask on, the time as he's looking at me and
2 finally with the gun pointed at me.

3 Q. And how long a period of time did you see him with the
4 mask off?

5 A. Oh, about a clear minute.

6 Q. A minute?

7 A. Yeah.

8 Q. Did you see him take the mask off?

9 A. No, ma'am.

10 Q. All right, so the first guy has now brought the other
11 gentlemen back inside to store, correct?

12 A. Correct.

13 Q. Were they made to get down on the floor also?

14 A. Yes, ma'am.

15 Q. Did you look up at all once you were down on the
16 floor?

17 A. Yes, ma'am.

18 Q. How many times did you look up?

19 A. About three or four.

20 Q. And for how long a period of time were you looking up?

21 A. Sometimes a minute, sometimes thirty seconds just to
22 answer the question Mr. Spears was asking me.

23 Q. Just to answer the questions. And basically what he
24 was asking you was about more money?

25 A. Yes, ma'am.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. Safe or video. Is that correct?

2 A. And the gun, did Mr. Bourgeois have a gun.

3 Q. And that would be the first man or the second man was
4 asking you about the gun and additional money?

5 A. The first guy.

6 Q. Can you describe again what the first man was wearing?

7 A. Gray hooded sweater, sweatshirt, and blue jeans.

8 Q. Was the hoodie up or down?

9 A. Down.

10 Q. And he had a cap on?

11 A. Yes, ma'am.

12 Q. Describe the cap.

13 A. It was a navy blue ball cap, Yankee's ball cap with a
14 N with a Y on it on there.

15 Q. And it was pulled way down?

16 A. Yes, ma'am.

17 Q. And then can you describe what the second guy was
18 wearing?

19 A. Black BDUs. You could say wheat-colored Timberland
20 boots, and a black hoodie sweatshirt.

21 Q. And was his hoodie up or down?

22 A. Down.

23 Q. Did he have something on his head?

24 A. No, ma'am.

25 Q. Did you see what the first guy was wearing on his

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 feet?

2 A. No, ma'am.

3 Q. And your testimony was you did recognize the first
4 man?

5 A. I knew him but not personally. I recognized his face,
6 the reason I knew him.

7 Q. I believe you said the second man knocked over a
8 cigarette rack?

9 A. Yes. Right.

10 Q. And that he took some cigarettes?

11 A. Yes, ma'am.

12 Q. You said a couple of packs. I mean, was he scooping
13 up a bunch of them or?

14 A. He could have got, like, four or five packs.

15 Q. Did see a phone drop at all during this incident?

16 MS. FRYAR: I object to the relevance as far as
17 identification.

18 THE COURT: Does it have any relevance?

19 MS. HINDS: No, ma'am.

20 THE COURT: Very well. Sustained.

21 BY MS. HINDS:

22 Q. Would it be safe to say that during this incident,
23 that your focus was pretty much on the gun?

24 A. Not necessarily. My focus was on mainly on my kids.

25 Q. Okay, because you were scared, correct?

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 A. Correct.

2 Q. Had you ever been robbed before?

3 A. No, ma'am.

4 Q. It was a pretty frightening experience?

5 A. Very.

6 Q. Would it be safe to say you felt like you were under
7 extreme stress?

8 A. Not stress but just afraid. I was fearful.

9 Q. Yes.

10 A. For my life and for my kids.

11 Q. Did you, did you -- were you actually looking when
12 they left? Did you see them leave?

13 A. No.

14 Q. Or did you hear the bell?

15 A. I heard the bell.

16 Q. All right, a couple of hours later they come get you
17 and want you to, want to show you a lineup, right?

18 A. Correct.

19 Q. And that one was on a printed page, correct?

20 A. Yes, ma'am.

21 Q. Okay, and again, who showed you the lineup?

22 A. Mr. Graham took me to go get the lineup. I can't -- I
23 think it was Mr. Bill Cartwright is the guy that met us at
24 the bait and tackle store.

25 Q. So, it's Mr. Graham for sure and your think ---

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 A. Yeah.

2 Q. --- Bill? What exactly was said to you when they
3 asked you to look at the lineup?

4 A. They asked me -- well, when I pulled up, Mr. Graham
5 asked me did I know why I was here, and I told him yeah.
6 Mr. -- I mean, Mr. Cartwright asked me did I know why I was
7 there. And I told him Mr. Graham said we were going to do
8 a photo lineup. And they asked me could I positively
9 identify the guy that I thought would be the first guy who
10 ran in the store. And they put the picture down on the,
11 the trunk of the car, and I pointed Mr. Phillip Spears.

12 Q. Did anyone suggest to you that the, that the man was
13 going to be in the lineup,?

14 A. No, ma'am. They just asked me could I positively
15 identify the guy that I thought had come in the store.

16 Q. Was it your understanding that -- were you thinking
17 that the man was going to be in the lineup?

18 A. I would hope so.

19 Q. You had never seen Mr. Bantan before that day,
20 correct?

21 A. No, ma'am.

22 Q. So, up until that point in time, the length of time
23 this incident took was the only contact you had with Mr.
24 Bantan?

25 A. Correct.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. But you did see his picture in the paper?

2 A. After the robbery.

3 Q. And that's when -- and you were told his name
4 afterwards also, correct?

5 A. Yes.

6 MS. HINDS: Beg the court's indulgence.

7 THE COURT: All right.

8 (COUNSELORS CONFER.)

9 BY MS. HINDS:

10 Q. When you go to do the second lineup, it's not on a
11 printed page, correct?

12 A. Correct.

13 Q. And you went to the Calhoun County Sheriff's Office?

14 A. Correct.

15 Q. And they took you to a room and showed you a computer
16 screen?

17 A. Yes, ma'am.

18 Q. Again, can you tell me what you were told when they
19 showed you that lineup?

20 A. They told me could I positively, do I know if I could
21 positively identify the second guy that I thought that had
22 come in the store. And I sat down to the computer screen
23 and I pointed out Mr. Titus Bantan.

24 Q. And were you expecting the second man's picture to be
25 in that lineup?

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 A. I wasn't expecting, but if I saw him, I knew who he
2 was.

3 Q. Do you remember giving a statement to the police, a
4 written statement?

5 A. When the -- right after the robbery occurred.

6 Q. Okay, when everything was fresh in your mind?

7 A. Yes, ma'am.

8 Q. Is there a reason that you did not mention the man in
9 the mask in that statement?

10 A. Not particularly.

11 Q. In your statement, you do say that, that you could
12 recognize the first guy. Is that correct?

13 A. Correct.

14 Q. And if you need to look at this at any point in time,
15 just let me know. But you admit you do not say in this
16 statement that you could recognize the second man?

17 A. Excuse me?

18 Q. Is it not true that you did not put in the statement
19 that you could recognize the second man?

20 A. Because I didn't know him before that day. I could
21 recognize Mr. Spears because I've seen him in the
22 neighborhood.

23 MS. HINDS: No further questions.

24 THE COURT: Mr. Johnson?

25 MR. JOHNSON: Thank you, Your Honor.

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 CROSS-EXAMINATION BY MR. JOHNSON:

2 Q. Ms. Rivers, how many times have you met with the state
3 prior to today to prepare you to testify today?

4 A. I've seen them twice.

5 Q. Twice? How long were those times that you met with
6 them?

7 A. About a hour last Friday and maybe another hour when
8 they came to the scene again to take pictures.

9 Q. And at that time, did they give you words such as
10 casing the place?

11 A. No. I'm very intelligent.

12 Q. You are?

13 A. Yeah.

14 Q. That's nice to know. Let me ask you this. If you are
15 -- since you're so intelligent, you know the importance of
16 writing a statement. Is that correct?

17 A. Correct.

18 Q. Why didn't you put all this information on your
19 statement?

20 A. I was -- first thing when they arrived, I was writing
21 down what I knew was -- had happened.

22 Q. Exactly, and that's all you knew is what you wrote on
23 that first statement, right?

24 A. And what I wrote on my statement is what I saw and
25 what happened in the case at the time that they was there.

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. Okay, okay, and none of this stuff was on that
2 statement. So, where, where does all this other things
3 that you're testifying about now come about if you wrote on
4 your first statement everything that you knew?

5 A. In that statement, I didn't say that Mr. Spears walked
6 in the store one way to the other. None of that was
7 mentioned.

8 Q. You ---

9 A. That's it.

10 Q. You had that in the statement. Do you -- but you do
11 not have in the statement that he jumped over a table.

12 A. He didn't jump over a table. He jumped over a
13 counter.

14 Q. You didn't have that in your statement.

15 A. When he came across the counter, he went out back and
16 got the guys.

17 Q. You didn't have that in your statement.

18 A. But that's what he done.

19 Q. I'm asking you. Why didn't you have any of that
20 because you're intelligent, as you said. And you know the
21 importance of doing the statement. Why isn't that in your
22 statement?

23 A. But in my statement, did I not write that he ---

24 Q. I'm not asking you ---

25 A. --- went back and got them?

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. Ms. Rivers.

2 THE COURT: Address it to the court, not to her.

3 MR. JOHNSON: Your Honor, will you please instruct the
4 witness to answer my questions, not to ask me questions?

5 THE COURT: I will, and wait for her response as well,
6 please.

7 BY MR. JOHNSON:

8 Q. Ms. Rivers, once again that was not in your statement,
9 correct?

10 A. Correct.

11 Q. And you just stated that you put everything that you
12 remembered when it happened in your statement.

13 A. Correct.

14 Q. So, now you're now saying, now saying that you didn't
15 remember that.

16 A. I'm not saying that I didn't say things that I didn't
17 remember then. I'm just saying that it wasn't in my
18 statement.

19 Q. But when you wrote your statement, that's when
20 everything was fresh in your mind?

21 A. Should have been.

22 Q. You said that my client, Mr. Spears, when he came in
23 the store had a hat over his eyes, correct?

24 A. Had a hat pulled down to eye level.

25 Q. To eye level?

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. Yes, ma'am -- yes, sir.

2 Q. What did he have on his neck? Did you say he had a
3 hoodie?

4 A. I didn't say he had it on his neck. He had on a
5 hoodie sweatshirt. It was wintertime, so he had on a
6 hoodie sweatshirt.

7 Q. So, all you could see was from the chin to above his
8 eyes?

9 A. Yes, sir.

10 Q. You was working behind the counter. You say you
11 looked up and then looked right back down?

12 A. During -- that's when he first entered the store.

13 Q. Right. So, it was, what, a second?

14 A. Could have been a split-second.

15 Q. At twenty-five feet away?

16 A. That's not when I recognized him. I recognized him
17 when he jumped the counter, which is only a inch away from
18 me.

19 Q. But that's not in your original statement, that he
20 jumped the counter. Are you aware that your boss stated
21 that the second man jumped the counter?

22 MS. FRYAR: I object. It's pitting the witnesses.

23 THE COURT: Sustained.

24 MS. FRYAR: It has nothing to do with the ---

25 THE COURT: Sustained.

N. RIVERS - REDIRECT EXAMINATION BY MS. FRYAR

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1 MR. JOHNSON: Your Honor, I have nothing further for
2 the witness.

3 THE COURT: All right.

4 MR. JOHNSON: She's very smart.

5 THE COURT: All right, any redirect?

6 MS. FRYAR: Just briefly, Your Honor.

7 ~~REDIRECT EXAMINATION BY MS. FRYAR:~~

8 Q. Ms. Rivers, when you came -- when, when officers came
9 to the Wagon Wheel shortly after this incident occurred,
10 did you have a verbal conversation with them?

11 A. With Mr. Graham I did.

12 Q. All right. Did you give the description of the
13 persons who had entered the store just as you've testified
14 to today?

15 A. Yes, ma'am.

16 Q. And did someone ask you write down what happened?

17 A. Yes, ma'am.

18 Q. Did somebody ask you write down the descriptions of
19 what happened or what those people looked like?

20 A. No, ma'am.

21 Q. They just asked you to write down what happened?

22 A. Correct.

23 Q. Did you write down a one-and-a-half page statement of
24 what happened?

25 A. Yes, ma'am.

N. RIVERS - REDIRECT EXAMINATION BY MS. FRYAR

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1 Q. All right. Did you write down in that statement
2 everything that happened in the detail that you've
3 testified today?

4 A. No, ma'am.

5 Q. If you'd have done that, it would have been ---

6 A. Numerous pages.

7 Q. --- fifteen pages?

8 MS. FRYAR: All right, I don't have any further
9 questions.

10 THE COURT: All right, Ms. Hinds, recross?

11 THE COURT: No, ma'am.

12 THE COURT: Mr. Johnson, recross?

13 MR. JOHNSON: No, ma'am.

14 THE COURT: Very well, you can come down.

15 WITNESS: Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: All right, any further witnesses?

18 MS. FRYAR: Yes, ma'am.

19 THE COURT: All right.

20 MS. FRYAR: The state would call Captain Bill
21 Cartwright.

22 MR. JOHNSON: Your Honor, my client needs to use the
23 bathroom.

24 THE COURT: Sure. We'll just, we'll take a comfort
25 break while the witness comes in.

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR.

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1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: All right now, your next identification
3 witness, call your identification witness.

4 MS. FRYAR: Your Honor, the state would call Captain
5 Tim Stephenson.

6 TIM STEPHENSON, BEING DULY SWORN,

7 TESTIFIES AS FOLLOWS:

8 THE COURT: If you would please be seated and state
9 your full name for the record, and spell your last name.

10 WITNESS: My name is Tim Stephenson. Last name is
11 spelled S.T.E.P.H.E.N.S.O.N.

12 MR. JOHNSON: Excuse me, Your Honor, may we approach?

13 THE COURT: Sure. Of course you can.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 DIRECT EXAMINATION BY MS. FRYAR:

16 Q. Captain Stephenson, where are you employed?

17 A. Calhoun County Sheriff's Office.

18 Q. And were you involved in the investigation of the
19 armed robbery that occurred at the Wagon Wheel on November
20 6, 2006?

21 A. Yes, I was.

22 Q. And as part of that investigation, did you receive a
23 request that you make a photographic lineup, including the
24 photograph of Mr. Titus Bantan?

25 A. Yes, I was.

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. Who requested that of you?

2 A. Captain Chris Golden.

3 Q. All right, and as a result of that, what was the first
4 thing you did?

5 A. He provided me with the information of the person he
6 wanted in the lineup. I got on the South Carolina DMV web
7 site to pull up that information, and then I called. It
8 was after hours, a little after 5, so I called the OD desk
9 at SLED to request somebody from photography contact me.
10 That I needed a photo lineup. I received a phone call from
11 somebody in the photographic lab, and then did my request
12 through, through them.

13 Q. Okay. I show you this document, Captain Stephenson,
14 and I'm going to ask you. Can you identify that?

15 A. This document is the ten year driver record that I
16 pulled up from South Carolina DMV online.

17 Q. After Captain Golden asked you to do that?

18 A. That's correct.

19 Q. Is that correct?

20 MS. FRYAR: And I believe both counsel have this. I'd
21 ask that this be made a court's exhibit, Your Honor.

22 THE COURT: Any objection?

23 MS. HINDS: No objection.

24 MR. JOHNSON: No objection.

25 THE COURT: Very well.

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR

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1 (DRIVING RECORD MARKED AS COURT'S EXHIBIT NUMBER 11.)

2 BY MS. FRYAR:

3 Q. Captain Stephenson, I ask you to review this. Is this
4 the record that you received?

5 A. Yes, it is.

6 Q. And on that report, does it indicate what time you
7 requested that information?

8 A. It does. It state's November the 6th, 2006, at 5:18
9 p.m. Actually it says 5:18 and 24 seconds.

10 Q. So after that, after you got that, then the next step
11 you did was what?

12 A. The next step is I called the SLED OD desk, which is
13 the Officer of the Day desk which somebody mans twenty-four
14 hours since it was after hours.

15 Q. So, you did not attempt to put a photographic lineup
16 from folks who had been arrested in Calhoun County. Is
17 that correct?

18 A. I don't have, even have the capability to do that.

19 Q. Okay, and when you request this information from SLED,
20 do you know where they get these photographs from?

21 A. I do not.

22 Q. Okay. Do you know if it's from booking reports or
23 drivers licenses?

24 A. I, I, I could only assume, but I do not know for
25 certain.

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. You do not assume. I ask you to look at what's been
2 marked as State's Exhibit Number 4 for identification
3 purposes and ask you, do you recognize that document?

4 A. Yes, I do.

5 Q. What is that?

6 A. This is the photo lineup as it was emailed to me from
7 SLED photography.

8 Q. Okay. When you received that from South Carolina Law
9 Enforcement Division, were you able to print this?

10 A. I was not able to print that at that time, no.

11 Q. Why is that?

12 A. It was quite baffling. When the email was sent to me,
13 I pulled the email up. That's what came up, all six
14 photographs. I simply went to print and for some reason,
15 it was only printing four photographs. And I hit print
16 again and it printed four photographs. Not being real
17 computer savvy, I went into the printer properties and
18 thought maybe something was inhibiting me from being able
19 to print all six. And after numerous attempts and a lot of
20 frustration, I simply could not get it to print more than
21 four photographs.

22 Q. Okay, but you reviewed this document?

23 A. Right.

24 Q. And when you received this document, did it appear to
25 you that these six individuals were similar in their facial

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR

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1 characteristics and hair characteristics?

2 A. Yes, they are obviously.

3 Q. All right, sir. When you were unable -- when you
4 received the information that Mr. Golden would like for Ms.
5 Rivers to be given an opportunity to be shown a
6 photographic lineup, what, what did you do?

7 A. I'm sorry?

8 Q. When you received the information from Captain Golden
9 that you would -- he would like for you to prepare a
10 photographic lineup for Ms. Rivers to identify, what did
11 you do?

12 A. Well, as I said, I contacted SLED photography, made
13 the request. And there's a form online that you fill the
14 information out and the request. And then I waited for --
15 he actually called me because it was after hours. Told me
16 he had received my request and that he would put it
17 together as quickly as possible, and it didn't take him
18 long at all. And he called me back to tell me that, you
19 know, he had sent the email. I checked my email and it
20 was, in fact, there.

21 Q. Okay, and did you instruct anyone to bring Ms. Natasha
22 Rivers to you, or how did that happen? Tell the judge.

23 A. Detective Graham had -- is it Ms. Rivers?

24 Q. Yes, sir.

25 A. In the sheriff's office in the squad room. I was back

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR

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1 in the office. And once I received it and I made those
2 numerous attempts to print it out, and I -- just for some
3 reason I guess it had a different format from the way it
4 was sent to the way my computer recognized it. I could not
5 get it to print more than four pictures. And so, but the
6 screen, you know, I'm looking at a screen of six pictures,
7 which is that, the six there. But it just, it would not
8 print the six. It's only printing four.

9 So I decided, well, you know, the lineup is here on
10 the screen. It's, it's the same as if it would be on
11 paper. So, I made the decision to -- we'll let her view
12 this photo lineup on the computer screen. There was
13 nothing else except what's on that paper was on the
14 computer screen. So, that's, that's all we could do, so I
15 felt like it was best to do it on the computer screen.

16 Q. Okay, and was the computer screen reflected just like
17 this in the color and everything was ---

18 A. Exactly like. That's why it was so baffling as to why
19 I could not get it to print.

20 Q. Yes, sir. All right, sir, and so then did Ms. Natasha
21 Rivers come into your office where this computer was?

22 A. Detected Graham walked her back into the office, and I
23 asked her to take a look at the screen to see if the person
24 that she was -- you know, involved in this incident was
25 there. And she immediately picked the bottom left picture.

T. STEPHENSON - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. What was her words to you when she did that?

2 A. She really didn't say anything other than put her, her
3 finger right on his picture on my computer screen.

4 Q. Okay, and did she hesitate before she did that?

5 A. Not, not at all.

6 Q. And what number did she pick out?

7 A. I believe it's number four. It's the bottom left
8 photograph.

9 Q. She picked out this photograph right here?

10 A. That's correct.

11 Q. And is that the person that you had received the
12 records on of the photograph?

13 A. That's correct.

14 Q. Mr. Titus Bantan?

15 A. From the, from the South Carolina DMV online and what
16 Captain Golden requested.

17 Q. Okay. Did Ms. Rivers know this gentleman's name
18 before she picked him out?

19 A. I am not sure.

20 Q. Did she tell you his name before she picked him out?

21 A. No, ma'am.

22 Q. All right, and did she pick him out around 6:15 p.m.?

23 A. Yes, ma'am. I requested that document at 5:18, a
24 little after. So, it would have been right after 6, yes,
25 ma'am.

T. STEPHENSON - CROSS-EXAMINATION BY MS. HINDS

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1 MS. FRYAR: All right, I don't think I have any more
2 questions for you, Mr. Stephenson. Thank you.

3 THE COURT: Cross-examination, Ms. Hinds.

4 CROSS-EXAMINATION BY MS. HINDS:

5 Q. So, it was Chris Golden that called you and asked you
6 to put together a lineup?

7 A. Yes, ma'am.

8 Q. And you had, at that point you made a request to SLED
9 and put the information in and they got back to you. Is
10 that correct?

11 A. Yes, ma'am.

12 Q. And you got email from them with those pictures?

13 A. Yes, ma'am.

14 Q. Was anyone else present when she made the ID? Was it
15 just you?

16 A. Me and her and Detective Graham.

17 Q. Now, the normal procedure, and correct me if I'm
18 wrong, would be to do a printout and then to actually have
19 after the identification, if one is made, to have them date
20 and sign it?

21 A. Yes, ma'am.

22 Q. Is that correct?

23 A. That's correct.

24 Q. But you couldn't do that in this case because you
25 couldn't get it to print?

1 A. That's right.

2 Q. Can you tell me exactly where she was standing in
3 relation to the computer when she looked at the screen?

4 A. It, it's a very small office. If I was -- say this is
5 my desk where I'm sitting. My laptop computer was facing
6 me. There's a door about where that computer would be that
7 comes in and you pretty much have to turn. A long, narrow
8 office.

9 She was standing there. She walked forward. I
10 explained to her that the lineup was going to be on the
11 computer screen and to pick out the one that was involved.
12 And I simply turned the screen, and she was pretty much
13 standing right in front of it, and that's when she pointed
14 to the lower left picture, actually put her finger on the
15 screen.

16 Q. And she didn't hesitate?

17 A. No, ma'am.

18 Q. Can, can you tell me why they use six photos? Why not
19 four or eight or?

20 A. No, ma'am, I can't tell you why it wouldn't print.
21 You know, the computer is, is rather old as well as the
22 printer. But I felt like maybe there was something in my
23 printer properties that wasn't set right. And I kept
24 trying to, to increase what it would print. I tried
25 everything that I knew how to try, but it kept doing the

T. STEPHENSON - CROSS-EXAMINATION BY MS. HINDS

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1 same thing. I just simply could not get it to print all
2 six. I, I do not know why.

3 Q. In your career as a police officer, have you done
4 lineups before?

5 A. Yes, ma'am.

6 Q. Do you generally use six photos in a lineup?

7 A. Yes, ma'am. That's pretty much the standard.

8 Q. Do you know why it's the standard?

9 A. No, ma'am. All -- since my career, twenty-one years,
10 it's always been six.

11 Q. When -- do you know if Ms. Rivers was shown another
12 lineup?

13 A. I do not.

14 Q. Would it surprise you to find out that she had been
15 shown another lineup?

16 A. I have no way of knowing if she was; I don't know.

17 Q. Now, you've been shown the lineup that allegedly Mr.
18 Bantan was picked out of, correct?

19 A. That's correct.

20 Q. I'd like to show you another lineup that was shown
21 earlier to Ms. Natasha Rivers. I'd just you to look at
22 that, and this is the lineup that you did, correct?

23 A. Correct.

24 Q. Okay. If you take a look at person number one in this
25 lineup.

1 A. Okay.

2 Q. Now, if you'll look in that lineup and see if this
3 picture doesn't appear in the number three spot.

4 A. It does appear to be the same, same picture.

5 Q. Would you agree ---

6 A. As number three, yes.

7 Q. Okay. Now, if you would look at number two on Mr.
8 Bantan's lineup, and if you would look at number six on
9 this lineup, would you not agree that those are the same
10 people?

11 A. Yes, they are.

12 Q. Okay. When -- in all the times that you've been doing
13 lineups, would you have shown the same witness two
14 different lineups containing people that she had already
15 eliminated?

16 A. Would I -- I'm sorry, repeat the question.

17 Q. That was a bad question. I'm sorry. In other words,
18 she was, she had done a lineup, and I understand that you
19 didn't know that, but she had been shown a lineup earlier
20 that day. Six people. She picks one, okay? Would you not
21 agree that when she's shown your lineup and two of those
22 people she's already been shown in a prior lineup -- she's
23 already not recognized them -- we're down to a one in four
24 chance, are we not ---

25 A. Excuse me.

T. STEPHENSON - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. --- in making that identification?

2 A. As long as the lineup was showing similar
3 characteristics I think is what's important. If someone,
4 if you had knowledge that someone was shown a lineup, then
5 I think you would probably try not to show some of the same
6 pictures in the same one.

7 MS. HINDS: Thank you.

8 THE COURT: All right, Mr. Johnson.

9 MR. JOHNSON: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MR. JOHNSON:

11 Q. Good morning.

12 A. Could afternoon.

13 Q. What was this specification that you sent to SLED when
14 you requested the lineup? When you requested the
15 information from SLED, do you use, like, a form that you
16 send off?

17 A. There is a form online that you fill out and send an
18 email as an attachment, and it has information on the
19 person that, that you want in the lineup so that they have
20 that information so that person can be in the lineup as
21 well as other individuals with similar characteristics.

22 Q. Well, how, how do, how do they come about getting the
23 other individuals, similar characteristics?

24 A. I'm not sure of that.

25 Q. So, you ---

T. STEPHENSON - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. Once, once I make a request, then it's -- I'm not the
2 one making the decision as to who goes in the lineup.

3 Q. So, so, so, you don't know what were the parameters
4 put into their request to get the other pictures, do you?

5 A. I do not, no.

6 Q. So, is it possible that the parameters could have been
7 wrong if you don't, if you don't know? Like, say the
8 client is six-one, certain complexion, certain weight, you
9 don't know what the person entered?

10 A. I don't know exactly how they do it. I know that they
11 have all the information on the individual requested to be
12 in the lineup, such as the height, the weight, and of
13 course they have a photograph of that person. So ---

14 Q. But ---

15 A. --- as far as how they do it, I couldn't answer it.

16 Q. But you wasn't the person to do that?

17 A. No, sir. I, I made the request.

18 Q. And in your request, you just sent a picture of the
19 individual that you ---

20 A. That's correct.

21 Q. --- you needed somebody like?

22 A. That's correct.

23 Q. Was it a picture, or did it have the stats in there?

24 A. Well, it had the stats of the person, which then they
25 can get from the DMV online, the picture of the person.

W. CARTWRIGHT - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. And you just assume that what they sent in was
2 correct?

3 A. What do you mean?

4 Q. You just assumed that the parameters they put would be
5 correct because you don't know. You don't know what they
6 put in, do you?

7 A. I, I don't know what their parameters are.

8 MR. JOHNSON: No other questions.

9 THE COURT: All right, redirect?

10 MS. FRYAR: Nothing.

11 THE COURT: All right, you may come down.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Do you have additional witnesses?

14 MS. FRYAR: Yes, ma'am. The state would call Captain
15 Bill Cartwright.

16 WILLIAM A. CARTWRIGHT, III, BEING
17 DULY SWORN, TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Please have a seat. Pull that mic as
19 close to you as your can. State your full name for the
20 record, please.

21 WITNESS: William Alexander Cartwright, III.

22 DIRECT EXAMINATION BY MS. FRYAR:

23 Q. Captain Cartwright, where are you employed?

24 A. Calhoun County Sheriff's Office.

25 Q. And were you involved in the investigation of the

1 armed robbery that occurred in the Wagon Wheel on November
2 6, 2006?

3 A. Yes, ma'am, I was.

4 Q. At some time, did you receive a request to develop a
5 photo lineup containing a picture of Phillip Spears?

6 A. Yes, ma'am, I did.

7 Q. Could you please tell Judge Goodstein how you received
8 that request?

9 A. Yes, ma'am. I received that request at the request of
10 Chris Golden, who at that time was captain of the Calhoun
11 County Sheriff's Office. And that was -- we were all in
12 the field at that time. So, what I did was -- because I
13 didn't have access to a computer. We were all down at that
14 end of the county. Called Orangeburg Public Safety and
15 spoke with my former partner in investigations, Dennis
16 Romanstein.

17 Q. All right.

18 A. I asked Dennis if he could call SLED, get the photo
19 lineup done, put Mr. Spears's picture in it, and have it
20 emailed to him on his departmental email, and to contact me
21 when he got that.

22 Q. All right, sir. Why did you not go back to the
23 Calhoun County Sheriff's Office for that?

24 A. We were busy in the field, and at that particular time
25 I didn't have email. It was easier being on that end of

W. CARTWRIGHT - DIRECT EXAMINATION BY MS. FRYAR

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1 the county to go to Orangeburg to retrieve that anyway.

2 Q. And was it quicker?

3 A. Yes, ma'am.

4 Q. All right, and so when you contacted this officer, how
5 did you retrieve the photographic lineup from him?

6 A. He contacted me via cell phone. I went to the
7 complex, picked it up, and went straight back on Highway
8 33. Met with Deputy Graham, who had Ms. Rivers. We met at
9 the same time.

10 I got out of the vehicle. I laid the photo lineup
11 down on the hood of my car. Asked Ms. Rivers if she
12 recognized the suspect, and she pointed out Mr. Spears
13 without hesitation.

14 Q. Did you indicate to her in any way who this person
15 was, who Phillip Spears was in the photographic lineup?

16 A. I don't recall if I indicated if that was who he was.
17 I asked her to sign underneath his name -- I mean,
18 underneath his picture her name indicating that that is who
19 she pointed out.

20 Q. Before she pointed out this gentleman, did you
21 indicate to her in any way who the person was who was a
22 suspect in this crime?

23 A. No, ma'am, I did not.

24 Q. All right, and I'm going to show you what's been
25 marked as State's Exhibit Number 2. Is that correct?

W. CARTWRIGHT - DIRECT EXAMINATION BY MS. FRYAR

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1 A. Yes, ma'am, that is correct.

2 Q. All right, and whose signature appears under number
3 four?

4 A. Ms. Rivers.

5 Q. All right and, Captain Cartwright, would it be fair to
6 say that you did this on the side of the road with Ms.

7 Rivers around 2:15 in the afternoon?

8 A. Yes, ma'am. That's correct.

9 Q. All right, you had nothing to do with actually putting
10 the lineup together. Is that correct?

11 A. No, ma'am. I did not.

12 Q. When you received the lineup, did you review the
13 lineup to see if the photographs looked similar?

14 A. Yes, ma'am, I did.

15 Q. From one another, and did they look similar to your
16 satisfaction?

17 A. They looked similar to me.

18 Q. How did you know before meeting with Ms. Rivers who
19 the suspect was?

20 A. Detective Romanstein and I discussed that when I got
21 to the complex.

22 Q. Okay, so he told you which one it was before you got
23 there?

24 A. Yes, ma'am, he did.

25 Q. All right. Did you have anything to do with arranging

W. CARTWRIGHT - DIRECT EXAMINATION BY MS. FRYAR

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1 these photographs?

2 A. No, ma'am. I did not.

3 Q. Did you have anything to do with arranging the numbers
4 where the photographs are on the page?

5 A. No, ma'am. I did not.

6 Q. All right.

7 MS. FRYAR: Beg the court's indulgence.

8 THE COURT: All right.

9 (A PAUSE.)

10 BY MS. FRYAR:

11 Q. Captain Cartwright, as part of this investigation, did
12 you go to a trailer at [REDACTED] in Orangeburg?

13 A. Yes, ma'am, I did.

14 Q. All right, sir, and can you recall who was at that
15 trailer when you got there?

16 A. Captain Chris Golden, Deputy Sean Murphy [sic],
17 several members of the Orangeburg County Sheriff's Office.

18 Q. All right, was Todd Williams, Lieutenant Todd Williams
19 from the Orangeburg County Sheriff's Office there?

20 A. Yes, ma'am.

21 Q. All right, sir. Please tell the judge what happened
22 when you got there.

23 A. When I got ---

24 MR. BROWN: Objection just as to relevancy far as the
25 scope of identification purposes.

W. CARTWRIGHT - DIRECT EXAMINATION BY MS. FRYAR

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1 MS. FRYAR: I thought they wanted to tie in the
2 previous issue with this one, ma'am, so I was just going to
3 provide that additional information.

4 MR. BROWN: My, my mistake. Withdraw the objection.

5 BY MS. FRYAR:

6 Q. If you would just tell the judge.

7 A. When I got there, Mr. Bantan was already handcuffed.

8 Q. All right, sir.

9 A. And sitting, seated on the sofa. At some point, I
10 don't really recall who asked. We asked for a consent to
11 search. We were granted that consent.

12 Q. Who told you you could search?

13 A. Mr. Bantan.

14 Q. All right, sir.

15 A. Myself, Todd Williams, Chris Golden, and at some point
16 Sean Murphy came into the back bedroom, which was indicated
17 to us was where he was staying.

18 Q. Okay.

19 A. And we began to search.

20 Q. All right, all right, what happened after that?

21 A. Okay, during that, during that search, best I can
22 recollect Chris Golden found a Coinstar receipt, which is
23 -- I know Bi-low's got them where you dump change in and it
24 gets you -- gives you back so much cash money with the
25 exception of a certain percent. A small percentage is

W. CARTWRIGHT - DIRECT EXAMINATION BY MS. FRYAR

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1 kept.

2 Q. It was a Bi-lo receipt. Is that correct?

3 A. Coinstar receipt.

4 Q. Okay.

5 A. And it may have been, may have also found a Bi-lo
6 receipt. I do remember the Coinstar. And also we found
7 some dark colored clothing that is consistent, was
8 consistent with what we were given at the scene as far as
9 physical description. That's to the best of my
10 recollection what we found during the consent.

11 Q. Okay.

12 A. And then we were denied consent.

13 Q. All right. What happened? How did -- Mr. Bantan told
14 you he didn't want to consent to search anymore?

15 A. Affirmative. He told us. I, I don't recall his exact
16 words, but we were -- you know, I want you to stop
17 searching, so we immediately stopped.

18 Q. Okay, and what happened when, when y'all stopped
19 searching?

20 A. We collectively, with the exclusion of Mr. Bantan, we
21 decided to -- we were going to get a search warrant.

22 Q. All right.

23 A. Here again, I picked up the phone because we were
24 inside the City of Orangeburg, Orangeburg County. Didn't
25 want to cross jurisdictional things even though they were

1 originally with us. But as far as the search warrant, they
2 wanted us to get the city to handle that for us. So, I
3 picked up the phone. I call my former partner, Dennis
4 Romanstein.

5 I said Dennis, I need some help. I'm out on Charlotte
6 Circle. I need a search warrant. Can you meet us at the
7 law complex, and we'll send Chris Golden there. He's got
8 the facts; it's his case. Assist him in, in preparing the
9 search warrant and can you get Judge Houser? You know,
10 locate him to sign or review it and sign it, which all that
11 transpired.

12 Q. To the best of your recollection, what time were they
13 gone to get the search warrant?

14 A. Ma'am, I'd have to say, you know, it was late in the
15 evening. 7, 7:30.

16 Q. Okay and, well, let me ask you this. What time did
17 they return to the home with the search warrant?

18 A. Between 8 and 8:30 is the best I recollect.

19 Q. And how long did it take y'all to search this
20 residence?

21 A. Wasn't -- we're talking about a small single wide.

22 We're all focused in that one bedroom that's, I don't know
23 what year it was. It's a single wide, like a 1975. The
24 room was fairly small. It didn't take that long to conduct
25 all we needed to do in there.

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 Q. Okay, and following that search, the evidence was
2 collected and do you know who filled out the return and did
3 the inventory of the items that were collected?

4 A. I'm wanting to say Todd Williams did with Orangeburg
5 County, but I could be wrong on that fact. But I believe
6 that's who did it.

7 Q. Okay. Was Mr. Chris Golden with him when he did it?

8 A. Yes, ma'am.

9 Q. Or do you know?

10 A. Yes, ma'am.

11 MS. FRYAR: Beg the court's indulgence.

12 (A PAUSE.)

13 MS. FRYAR: I don't have anything further, Judge.

14 THE COURT: Very well. Cross-examination, Ms. Hinds?

15 CROSS-EXAMINATION BY MS. HINDS:

16 Q. Okay, regarding the photo lineup, you were the one
17 that made the request. You called Dennis Romanstein to
18 make a request. Is that correct?

19 A. Yes, ma'am, I did.

20 Q. And you -- about how long after you made that request
21 did you receive the array?

22 A. Within an hour I would say.

23 Q. And when you got the lineup, how much time did it take
24 to locate Ms. Rivers?

25 A. Ms. Rivers, as far as I know it didn't take long at

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 all really because Deputy Graham and I, when we met at what
2 we call Five Points, which is 33 and all that down that end
3 of the county, we met at the same time. So, he must have
4 been in close proximity to her.

5 Q. Okay, and tell me exactly what happened. You all get
6 out of your cars. Is that right?

7 A. Ma'am?

8 Q. You get out of your cars?

9 A. Yes. Yes, ma'am.

10 Q. Ms. Rivers gets out of the other car?

11 A. Along with Deputy Graham.

12 Q. Is this in a parking lot, on the side of the road?

13 A. There is a store right at Five Points. It's just a
14 little mom and pop store, concrete block building, and
15 that's where we met at. This wide enough little parking
16 area, that's where we met her at.

17 Q. This is, like, 2:00 in the afternoon?

18 A. Yes, ma'am, approximately.

19 Q. And you showed her the lineup on the back of the car.
20 Is that what ---

21 A. Hood of the car, ma'am.

22 Q. On the hood of the car?

23 A. Yes, ma'am.

24 Q. And she immediately picked out Mr. Spears?

25 A. Yes, ma'am.

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 Q. There was no hesitation whatsoever?

2 A. No, ma'am.

3 Q. Okay, as I understand your testimony, you didn't have
4 anything to do with actually picking the pictures that went
5 into the lineup. Is that correct?

6 A. The lineup, that was done by SLED.

7 Q. You've done photo lineups before in your career, have
8 you not?

9 A. Yes, ma'am.

10 Q. Okay. You didn't -- did you at all suggest that there
11 was going to be somebody in that lineup? That the person
12 was going to be in that lineup?

13 A. No, ma'am. I simply laid it on the hood and asked her
14 if she recognized anyone in this lineup.

15 Q. Can you tell, can you tell me why a six-person photo
16 lineup was used?

17 A. It's standard.

18 Q. And by standard, you mean?

19 A. You usually have one suspect and five other
20 individuals in that lineup. I mean, that's what I've
21 always used.

22 Q. And that's pretty much every time you've done a
23 lineup, you do a six-person lineup, correct?

24 A. Yes, ma'am.

25 Q. I'd like to show you the two lineups that were done.

1 I believe you identified that as the one that you showed
2 Ms. Rivers?

3 A. Yes, ma'am.

4 Q. Did you -- were you aware that another lineup was
5 completed?

6 A. No, ma'am.

7 Q. Okay. There was -- there's been testimony that,
8 excuse me, Ms. Rivers was also shown a second lineup and
9 ordered to identify supposedly Mr. Bantan. Would you take
10 a look at that lineup?

11 A. Okay.

12 Q. And looking at this lineup, would you look at picture
13 number three on this one?

14 A. Yes, ma'am.

15 Q. And picture ---

16 A. Number three on that one?

17 Q. And number one on that one.

18 A. Yes, ma'am.

19 Q. Would you not agree they're the same person?

20 A. Appears to be.

21 Q. Okay, would you look at number six on this one?

22 A. Yes, ma'am.

23 Q. And then look at number two on that one?

24 A. Yes, ma'am.

25 Q. Would they not appear to be the same person?

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 A. They appear to be.

2 Q. And in your years in law enforcement, have you ever
3 shown the same witness two lineups where you repeated
4 people from the first one?

5 A. No, ma'am. Normally what I have always done is just
6 showed one lineup, if that's what you're asking.

7 Q. What I'm asking is if you were trying to identify more
8 than one person.

9 A. Yes, ma'am.

10 Q. Okay, you were going to show a witness and identify --
11 a lineup for ---

12 A. One suspect.

13 Q. --- defendant number one.

14 A. Right.

15 Q. And there was still another one you needed to
16 identify, so you're going to show them another lineup,
17 would you include people that they had already ruled out in
18 the first one in the second lineup?

19 A. Ma'am, I've never done -- I've never had to do that.

20 Q. Would you not think that that might be a little
21 prejudicial? She's already ruled those people out.

22 A. It could be. I, I, like I say, I've never done that,
23 though, ma'am.

24 Q. Well, wouldn't it, in effect, reduce it to a four-
25 person lineup?

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 MS. FRYAR: I object. That calls for information that
2 he has no knowledge about. That calls for speculation on
3 the part of Captain Cartwright.

4 THE COURT: If you can lay a foundation, you can
5 certainly ask him that because that really is in the nature
6 of an expert opinion as far as lineups, but if you can lay
7 a foundation.

8 BY MS. HINDS:

9 Q. Going, going back to the events that happened at 140
10 Charlotte Circle.

11 A. Yes, ma'am.

12 Q. You were not present when the search warrant was
13 issued, were you? Were you?

14 A. What do you mean issued? What do you mean by that?

15 Q. Were you present when Judge Houser issued a search
16 warrant?

17 A. No, ma'am, I was not.

18 Q. Okay, so you don't have any personal knowledge of what
19 happened in -- at Judge Houser's office?

20 A. No, ma'am, I do not.

21 Q. What time did you get to the, to the 140 Charlotte
22 Circle address?

23 A. Ma'am, probably around 6:45 roughly.

24 Q. And who was there when you got there?

25 A. Captain Chris Golden, Sean Murphy, Todd Williams,

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 Orangeburg County S.O., sheriff's office, and some other
2 uniforms deputies that I didn't recognize.

3 Q. Did you -- you went inside the trailer, correct?

4 A. Yes, ma'am.

5 Q. Okay, and you had an opportunity to see, see Mr.
6 Bantan, correct?

7 A. Yes, ma'am.

8 Q. Where was he when you first got there?

9 A. As you walked in the door of the trailer, to the left-
10 hand side there was a love seat sofa. That's where he was
11 sitting, and then just past that was the hallway which led
12 to the bedrooms. So, but that's where he was seated at
13 when I walked in.

14 Q. Okay. Did he appear to be sick or sweating or
15 anything?

16 A. No, ma'am. I don't recall that, seeing him sweat, no,
17 ma'am. I don't recall that.

18 Q. Was he saying anything, or was he just sitting there?

19 A. He said he didn't feel good. I do recall that.

20 Q. Was he cuffed at the time?

21 A. Yes, ma'am, he was.

22 Q. Front or back?

23 A. Best I recollect, ma'am, it was in the back.

24 Q. At any time during your stay at the trailer, did you
25 remove the cuffs from Titus?

1 A. Did I?

2 Q. Uh-huh.

3 A. No, ma'am.

4 Q. Did anyone else?

5 A. At some point he was unhandcuffed, ma'am.

6 Q. Well, at some point when you got to the jail or?

7 A. Oh, no, ma'am. It was while we were there he was
8 unhandcuffed.

9 Q. Okay.

10 A. But I, I can't tell you, you know, what point. I
11 don't recall, but he was released from his restraints.

12 Q. Were you there when Titus Bantan gave a consent to
13 search?

14 A. Ma'am?

15 Q. Were you there when Mr. Bantan gave the consent to
16 search?

17 A. Yes, ma'am, I was.

18 Q. And do you know what time it was?

19 A. No, ma'am. It was shortly after I arrived.

20 Q. And what happened after he gave a consent to search?

21 A. We went to the back and began searching that bedroom
22 that was indicated where he was staying.

23 Q. All right, you said it was shortly after you arrived.

24 Do you have any idea what time you got to the trailer?

25 A. No, ma'am. Like I said, it was -- I got there between

W. CARTWRIGHT - CROSS-EXAMINATION BY MS. HINDS

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1 6:30, 6:45 and it was right after that.

2 Q. And how long in your estimate did it take before Mr.
3 Bantan rescinded his consent?

4 A. Ma'am, we weren't back there ten or fifteen minutes.
5 But there again as I stated, it's a very small bedroom. I
6 mean, it wasn't very big at all. So, we had already
7 started and then shortly afterwards: Stop. Which we did.

8 Q. And what time did Chris and Sean go to get the search
9 warrant?

10 A. Between, like 7, 7:30, somewhere in that range, ma'am,
11 that thirty-minute range. I had to make a phone call and
12 set it up, and they immediately left.

13 Q. And that they, that was Chris Golden and Sean
14 Murphree?

15 A. Yes, ma'am.

16 Q. And they returned a short time later?

17 A. Yes, ma'am.

18 Q. What county is the Wagon Wheel in?

19 A. Calhoun.

20 Q. And what county is [REDACTED] in?

21 A. Orangeburg County.

22 Q. And would that also be in the city?

23 A. Yes, ma'am. That is in the City of Orangeburg.

24 Q. Okay. Were you present at the trailer when Ms. Anna
25 Miranda let the cops in, or did you come after that?

W. CARTWRIGHT - CROSS-EXAMINATION / CROSS-EXAMINATION 410

1 A. I was after that.

2 Q. Who actually found the Coinstar receipt?

3 A. Chris Golden.

4 Q. Do you know what time Mr. Bantan was taken from 140
5 Charlotte Circle?

6 A. It would've been after 8:30, ma'am. I'm pretty sure
7 probably would have been around, after 8:30.

8 Q. And where was he taken to?

9 A. The sheriff's office, Calhoun County.

10 Q. Do you know what time he was advised of his rights?

11 A. No, ma'am. I don't, I don't possess that knowledge,
12 ma'am.

13 Q. About how long was he at the Calhoun County Sheriff's
14 Office?

15 A. No more than about twenty minutes I would say.

16 Q. And where was he taken to after that?

17 A. Law complex, 1520 Ellis Avenue, Orangeburg-Calhoun
18 Detention Center.

19 MS. HINDS: No further questions.

20 THE COURT: Mr. Johnson?

21 MR. JOHNSON: Thank you.

22 CROSS-EXAMINATION BY MR. JOHNSON:

23 Q. Afternoon, sir.

24 A. All right.

25 Q. Officer Cartwright, the photo lineup that you had

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JOHNSON

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1 Natasha look at.

2 A. Yes, sir.

3 Q. You didn't put the photo lineup together yourself, do
4 you?

5 A. No, sir.

6 Q. Did you?

7 A. I did not.

8 Q. You actually received it from who?

9 A. Detective Dennis Romanstein, Orangeburg Department of
10 Public Safety.

11 Q. Okay. So, you really don't know how that photo lineup
12 was done. You just assumed SLED done it, correct?

13 A. That's what Detective Romanstein told me. He did it
14 through SLED. So, no, sir, I do not know.

15 Q. Is there any paperwork or anything showing that even
16 the request was made to SLED?

17 A. No, sir. That was all done over the phone.

18 Q. Do you have any documentation or anything like notes
19 that you took? Do you have any of those things ---

20 A. No, sir.

21 Q. --- that you took?

22 A. That would be in the case log, sir. If the -- all --
23 anything that I would have written down, sir, would be in
24 the case log.

25 Q. Okay. So, did you write something down?

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. No, sir.

2 Q. So, there's nothing ---

3 A. Not that I recall, sir. I may have, but I don't
4 recall that at this particular time if I actually, you
5 know, wrote something down.

6 Q. But as you think about it, you can't think of anything
7 you ---

8 A. No, sir.

9 Q. --- wrote down? And you cannot explain how the two,
10 how the -- how you had pictures of two individuals, two
11 matching? That you have a picture of two individuals on
12 both lineups?

13 A. No, sir, I cannot. All I can tell you is one lineup
14 that I showed. I'm not -- I was not familiar with the
15 second lineup, sir.

16 Q. So, so basically you were just someone that took it
17 there to show it to an individual?

18 A. Yes, sir.

19 Q. Now, when Natasha Rivers showed up to review the
20 lineup, she was riding with a another officer?

21 A. She was riding with a sheriff's deputy, yes, sir.

22 Q. That sheriff's deputy was at the scene of the -- I'm
23 assuming the sheriff's deputy brought her from the crime
24 scene. Is that correct?

25 A. Sir, I mean, he could have picked her up from her

W. CARTWRIGHT - REDIRECT EXAMINATION BY MS. FRYAR

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1 residence or something. I mean, I'm not sure.

2 Q. You don't, you don't know?

3 A. No, I do not know.

4 Q. And you don't know what conversation he had with her
5 prior to getting there?

6 A. No, sir, I do not.

7 Q. So, you don't know if Phillip Spears's name was
8 mentioned to her prior to her getting there, do you?

9 A. I have no idea, sir.

10 MR. JOHNSON: No other questions.

11 THE COURT: Redirect?

12 MS. FRYAR: Just briefly.

13 REDIRECT EXAMINATION BY MS. FRYAR:

14 Q. So, Captain Cartwright.

15 A. Yes, ma'am.

16 Q. Were you taking contemporary -- contemporarily notes
17 during this search what time everything was or anything
18 like that? Do you write down anywhere this was done at
19 this time, this is done at this time?

20 A. No, ma'am.

21 Q. Did you write down what time you got there?

22 A. No, ma'am, but I do recall in a general time frame.

23 Q. All right.

24 A. This isn't something that happened every day.

25 Q. Right, and you've indicated that it was, to your

W. CARTWRIGHT - RECROSS-EXAMINATION BY MS. HINDS

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1 recollection, around 6:30 or 6:45?

2 A. Yes, ma'am, when I arrived.

3 Q. Could it have been earlier?

4 A. Yes, ma'am, it could have been.

5 Q. Did you write anything down about the time or
6 anything?

7 A. No, ma'am, I did not.

8 Q. Are you giving us your best information on that?

9 A. Best of my ability, best of my knowledge, ma'am.

10 Q. But without any doubt, you there when Mr. Titus Bantan
11 gave consent to search that residence. Is that correct?

12 A. Without a doubt, ma'am.

13 Q. Did anyone, any member of law enforcement tell Mr.
14 Bantan if you give us consent to search this residence,
15 we'll take those handcuffs off you?

16 A. No, ma'am.

17 MS. FRYAR: Thank you, Your Honor.

18 THE COURT: Okay. All right, recross, Ms. Hinds?

19 RECROSS-EXAMINATION BY MS. HINDS:

20 Q. But he was cuffed at some point, correct?

21 A. Ma'am?

22 Q. He was handcuffed at some point while he was at the
23 residence?

24 A. Yes, ma'am.

25 Q. Okay, about how long was he in cuffs?

W. CARTWRIGHT - RECROSS-EXAMINATION BY MS. HINDS

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1 A. Not that long. Well, they were there prior to my
2 arrival, ma'am, so I don't know.

3 Q. But you said that he was cuffed when you arrived,
4 correct?

5 A. When I arrived, yes, ma'am.

6 Q. Okay.

7 A. But it could have been, like, one minute before I got
8 there, and it could have been five minutes before I got
9 there. I mean, I don't know, but he was handcuffed before
10 I arrived.

11 Q. And that some point while you're there, he was
12 uncuffed, correct?

13 A. Yes, ma'am.

14 Q. And was that after he gave consent to search?

15 A. No, ma'am. He was -- my, my recollection, he was
16 still handcuffed during the consent because when he stopped
17 us, at that point shortly afterwards he was uncuffed. It
18 was after he stopped us.

19 MS. HINDS: No further questions.

20 MR. JOHNSON: I have no further questions.

21 THE COURT: All right, very well. You may come down.

22 WITNESS: Thank you, ma'am.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Call your next witness, please.

25 MS. FRYAR: That's all from the state.

1 THE COURT: All right, as regards to the
2 identification, all right. Ms. Hinds, are there any
3 motions regarding the identification?

4 MS. HINDS: Yes, ma'am.

5 THE COURT: Okay.

6 MS. HINDS: Your Honor, the standard that we're
7 looking at here is the substantial likelihood of
8 irreparable misidentification. In other words, a
9 suggestive confrontation is disapproved of because it
10 increases the likelihood of a misidentification, or when --
11 if it's unnecessarily suggestive. For a number of reasons,
12 I'm going to argue that this was a bad lineup.

13 As I pointed out through the officers' testimony, and
14 as anybody can see when they look at the two lineups, Ms.
15 Rivers was the only witness that was shown lineups. She
16 was shown one with six people in it. She allegedly picks
17 out Mr. Spears. She is then several hours later shown
18 another lineup. Two of the people from the first lineup --
19 in other words, two people that she's already not
20 recognized -- are included in those several photos in the
21 lineup where she picks out Mr. Bantan.

22 Clearly, the odds have been significantly reduced of
23 her being able to -- she already knows that those two
24 people are -- is reasonably sure those two people are not
25 somebody that she can ID. So, we argue that that, in

1 essence, has reduced it to a one-in-four chance.

2 In looking at the totality of the circumstances, by
3 Ms. Rivers's testimony it was a relatively short period of
4 time. I believe she said ten to fifteen minutes total.
5 There was a point in time where he was masked, and all she
6 could see was eyes. There was some ability to look at him
7 after he removed the mask, but certainly not that great
8 amount of time.

9 She is in fear, rightly so, for her children's safety.
10 She's concentrating on that. She's afraid; she's scared to
11 death. She's trying to answer Mr. Spears's questions.
12 There is clearly a lot going on. She is focusing. She's
13 focusing greatly on trying to make sure that her children
14 are not harmed in any way. I would argue that that is not
15 a good way to be making an identification.

16 Again, she was on the floor part of the time. She's
17 looking down, and that reduces the amount of time that she
18 would have been able to clearly see his face. She had
19 never met or seen my client before, so it's not that that
20 would jog her memory and bring that back. And for all
21 those reasons, I would say that the lineup is no good.

22 THE COURT: Very well, all right. Mr. Johnson, let me
23 hear from you.

24 MR. JOHNSON: Thank you, Your Honor. Your Honor, it's
25 my position that I think the key here is certainly the

1 totality of the circumstances.

2 THE COURT: Yes.

3 MR. JOHNSON: And it's my belief that, first of all,
4 the witness has testified that she was working. She looks
5 up. She looks up for a second or so, looks back down.
6 That allegedly my client has a hat on his head. He has a
7 hoodie on. She pays no attention. That her next
8 observation of my client is allegedly when he jumps over a
9 counter next to her. At best, she could see the side of
10 his face. It's not a frontal view. He's jumping to her.
11 He jumps to the side, as stated by her, which then is only
12 a matter of seconds.

13 The circumstances are that there's a gun held on her.
14 She states clearly that she's more concerned about the
15 children and she watches the children; therefore, she's not
16 paying attention to the individual. At best she's had a
17 three to four second observation just to determine who this
18 individual is with a hat on.

19 One of the other keys is then the officer who -- the
20 lead investigator who testified yesterday before the court,
21 he testified that somebody mentioned someone from New York,
22 and then he said Phillip Rivers [sic] at the scene prior to
23 the identification, not knowing exactly where Ms. Rivers,
24 Ms. Natasha Rivers were. He said Phillip Spears, I'm
25 sorry, but that he says Phillip Spears. He said it out

1 loud enough for it have been overheard. He does not know
2 if Ms. Rivers heard or anything of that nature. Then she's
3 taken at some point by another officer that was at the
4 scene to then view his picture at a different location.

5 You then look at the two, the two photo lineups that
6 were done that both have the same pictures of two
7 individuals on these pictures, which suggests to me that
8 they didn't come from SLED. There's no paperwork of
9 anybody sending anything to SLED. It's just people making
10 assumptions that that normally was done: that's what's done
11 in this case. The state has presented no evidence to say
12 where these pictures came from.

13 I think you look at the totality of the circumstances,
14 Your Honor, it makes this very suggestive at best. And I
15 think that based on that, that the out-of-court
16 identifications, I suggest that, that the out of, out-of-
17 court identifications by the photo lineups, we ask that
18 they not be allowed.

19 THE COURT: Thank you so much. All right.

20 MS. FRYAR: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. FRYAR: Clearly everyone in the courtroom knows
23 the court will stick to the totality of the circumstances
24 to determine whether the identification was reliable, and
25 it's a two-pronged test as you know, Your Honor. The first

1 one is is it unduly suggestive.

2 Your Honor, I would submit to you that when Ms.
3 Natasha Rivers testified, she indicated that she looked at
4 these photographic lineups and immediately pointed out the
5 first time Mr. Phillip Spears and the second time Mr. Titus
6 Bantan. There's no indication that she even knew that
7 ~~there was any relationship between any of the other people~~
8 because she didn't really look at them. She immediately
9 picked out, the testimony said, these fellows as the
10 suspects in this case. So, I would suggest to you that it
11 was not unduly suggestive.

12 And even if it were unduly suggestive, which we do not
13 concede, of course you could look to the factors that are
14 laid out in Neil vs. Biggers. And I will point out that
15 Neil vs. Biggers was a show up in a station house with just
16 one person. And there have been many cases where people
17 are showed just one photographic lineup. And if the court
18 would look to these factors, the opportunity of Ms. Rivers
19 to view the suspects at the time of the crime, we say that
20 that was a good opportunity.

21 The witness's degree of attention, she testified to
22 the great attention that she was paying to these people
23 while this was going on, and the accuracy of prior
24 descriptions, and the description that she made does match
25 the description of the defendants perfectly. And the level

1 of her certainty is without question, Your Honor. And the
2 amount of time between the crime and the identification, it
3 all happened the same day. So, Your Honor, we would, we
4 would say that's these, these identifications are reliable
5 and should be admitted into evidence.

6 THE COURT: All right. Ms. Hinds, anything further?

7 MS. HINDS: No, Your Honor.

8 THE COURT: All right, Mr. Johnson, anything further?

9 MR. JOHNSON: Just, Your Honor, that we would take
10 note that the descriptions do not much match my client
11 perfectly as stated by the state. As well as it is our
12 position if the state is correct that she didn't look at
13 the other pictures, that's even more suggestive that she
14 was unduly persuaded because then she did not take the time
15 to properly look at the other pictures to see if those
16 other individuals was actually the person.

17 THE COURT: Very well. Thank you. I'll handle Mr.
18 Spears first because that was the first lineup. I do not
19 find that it was unduly suggestive. There were six
20 photographs, and I think certainly the description that was
21 given by the victim to the robbery was, I certainly think
22 it was reliable. I don't think the lineup was unduly
23 suggestive.

24 And she did give a description. She described in
25 substantial detail that his face was not covered. That his

1 forehead was covered. She talked about her ability to
2 observe him and that she was able, as she was on the scene
3 as these events were unfolding, that she was struggling to
4 remember where she had seen him, and she was able to
5 ascertain that she had seen him in the neighborhood. That
6 she didn't know who he was, that she did recognize him
7 although she did not know his name.

8 And shortly thereafter, within a matter of hours, the
9 lineup was shown to her. And I took her testimony to mean
10 that, not that she ignored the other photographs. That she
11 was just very clear and very certain when she saw Mr.
12 Spears's photograph that that was Mr. Spears. In fact, the
13 person that she recognized.

14 So, I do not find that the lineup was unduly
15 suggestive. And do find that there is -- certainly I don't
16 believe that there was any substantial likelihood of
17 misidentification in the out-of-court identification.

18 On to Mr. Bantan. With regards to Mr. Bantan, while
19 she did not recognize him from someone in the community,
20 that she had never seen him before, she talks about the
21 fact that she was able to look at him when he removed his
22 mask, and that she remembered what he looked like. She
23 talks about having seen the facial hair and that she
24 remembered seeing him, and she remembered very clearly what
25 he looked like.

1 Obviously she was paying attention to all of these
2 events. And no question she is very concerned about her
3 children from her testimony because she was also probably,
4 she was also riveted, I think, as these events unfolded.
5 The light was good. It was in a store, in a commercial
6 setting, and she describes a period that she had to see him
7 without the mask.

8 And then we move on to the photographic lineup. And
9 while it certainly may be reality that there were two
10 repeating individuals in the second lineup, and while at
11 first blush that causes concern, I would note that, really
12 two things. Number one, these repeated photographs are not
13 in the same location on each sheet, and I note that.
14 Secondly, there is no indication in this record whether or
15 not Ms. Rivers realized or noticed that they were the same
16 individuals in both lineups. Thirdly, there is no
17 testimony that explains to me that that in and of itself
18 makes the lineup unduly suggestive.

19 So, I don't find that the second lineup was unduly
20 suggestive either, and note that her testimony,
21 corroborated by law enforcement, was that she was very
22 clear at the time that the identification was made. And
23 her own testimony is that she was very certain. That when
24 she viewed the second lineup, she was very clear that the
25 person that she had seen was Mr. Bantan.

1 It is certainly interesting that at the time that she
2 went for the bond hearing, that she watched Mr. Bantan,
3 along with a number of other individuals, get out of the
4 van. Obviously she knew that those individuals were there
5 for a criminal court proceeding and, therefore, certainly
6 suggestive in that he is amongst a number of individuals.

7 But as I understand it, based on her testimony there
8 were a number of African-American gentlemen who were also
9 present. I just note that. That really doesn't go to the
10 basis of certainly the lineup. But I just note that her
11 testimony, that she certainly was able to identify him,
12 based on her testimony, pretty easily.

13 So, and I would note also, I think it is important
14 that the identification, the second lineup was also within
15 hours of these events, and I think that's likewise
16 important.

17 With regards to it being on the computer verses being
18 on the sheet, I understand why it was on the computer
19 rather than on the sheet, and the lineup which was on the
20 computer has been reproduced here, and there's been no
21 challenge that what was on the computer is what was on the
22 sheet presented and now in evidence for identification
23 purposes for this hearing at this juncture.

24 So, I would -- I don't believe that the second lineup
25 was unduly suggestive considering the totality of the

1 circumstances. And I believe that it certainly may be
2 utilized in the trial.

3 All right, what else do we have?

4 MS. FRYAR: Your Honor, under the State vs. Ora
5 Simmons, I think it's incumbent upon us to have an in-
6 camera hearing when we have a witness identify the
7 defendant as someone who commits a crime, and there is a
8 challenge on the in-court identification because the
9 perpetrators have been seen previously. And we have that
10 case, we have that situation.

11 The defense would require us to put up evidence
12 regarding our second victim, Mr. J.K. James Bourgeois. Mr.
13 Bourgeois has made identifications not from a photographic
14 lineup but from seeing the defendants at previous hearings.
15 So, we would be prepared to go forward with that.

16 THE COURT: Yes. All right.

17 MS. FRYAR: The state would call Mr. James Bourgeois,
18 please. Your Honor, I have some law that I'm providing to
19 defense counsel regarding this at this time.

20 THE COURT: Sure. Okay.

21 JAMES K. BOURGEOIS, BEING DULY
22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Pull the mic back as far as possible.
24 State your full name for the record, please.

25 WITNESS: James Bourgeois.

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1 DIRECT EXAMINATION BY MS. FRYAR:

2 Q. Now, Mr. Bourgeois, I understand you have an illness
3 that has affected your throat. Is that correct?

4 A. Yes, ma'am.

5 Q. So if you would, really get up into that microphone.

6 A. Okay.

7 Q. So the judge can hear you. All right, sir.

8 THE COURT: Just imagine Frank Sinatra singing "My
9 Way."

10 WITNESS: I'm not that good at it.

11 BY MS. FRYAR:

12 Q. Mr. Bourgeois.

13 THE COURT: There you go, and I've got some water for
14 you right there, sir.

15 WITNESS: That won't change it.

16 THE COURT: I know, but your voice might get dry and
17 you might like to have that. Okay.

18 MS. FRYAR: Thank you.

19 BY MS. FRYAR:

20 Q. Mr. Bourgeois, back on November the 6, 2006, what was
21 your occupation? What were you doing to make some money?

22 A. I was operating Bell's Wagon Wheel.

23 Q. All right. Was it also named, known as Bell's Bait
24 and Tackle Shop?

25 A. It was Bell's Wagon Wheel Bait and Tackle.

1 Q. Okay. Everybody around here knows it as the Wagon
2 Wheel. Is that right?

3 A. Yeah. They have for the last twenty years or more.

4 Q. All right, sir.

5 A. About thirty now.

6 Q. Okay. If you could tell Judge Goodstein on the
7 morning of November the 6, 2006, did an incident occur at
8 the store?

9 A. Yes, ma'am.

10 Q. Tell Judge Goodstein what happened, Mr. Bourgeois.

11 A. Well, we had came back from H.T. Hackney, had put out
12 an order. I think Tasha was still putting up the last two
13 or three small items, and we had decided to haul the trash
14 away that morning.

15 Q. And when you say we, who are you speaking of?

16 A. Myself, Mr. Prezzie, and Mr. Williams.

17 Q. All right, and do they work for you?

18 A. Yes.

19 Q. All right, sir, and so go ahead, please.

20 A. Kie had taken the truck around. I had started loading
21 trash, me and Mr. Williams were. That's when might have --
22 when Mr. Spears walked in the store.

23 Q. All right, you say Mr. Spears walked in the store, and
24 you're pointing at the gentleman sitting in the courtroom
25 with the white shirt on. Are you identifying Mr. Phillip

1 Spears?

2 A. Yes, ma'am.

3 Q. That is the person that walked into your store on that
4 day?

5 A. That is the one.

6 Q. All right, tell us if you would, sir, what that -- did
7 you know his name at the time?

8 A. No.

9 Q. Could you tell us, sir, what happened while you were
10 in the store and what you observed?

11 A. Well, I saw him walk around like he was a customer
12 looking for something.

13 Q. Yes, sir.

14 A. I went ahead and finished up what I was doing there.
15 Then I walked out the back to see about getting all the
16 trash loaded up to haul off.

17 Q. Yes, sir. Did you go out that back door behind the
18 counter?

19 A. Yes, ma'am.

20 Q. All right, sir.

21 A. The next thing I know, Phillip Spears has the gun in
22 his hand pointed at my face.

23 Q. How ---

24 A. Let me correct that. I, I was still going toward the
25 truck. The next thing I know, he was behind me and I heard

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 him say get back inside and lay down.

2 Q. All right.

3 A. On the floor, and as I turned, he had a gun in my
4 face.

5 Q. Okay, and show the judge how he held the gun to you.

6 A. How did he what?

7 Q. How does he hold that gun to you?

8 A. He had it turned sideways.

9 Q. And how far was he from you while he had that?

10 A. That gun was probably six inches from mine, face when I
11 turned.

12 Q. Okay, so just on the other side of his arm ---

13 A. Yeah.

14 Q. --- is where you saw him?

15 A. Yeah.

16 Q. Is that correct? All right, did you look into his
17 face at that time?

18 A. Yes, ma'am.

19 Q. Was his face covered at that time?

20 A. It was down to about here.

21 Q. What do you mean by that?

22 A. Well, he had a cap pulled down to about here.

23 Q. Okay.

24 THE COURT: Let the record reflect that it appears
25 that the witness has placed his hand right at eyebrow

1 level. You agree with that, Ms. Hinds?

2 MS. HINDS: Yes, ma'am.

3 THE COURT: And Mr. Johnson?

4 MR. JOHNSON: Yes, Your Honor.

5 THE COURT: All right, and Ms. Fryar?

6 MS. FRYAR: Yes, ma'am.

7 THE COURT: Very well.

8 BY MS. FRYAR:

9 Q. All right, and so what did, what did he say to you?

10 A. He said get back inside and lay down on the floor.

11 Q. Okay. What did he look like?

12 A. He was about five-ten, five-eleven, slender build.

13 Might weigh 150 or 60 pounds.

14 Q. What can you tell us, if anything, about his face?

15 A. I don't know. I've never decided what it is, but it's
16 like he had acne bumps or something all over his face.

17 Q. All right. Did he have any ---

18 A. I don't know whether that's what it is or not.

19 Q. Okay, sir, and did he have any facial hair?

20 A. Yes.

21 Q. All right, where was that?

22 A. Kind of had a scruffy looking mustache.

23 Q. Okay, and what, what did he do?

24 A. What do you mean what did he do?

25 Q. What did he do after that? He pointed that gun at you

1 and told you to get back inside?

2 A. Well, I, I started inside and he went ahead and got
3 ahold of Kie with the gun, pointed at him and telling him
4 to get himself in there.

5 Q. And when you say Kie, are you referring to Iskier
6 Prezzie?

7 A. Yes, ma'am.

8 Q. All right.

9 A. And he also told Mr. Williams the same thing.

10 Q. All right.

11 A. And he about halfway dragged Kie in there by the shirt
12 collar.

13 Q. All right, sir, and did you have an opportunity to see
14 what kind of clothes he had on?

15 A. Yes.

16 Q. What, other than ball cap that you have described to
17 the judge, what else did he have on?

18 A. He had on, like, a gray hoodie and a pair of faded
19 blue jeans.

20 Q. Okay, and so what did he do after that, Mr. Bourgeois?

21 A. After that, he -- once I walked inside, the fellow
22 I've come to know as Mr. Bantan jumped over the counter and
23 told me to open the cash register.

24 Q. Okay, now you say the fellow you refer to as Mr.

25 Bantan, do you, did you -- do you recognize somebody in the

1 courtroom that was there that day?

2 A. Yes, ma'am.

3 Q. And who is that?

4 A. That's the other defendant there in the green shirt.

5 MS. FRYAR: Please let the record reflect that he is
6 identifying Mr. Titus Bantan.

7 Q. Why did -- did that gentleman have a mask on when you
8 saw him, Mr. Bourgeois?

9 A. I never did see him with a mask on.

10 Q. All right. So, you didn't see him with a mask on?

11 A. No.

12 Q. And when did you first recognize him or see him for
13 the first time?

14 A. After when I first seen him was when I turned. When
15 Mr. Spears had the gun at my head and told me to get
16 inside, I looked through the door and he was standing at
17 the counter.

18 Q. Okay, let me back up for just a second. Did -- you
19 say that the first person had a cap on. Could you see any
20 kind of hair underneath the cap?

21 A. Yeah. You could see kind of ends of braids sticking
22 out.

23 Q. Okay, all right, but this second guy, he didn't have a
24 mask on?

25 A. No.

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1 Q. Can you describe him for the judge? What did he look
2 like?

3 A. Well, he was, he seemed to be taller. Like six-one,
4 six-two. Maybe six-three, and he had a, like a sweatshirt
5 on. He seemed to be heavier.

6 Q. All right.

7 A. Maybe 180, 90 pounds.

8 Q. Okay, and what was he wearing?

9 A. He was wearing a dark, like a black hoodie I guess you
10 call them.

11 Q. All right. What kind of pants?

12 A. They were maybe the same color.

13 Q. Black?

14 A. Yes.

15 Q. All right, sir, and so tell the judge what happened.
16 You walked in and you saw that second gentleman, that
17 second person.

18 A. Well, as I came in, Spears was bringing the other two
19 in behind him, kind of wrestled them down on the floor
20 around the counter, and Mr. Bantan told me to open the cash
21 register, which I did.

22 Q. Were you looking in his face when you told him that?

23 A. Yes. I looked at his face.

24 Q. All right, and did you comply with what he asked you
25 to do?

1 A. Yes.

2 Q. All right. How far was he from you when you saw him,
3 when he was telling you that?

4 A. Maybe a foot or two.

5 Q. Okay.

6 A. He was close.

7 Q. Okay, and what happened after that?

8 A. Well, he cut in behind me, kind of shoved me down on
9 the floor, poked me in the head, back of the head with a
10 gun. Told me get to down, stay down or he might shoot.

11 Q. Okay, and which one was it, the person who came in the
12 store first who you've identified as Mr. Spears, or the
13 person who came in the store second who you've identified
14 as Mr. Bantan? Who was doing that? Who was pointing that?
15 Who had, if you know, who had that ---

16 A. You mean at the cash register?

17 Q. Yes, sir.

18 A. It was Mr. Bantan.

19 Q. At any time, did Mr. Spears have a gun on you?

20 A. I think he poked me one time.

21 Q. Okay.

22 A. But I'm not positive about that.

23 Q. Okay, because you had your head down?

24 A. Yes.

25 Q. All right. Why -- but Mr. Bantan, he poked you more

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1 than one time. Is that correct?

2 A. Yeah, five or six times altogether.

3 Q. Why was Mr. Bantan poking you with the barrel of that
4 the gun?

5 A. Because I kept looking up.

6 Q. Okay, and he wanted you to keep down?

7 A. That's what he told me.

8 Q. How many times did you look up and look at them?

9 A. Five, six. Might be more than that.

10 Q. Okay. Did you have a good opportunity to look at
11 them?

12 A. Yes.

13 Q. Did you have a good opportunity to look at the face of
14 Mr. Phillip Spears?

15 A. Yes. I saw him when he went to check the door to the
16 bathrooms and our little storage area.

17 Q. Okay, and all this space that you're talking about
18 between the back door and the counter where the register
19 is, how broad a space is that?

20 A. It's 8 feet.

21 Q. Okay, and how far are these doors in front of you that
22 you're talking about from the cash register to those doors,
23 Mr. Bourgeois?

24 A. To -- 10 feet.

25 Q. All right. Were -- okay. Were they standing still,

1 or were they moving around?

2 A. They were constantly moving.

3 Q. Okay, were they getting close to you some of the time
4 then?

5 A. Mr. Bantan was close to me most of the time.

6 Q. All right, sir, and did you know who these people were
7 before?

8 A. I have no idea who they are.

9 Q. All right, sir, and when law enforcement officers came
10 down to the Wagon Wheel, did you call 911 after the robbery
11 occurred?

12 A. Yes, ma'am.

13 Q. When they came down to the Wagon Wheel, did you
14 describe to them what these people looked like?

15 A. Yes.

16 Q. All right. Following this, Mr. Bourgeois, back in
17 March of 2007, did you have an opportunity to go to a bond
18 reduction hearing for Mr. Titus Bantan?

19 A. Yes, ma'am.

20 Q. All right. Tell the judge how you saw -- what
21 happened on that day when you went to the bond reduction
22 hearing. Did you see Mr. Bantan?

23 A. Yes.

24 Q. All right. Where was Mr. Bantan when you saw him
25 again?

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. What do you mean again?

2 Q. You had seen him at the robbery.

3 A. Oh, okay.

4 Q. And where were you -- where was he when you ---

5 A. The next time I seen him, the deputies were taking
6 several prisoners in, kind of in the back way of the
7 courtroom.

8 Q. All right, in the courtroom?

9 A. Yes.

10 Q. And among those inmates, did you see him?

11 A. Yes, ma'am.

12 Q. When you saw him, how sure were you that it was him?

13 A. I was positive.

14 Q. All right, sir, and in between those two times, did
15 you, did you see him at all? Did you see a picture of him
16 perhaps?

17 A. Either two or three days after the robbery, his
18 picture was in the paper.

19 Q. All right. So, after the robbery, you were looking at
20 the paper?

21 A. Yes, ma'am.

22 Q. And you saw a picture of Titus Bantan?

23 A. Yes.

24 Q. And what were your thoughts when you saw that picture?

25 A. I knew that he was one of them.

1 Q. How did you know?

2 A. Because I, I just couldn't lose it.

3 Q. What do you mean by that?

4 A. Ever since, including the day of the robbery, that
5 night I saw both of these characters in my dream.

6 Q. Yes, sir.

7 A. ~~When they came into the dream, all I could see was~~
8 ~~them. I couldn't even tell you what the dream was about.~~

9 Q. All right. So, you repeatedly played in your mind
10 what their faces looked like ---

11 A. Yes.

12 Q. --- is your testimony?

13 A. It seemed like it was just printed in there.

14 Q. Yes, sir, and so when you saw this picture in the --
15 the photograph saying Titus Bantan or identifying this
16 person as Titus Bantan, what was your agree of certainty
17 that that was Titus Bantan?

18 A. I knew that it was him, but I didn't know anything
19 about Titus Bantan. I still don't know anything about
20 Titus Bantan.

21 Q. You didn't know that was his name, but you knew that
22 was a person that ---

23 A. I knew that was him.

24 Q. All right, sir. All right, following that, in April
25 of 2007 did you have an opportunity to go to a bond setting

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 involving Mr. Spears?

2 A. Yes.

3 Q. Please tell the judge how you knew to go somewhere.

4 A. How what?

5 Q. How did you know to go to this bond setting?

6 A. I'm not even sure about that.

7 Q. Okay, did ---

8 A. Somebody, somebody notified me there was a hearing.

9 Q. Okay, and did they tell you where that hearing was
10 going to be?

11 A. They said it would be at Judge Lake's.

12 Q. Okay, and so Judge Lake is our magistrate here in
13 Calhoun County, and you knew where that was?

14 A. Yes, ma'am.

15 Q. Is that correct? Okay, and so did you go to Judge
16 Lake's office?

17 A. Yes, I did.

18 Q. Okay. Did you have an opportunity to see Phillip
19 Spears at that time?

20 A. Yes.

21 Q. Had you seen him since the time of the robbery?

22 A. No.

23 Q. All right. When you were at Judge Lake's sitting
24 there, tell us what happened.

25 A. While I was sitting there waiting with a paper, I

1 looked up and he came in there. So, I got to see him walk
2 through the front door.

3 Q. Okay.

4 A. And the second I seen him, I knew he was the one that
5 put the gun to my head.

6 Q. Okay, there were no other folks with him? He was the
7 only one. Is that correct?

8 A. He was the only one.

9 Q. And do, do you know if the judge was going to have
10 other matters than this one today? Did you know that other
11 people might be coming that day?

12 A. I didn't know. I had no idea.

13 Q. Okay. All right. So, if -- you didn't know for sure
14 that this was going to be the hearing for Mr. Spears at
15 that time. Is that correct?

16 A. No.

17 Q. But deputies came in with Mr. Spears. Is that
18 correct?

19 A. Yes.

20 Q. All right, where were you when you first, first saw
21 Mr. Spears again since the time of that robbery?

22 A. I was sitting there in the waiting area.

23 Q. All right, all right, and when did you see him? When
24 he walked in the door or what?

25 A. When he walked through the door.

J.K. BOURGEOIS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. All right, sir, and did you look into his face?

2 A. Yes.

3 Q. All right. How long did it take you to determine
4 that's the guy who robbed you?

5 A. Something like a second.

6 Q. All right, sir. He'd never had his picture in the
7 newspaper or anything like that?

8 A. Not that I know of.

9 Q. And so had you seen his face between the time of the
10 robbery and the time that you saw him in Judge Lake's
11 office?

12 A. No, ma'am.

13 Q. Only in your mind?

14 A. Only in my mind.

15 Q. How many times in your mind?

16 A. Three or four times a week for about eight weeks.

17 MS. FRYAR: Thank you, Mr. Bourgeois. I appreciate
18 your testimony.

19 THE COURT: Cross-examination, Ms. Hinds?

20 CROSS-EXAMINATION BY MS. HINDS:

21 Q. Afternoon, Mr. Bourgeois. On the day of the robbery
22 when you called 911 and the officers responded and they
23 asked you to tell them what happened, did you tell officers
24 that you could identify these two guys?

25 A. Would you repeat that for me?

J.K. BOURGEOIS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. On the day of the robbery when you called cops to come
2 to the Wagon Wheel and you tell your story about what
3 happened, did you tell any of the officers that you could
4 identify one or both of the men?

5 A. Yes.

6 Q. Who did you tell?

7 A. I don't know that for sure.

8 Q. Did they offer to show you a lineup, a photo lineup?

9 A. No, ma'am.

10 Q. If you could -- if you told them that you could
11 identify the people, do you, do you have any idea why they
12 would not show you a photo lineup?

13 A. No idea.

14 MS. FRYAR: Objection. Calls for speculation on the
15 part of the witness.

16 THE COURT: I sustain the objection.

17 BY MS. HINDS:

18 Q. And you saw, the next time that you saw Mr. Bantan's
19 picture was in the newspaper, correct?

20 A. Yes, ma'am.

21 Q. And that was in a store relating to the robbery,
22 correct?

23 A. Yes.

24 Q. So as you're reading that, you scan the picture, you
25 know that's the story about your robbery, correct?

J.K. BOURGEOIS - CROSS-EXAMINATION BY MS. HINDS

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1 A. I recognized him before I read the article.

2 Q. And you had never seen him before ---

3 A. No.

4 Q. --- November 6, 2006, correct?

5 A. Never have that I know of.

6 Q. And the day that you saw him at the courthouse, had
7 you been notified that there was going to be a bond
8 hearing?

9 A. Yes, ma'am.

10 Q. So, you knew he was going to be in the building,
11 correct?

12 A. Yes.

13 Q. And when you saw him, was he, was he in a group of
14 people?

15 A. Yeah. There was three or four other people being
16 brought in with him.

17 Q. Just three or four inmates? In other words, three or
18 four other inmates and Mr. Bantan?

19 A. Yes.

20 Q. And you knew he was coming there for that bond
21 hearing, correct?

22 A. I assumed that because he did not have to be there for
23 the hearing.

24 Q. Did you put in your statement that you could identify
25 them, the people?

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. I don't know whether I did or not.

2 Q. If I told you you did not put it in, would that
3 surprise you?

4 A. No.

5 Q. Would you like to look at your statement? I don't
6 want to put words in your mouth.

7 A. I could have. I might not have. I don't know.

8 Q. And you don't remember the officer that you told that
9 you could identify the two men?

10 A. I talked to so many officers that day; I don't know
11 what I may have told any individual.

12 MS. HINDS: No further questions.

13 THE COURT: All right. Yes, sir, Mr. Johnson.

14 MR. JOHNSON: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q. Good afternoon, Mr. Bourgeois. Mr. Bourgeois, you
17 said that you recognized my client with a hat down over his
18 eyes.

19 A. Yes, sir.

20 Q. But you can't -- I hate to keep asking double
21 questions with respect to my client, but you didn't, you
22 didn't tell the police at that time that you could identify
23 him, did you?

24 A. Yes, I did.

25 Q. But you can't remember ---

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. I don't know names, which one I did.

2 Q. The particular hearing that you went to you say was a
3 bond reduction hearing?

4 A. One in Orangeburg was, I think. I think it was a bond
5 reduction.

6 Q. Could it have been a pretrial hearing?

7 A. The one up here could have been a preliminary.

8 Q. A preliminary hearing. Did you talk to any officers,
9 like Officer Graham? Did he tell you to show up that day
10 or have anything to do with bringing you there?

11 A. I believe one of the deputies was the one that
12 informed me of this bond hearing at St. Matthews.

13 Q. Do you think that deputy was Officer Graham?

14 A. Could I see Officer Graham?

15 MR. JOHNSON: If the court would allow it?

16 THE COURT: Go ahead. Say again. I'm sorry.

17 Something caught my eye here in the case law. Go ahead.

18 You want to see?

19 MR. JOHNSON: I asked him was Officer Graham the
20 person who brought him.

21 THE COURT: I understand.

22 MR. JOHNSON: He said he would like to see him.

23 THE COURT: You would like him to see Officer Graham?

24 MR. JOHNSON: To see if that was the person.

25 THE COURT: Do you have any objection?

J.K. BOURGEOIS - CROSS-EXAMINATION/REDIRECT EXAMINATION 446

1 MS. FRYAR: No objection.

2 THE COURT: Okay. I hope he's here.

3 MR. JOHNSON: I think he's outside.

4 THE COURT: I hope so.

5 (A PAUSE.)

6 (OFFICER GRAHAM ENTERS THE COURTROOM.)

7 BY MR. JOHNSON:

8 Q. That was the officer that brought you that day?

9 A. Yes, sir.

10 Q. Thank you, and the officer ---

11 A. He didn't, he didn't bring me. He just stopped and
12 let me know about the hearing.

13 Q. Okay.

14 MR. JOHNSON: And, Your Honor, if I could, could I ask
15 Officer Graham to stay in the area? I may want to call
16 him.

17 THE COURT: Just don't go far. Don't go far. Thank
18 you.

19 (OFFICER GRAHAM EXITS THE COURTROOM.)

20 MR. JOHNSON: I have no other questions, Your Honor.

21 THE COURT: All right, thank you. Any redirect?

22 REDIRECT EXAMINATION BY MS. FRYAR:

23 Q. Was it Deputy Graham, Mr. Bourgeois, that you stated
24 to that you could also identify the two subjects if you saw
25 them again? Was that the gentleman you told I can identify

J.K. BOURGEOIS - RECROSS-EXAMINATION BY MS. HINDS

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1 them if I saw them again?

2 A. I think I did.

3 MS. FRYAR: All right, sir. I don't have anything
4 further.

5 THE COURT: All right, Ms. Hinds?

6 RECROSS EXAMINATION BY MS. HINDS:

7 Q. Do you wear glasses, Mr. Bourgeois?

8 A. Reading glasses.

9 Q. You can see at a distance?

10 A. I can't read up here, but I can see perfect at a
11 distance.

12 MS. HINDS: Nothing further.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: I have no further questions.

15 THE COURT: Thank you. You can come down, Mr.

16 Bourgeois. Thank you. Do you want to take your water with
17 you? Thank you.

18 WITNESS: Thanks.

19 THE COURT: All right, yes, sir.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Call Your next witness.

22 MS. FRYAR: Your Honor, that's all we have on this
23 issue.

24 THE COURT: All right. Ms. Hinds?

25 MS. HINDS: Your Honor, although we have testimony

1 that he told officers that he could identify the two
2 people, it seems unusual to me that they would show Ms.
3 Rivers a lineup and ask if she can identify somebody and
4 not show Mr. Bourgeois. There's testimony we believe that
5 he perhaps didn't think he could identify somebody.

6 I think the fact that he recognizes a picture in the
7 paper when it's a story about the robbery is a little
8 suggestive. And certainly when he goes to the bond
9 hearing, he's been notified that the person is going to be
10 there and that they're going to have their bond hearing,
11 and he has a right to be there and he knows he's going to
12 be there.

13 For all those reasons, I think that the in-court
14 identification is going to be tainted by those, those
15 things. He sits here today under oath and he can point out
16 Mr. Bantan. Well, obviously. He's sitting here at the
17 defendant's table.

18 I'd also make note that he said he had a green shirt
19 on. And we may have a different perception, but that shirt
20 is definitely not green to me. For all those reasons, we
21 would ask you not to allow the identification.

22 THE COURT: Okay. Yes, sir, Mr. Johnson.

23 MR. JOHNSON: Your Honor, I would like to call ---

24 THE COURT: Yes, sir, because you have witnesses, yes.

25 MR. JOHNSON: I'd like to call Officer Graham.

S. GRAHAM - DIRECT EXAMINATION BY MR. JOHNSON

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1 THE COURT: Yes.

2 STANLEY M. GRAHAM, BEING DULY

3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Pull the mic to you as close as you
5 possibly can. State your full name for the record.

6 WITNESS: Stanley M. Graham.

7 THE COURT: Your witness.

8 MS. FRYAR: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. JOHNSON:

10 Q. Officer Graham, do you remember back on April 26th of
11 this year when you, I think you took -- you was actually
12 the transport officer that took Mr. Spears back from
13 preliminary?

14 A. Yes, sir.

15 Q. Do you remember that?

16 A. Yes, sir.

17 Q. Okay. Do you remember Mr. Spears asking you who was
18 that gentleman when he pointed at Mr. Bourgeois, and you
19 told him that was one of the victims or whatever at the
20 scene?

21 A. No, sir.

22 Q. You don't remember having any conversation with him on
23 the way going back?

24 A. We talked, but specifics about the conversation, I
25 don't remember.

S. GRAHAM - DIRECT EXAMINATION BY MR. JOHNSON

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1 Q. Okay. Do you remember telling Mr. Spears that that
2 was Mr. Bourgeois, and you didn't have to worry about him
3 being there because he couldn't identify you?

4 A. No, sir.

5 Q. So, it's your understanding that you had no
6 conversation at all about that?

7 A. No, sir. I don't have any recollection of talking to
8 Mr. Spears about it.

9 Q. All right. Well, let's go the other direction. Do
10 you have any recollection of Mr. Bourgeois telling you that
11 he could identify anybody?

12 A. Yes, sir. I think on scene that day, he vaguely could
13 identify people but not names, not specifics.

14 Q. So, you was actually at the scene that day?

15 A. Yes, sir.

16 Q. Do you remember what Mr. Bourgeois said about
17 identifying, identification of anyone?

18 A. Different witnesses had different ideas as far as ---

19 Q. Well, as far as Mr. Bourgeois ---

20 A. Okay.

21 Q. --- who we're talking about. What specifically was
22 his remembrance that you remember?

23 A. Vaguely. I can't recall his specifics. He was the
24 first one that I met on scene, so he identified two black
25 males. As far as facial features or hair color or anything

S. GRAHAM - DIRECT EXAMINATION BY MR. JOHNSON

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1 like, I can't remember.

2 Q. He didn't have any of that?

3 A. I can't remember if he did or if he didn't.

4 Q. Well, let me ask you the standard question. I've been
5 asking everybody else. Do you have any notes?

6 A. The incident reports are my notes.

7 Q. Which incident reports?

8 A. The incident report from the armed robbery.

9 Q. The one-page incident report, or is there more to it?

10 A. There should be at least two separate pages, page one
11 and a supplemental.

12 Q. Let me show you the ---

13 MR. JOHNSON: One moment, Your Honor.

14 (A PAUSE.)

15 THE COURT: Your Honor, can I approach the witness?

16 THE COURT: You may.

17 BY MR. JOHNSON:

18 Q. Is this the incident report and the supplemental that
19 you're referring to?

20 A. Yes, sir, it is.

21 Q. So, could you point out which one is that first page?

22 A. This is page one, and the rest of these are
23 supplemental because on page one, you can only put one
24 witness and -- I'm sorry, one victim and one subject.

25 Q. Okay. Do you remember having any conversation with

S. GRAHAM - DIRECT EXAMINATION BY MR. JOHNSON

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1 Mr. Bourgeois at the preliminary hearing?

2 A. No, sir, I don't. My main focus at the prelim was
3 keeping an eye on the subject in custody.

4 Q. Can you explain to the court why Mr. Bourgeois, if he
5 could identify someone, was not shown a photo lineup?

6 A. I cannot.

7 MR. JOHNSON: No other questions.

8 THE COURT: All right, cross-examination?

9 MS. FRYAR: No, ma'am.

10 THE COURT: Ms. Hinds? No?

11 MS. HINDS: No, ma'am.

12 THE COURT: Okay, thank you.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: All right, Mr. Johnson, do you have
15 additional witnesses?

16 MR. JOHNSON: I have no other witnesses, Your Honor.
17 I'd just like to reiterate the same basic motion that
18 co-counsel made.

19 THE COURT: Okay.

20 MR. JOHNSON: I think that he saw the picture of my
21 client, the victim, before. I think that, once again I
22 hate to use the same term, but the totality of the
23 circumstances is that the police officers took the photo
24 lineup to the, it's our belief, to the only individual that
25 indicated she could identify the people. That I'm sure

1 that police officers had other individuals. That it's --
2 any standard procedure I've ever been in, that any other
3 identifying witnesses would have been given a photo lineup
4 at that time.

5 THE COURT: All right. Yes, ma'am.

6 MS. FRYAR: Yes, ma'am. I would say, Your Honor, it's
7 not unusual not to show Mr. Bourgeois a photographic lineup
8 in light of the fact that they already had both suspects
9 picked out by a previous witness and had, as you know,
10 received a lot of fruits of their crime. That's not an
11 unusual thing at all.

12 I do not think this is -- while it may be somewhat
13 suggestive, it's not unduly suggestive. And I have handed
14 up the case to you, ma'am, of Antonio Tisdale and provided
15 that to defense counsel.

16 Obviously victims have a right to go to hearings
17 involving other folks. And in this case, as you see,
18 tellers at a bank had seen a suspect on television at a
19 bond setting hearing, and they had also seen a picture in
20 the newspaper of the suspect and then positively identified
21 those folks from that forum.

22 And, Your Honor, I just feel like that even if it was
23 suggestive, it was not unduly suggestive. If it was unduly
24 suggestive, you heard testimony regarding his opportunity
25 to view the witnesses -- the suspects at the time of the

1 crime, his degree of attention, his accuracy of the
2 witness's description, and -- as you look at the photo
3 lineups, and the level of certainty of his, his, it's
4 without question that he is very certain.

5 And so I will just tell you in Neil vs. Biggers, the
6 case that we rely on on that, it was seven months between
7 that time they did the station house show up with the guy
8 and the time he was identified, and we are in a shorter
9 frame of time than that. Thank you.

10 THE COURT: Ms. Hinds?

11 MS. HINDS: Your Honor, I'll just renew my prior
12 argument. I, I do think it was unduly suggestive. I think
13 that that idea that because of some -- one person could
14 identify, had identified one person earlier that afternoon,
15 I don't know why, if Mr. Bourgeois thought that he could
16 identify other people -- and remember at that point, Ms.
17 Rivers had only identified one of the suspects. I would
18 think that the police would have wanted to have shown him
19 lineups to try maybe perhaps to identify the other person.
20 I do think that, given the fact that the picture was in the
21 newspaper with the story and the fact that he was going to
22 the courthouse knowing that Mr. Bantan was going to be
23 there is unduly suggestive. And I do have to question the
24 in-court identification.

25 THE COURT: Mr. Johnson?

1 MR. JOHNSON: Just save time, Your Honor.

2 THE COURT: Same?

3 MR. JOHNSON: Same.

4 MS. FRYAR: And, Your Honor, I would point out in the
5 Tisdale case that the alleged suggestiveness of the
6 identification goes to the weight rather than
7 admissibility, and I would, I would present that to you.

8 THE COURT: Talking about the suggestiveness, you're
9 talking -- but in the Tisdale they're talking about it goes
10 to the weight when it's a non-governmental identification.
11 That was the newspaper and the media. That's different.

12 MS. FRYAR: Well, Your Honor, we would submit by --
13 the courts meant by non-governmental procedure, we mean a
14 policeman did not present this person. No law enforcement
15 officer was involved in this case in presenting these
16 suspects to Mr. Bourgeois.

17 THE COURT: I'm not concerned about the newspaper
18 pictures because that goes to the weight clearly in the
19 case law that you have showed me. And I'm not -- I agree
20 with you. It certainly is suggestive when an individual is
21 going to the courthouse to a bond hearing and they know
22 that, and they know that the person is going to be there.

23 But under the facts as this one was, I don't think it
24 is unduly suggestive because rather than Mr. Bourgeois
25 identifying the defendant Mr. Bantan by virtue of him being

1 called up to the bond hearing, he observed Mr. Bantan with
2 a group of other people, a group of other African-American
3 gentlemen, as I understand it, coming into the courthouse
4 for a -- I don't know why, but he was with a group of
5 inmates, and he talks about him. That he, in a fraction of
6 a second, was able to pick him out. So, I'm not concerned
7 about that. I think you've met the burden and that his in-
8 court identification will be allowed.

9 And you're right. I was a little bit concerned about
10 the green shirt as opposed to the brown shirt, too. But
11 one person's -- I don't know that I would identify that as
12 green, but I can bet you my husband would identify that
13 color as green. I must tell you I think he was identifying
14 Mr. Bantan and called the color as he did. But I will
15 allow that.

16 MS. FRYAR: Thank you.

17 THE COURT: With regards to Mr. Spears, it's a little
18 bit different in that didn't see a photograph of him in the
19 newspaper, and he is obviously going to Judge Lake for the
20 purpose of the bond hearing. He knows that, and he -- he,
21 Mr. Spears, he -- is brought into the building with law
22 enforcement surrounding him.

23 But as you say, he didn't, as you elicited from him,
24 he did not know how many individuals there were. If there
25 was going to be one bond hearing or fifteen or twenty, he

1 did not know. There had been obviously some delay in that
2 there, that there -- and I'm not sure how that cuts because
3 if there's a delay, I guess you could certainly argue that
4 if there's a delay, then I guess you could say that the
5 next person in would be the person for whom everyone was
6 waiting.

7 MR. JOHNSON: Excuse me, Your Honor. To clarify, my
8 client was the only person that day.

9 THE COURT: I know that, but what I'm saying -- you're
10 right. But what I'm saying is that it was elicited on
11 direct that he didn't know if he was the only person. He
12 didn't know if he was -- that there were people to come
13 before or after. He did not know that, and that was
14 elicited on direct examination.

15 MR. JOHNSON: I think it...

16 THE COURT: Do you see what I'm saying? In other
17 words, I'm just commenting that it was elicited from the
18 state that Mr. Bourgeois did not know, was unaware how many
19 people there were there. You're telling me that there was
20 one, but he didn't know if it was going to be one or five
21 or ---

22 MR. JOHNSON: But, but he wasn't told they would be
23 there. He was told that he was going there for the prelim
24 for my client.

25 THE COURT: Right. I understand that. I do

1 understand that, and it certainly is helpful to me that he
2 did not know that this was -- that he was told that this
3 would be the lone proceeding. And in that it was delayed,
4 that's somewhat helpful because he does not know as he sits
5 there if that is someone who is coming in for their point
6 in time, or if this is the person who's running late. In
7 that you have elicited that testimony, he did not know how
8 many there were going to be. And that when he is escorted
9 into the building, he again says that within a fraction of
10 a second, he knew that that was the person that had robbed
11 him and that he had seen -- and he had seen nothing
12 interimly.

13 He talks very dramatically that he had seen them in
14 his dreams and that the faces he had seen about eight weeks
15 at least three times a week in his dreams. And certainly
16 his demeanor and his testimony indicate to me that it was
17 fairly dramatic for him.

18 So, again even with regards to Mr. Spears, I think
19 that the burden which has been articulated in the State vs.
20 Ora Simmons has been met, and I will allow the in-court
21 identification subject to cross-examination.

22 Okay, very well, what else from the state? Anything
23 further from the state?

24 MR. JEFFRIES: Your Honor, I think that will bring us
25 back to the issue of suppressing the search warrant and the

1 evidence that was seized as a result of the search warrant.

2 THE COURT: I am confused. I thought that I had heard
3 about two receipts. I thought I had heard about a Bi-lo
4 receipt and Star receipt.

5 MR. JEFFRIES: And my understanding is that the Bi-lo
6 receipt represents money taken from the Coinstar
7 transaction.

8 THE COURT: Okay.

9 MR. JEFFRIES: Go to the Coinstar, put your money in.
10 It spits out a receipt that you then take to the Bi-lo
11 cashier and get cash.

12 THE COURT: Is it one receipt or two receipts?

13 MR. JEFFRIES: It's one receipt.

14 MS. HINDS: I thought there are two receipts.

15 MR. JEFFRIES: Well, okay, well there's two receipts
16 in evidence. We have the receipt that was retrieved from
17 the search warrant and then Officer, I believe Officer
18 Graham then goes to Bi-lo to get video of that transaction
19 and also the original receipt of the person who takes the
20 Coinstar receipt to the Bi-lo cashier. So, that receipt
21 comes from Bi-lo. It has absolutely nothing to do with the
22 search warrant, Your Honor.

23 (A PAUSE.)

24 MS. FRYAR: Your Honor, we're looking for our search
25 warrant. If you just give us a minute.

1 THE COURT: Oh, and I have the affidavit.

2 MS. FRYAR: Oh, okay.

3 THE COURT: So if you need the affidavit, it's here.

4 MS. FRYAR: No, ma'am. I need the return.

5 THE COURT: All right.

6 (A PAUSE.)

7 MR. JEFFRIES: All right, if you -- I just want to
8 verify what I just said. The actual Bi-lo receipt where he
9 gets the money from Bi-lo is what was found as a result,
10 our original position is, as a result of the consent
11 search. But in any way, after the search warrant is
12 executed -- it's listed in the return. Even if they then
13 sent one of the officers to Bi-lo to verify that they had
14 the Coinstar receipt that was given to them by someone in
15 order to get the money, that's why we have the receipt from
16 Bi-lo. Is that...

17 MS. FRYAR: Your Honor, can I have ---

18 THE COURT: This is what I remember from the
19 testimony. Can I just tell you what I remember, and then
20 you can correct me so you'll know what is correct.

21 MS. FRYAR: Yes, ma'am.

22 THE COURT: Here's what I remember the testimony
23 being. I remember the testimony being that the consent, in
24 parenthesis, at the consent search they found a Bi-lo
25 receipt. And when they went back with the search warrant

1 and they searched the bedroom, then they found the Star
2 receipt. Okay, no?

3 MS. FRYAR: It's all one receipt, Your Honor.

4 THE COURT: Okay.

5 MS. FRYAR: But if I could have this marked as a
6 Court's Exhibit?

7 THE COURT: Sure.

8 (BI-LO / COINSTAR RECEIPT MARKED AS COURT'S EXHIBIT
9 NUMBER 12.)

10 MS. FRYAR: I'll hand this up, Your Honor.

11 THE COURT: Sure.

12 MS. FRYAR: As you see, it is a Bi-lo receipt with
13 Coinstar written on it.

14 THE COURT: Okay.

15 MS. FRYAR: So, that's what they are referring to.

16 THE COURT: Okay.

17 MS. FRYAR: That's the only one.

18 THE COURT: They just referred to as two different
19 things?

20 MS. FRYAR: Yes, ma'am.

21 THE COURT: I understand.

22 MR. JEFFRIES: It was taken before the search warrant
23 was executed.

24 THE COURT: Right. Got it.

25 MR. JEFFRIES: And again, my whole argument as to that

1 is under the legal theory of inevitable discovery had been
2 recovered during the search -- after the search warrant was
3 obtained because they had already identified and already
4 observed it, but they chose to take it then. Then got the
5 search warrant and then came back and got everything else.

6 THE COURT: Have you got any case law on it? I love
7 that inevitable find.

8 MR. JEFFRIES: I'm sure I do.

9 THE COURT: I'd like to see that. It might be
10 helpful.

11 All right, yes, Mr. Brown, yes.

12 MR. BROWN: I think it's vital.

13 THE COURT: Yes.

14 MR. BROWN: I think we've...

15 THE COURT: Yes.

16 MR. BROWN: I think our position is not only removing
17 during the consent search, this consent to search, as it's
18 called. That it was not voluntary, one.

19 THE COURT: Yes.

20 MR. BROWN: And not just the Coinstar receipt. I
21 understand they didn't grab the boots and they didn't grab
22 the other stuff. These are things they found to support

23 ---

24 THE COURT: They don't. In the affidavit, it's not
25 listed.

1 MR. BROWN: It's not items?

2 THE COURT: What they say ---

3 MR. BROWN: I think they say items.

4 THE COURT: Here's what they say. What they say is if
5 you take out, if you take out that portion of it, this is
6 what you are left with:

7 An armed robbery occurred at Bell's Bait and
8 Tackle Shop in Elloree, South Carolina, and a
9 suspect, Phillip Spears, was positively
10 identified by a store clerk from a six photo
11 lineup compiled by SLED. Information was
12 received by officers from the Calhoun County
13 Sheriff's Office that suspect sometimes stayed at
14 [REDACTED] in the City of Orangeburg.
15 So, officers responded to that location. Upon
16 arriving at [REDACTED] a second
17 subject, Titus Bantan, was located and has also
18 been positively identified from a six photo
19 lineup compiled by SLED as one of the armed
20 robbery suspects.

21 That's what I'm looking at.

22 MR. BROWN: And then I think I'm just responding to
23 your, or I guess I'm responding to B.J.'s talking about the
24 inevitable discovery. It would be our, our position that
25 the things that were found during the, quote, consent

1 search was not just the receipt. They also, their
2 testimony, saw boots, shirt and jeans among -- those are
3 all listed and those are the things they sought and
4 obtained information on during this, quote, consent search.

5 THE COURT: Yes. State vs. Davis says if there is a,
6 and again of course understand in State vs. Davis the
7 information that is excised is information that was either
8 recklessly misrepresented or untruthful intentionally, and
9 that is the information that is removed. And what is
10 indicated in State vs. Davis I think is that if there is a
11 portion of a search warrant which is found to be not
12 appropriate, that the way that you then review the search
13 warrant is that you excise that portion and then look at
14 the remainder of the search warrant to see if it's
15 acceptable, to see if the search warrant should have been
16 granted.

17 There's another case that's very important, and I
18 think the record should reflect that that case, and it is
19 cited in the State vs. Davis case, and that is State vs.
20 Franks. I do apologize that I do not have the citation
21 with regards to that case. So, on that basis, I would
22 excise this sentence:

23 Subject gave verbal consent for officers to
24 search the mobile home where he resides and after
25 items were found that were consistent with items

1 from the armed robbery, he rescinded the consent.

2 I am going to excise that. I understand about the
3 case law. I am uncomfortable with the way this alleged
4 consent was given. I don't think it was consensual; I
5 think that his will was overcome.

6 I think that his will was overcome in the following
7 specifics. They came in. They had their guns drawn. They
8 told him to come out. They did not think it was -- they
9 thought he was Mr. Spears. They told him to back down the
10 hall with his hands over his head. They told him to kneel
11 with his hands over his head. They put handcuffs on him,
12 and they held him just that way until he gave consent.

13 And taking the evidence in its totality, there's no
14 question in my mind that that's how that happened despite
15 other stories given by one of the officers who testified.
16 And when he was, when he granted consent to search, they
17 took his handcuffs off. So, I don't think that's consent.
18 I think they overcame his will in regards to that search.
19 So, I don't think that that search was consensual.

20 So, what do we do with that, though? I do find, I do
21 find, though, that this search warrant, that the affidavit
22 given gives rise to probable cause. I do find that the
23 search warrant issued by Judge Houser was appropriately
24 issued. I am not at all troubled that the affiant is a
25 police officer who is not an Orangeburg County police

1 officer. I don't think it matters where you live when you
2 give an affidavit for a search warrant.

3 I do find, based on all that I have heard, is that
4 Chris Golden simply was, he simply was the officer who
5 delivered the search warrant to Officer Williams, who was
6 an Orangeburg County officer and executed the search
7 warrant and then reported back to Judge Houser the items
8 that had been taken. I certainly think that Officer Golden
9 was present, and there's certainly no -- I don't have any
10 concern about that.

11 I think that there was a town, Orangeburg town officer
12 who went with Chris Golden for the purposes of obtaining
13 the affidavit. I simply say that. I don't know that that
14 has any importance at all, but I do find that Chris Golden
15 was the affiant. And I find specifically that this
16 affidavit, though, was not directed to Chris Golden but was
17 directed to police officers in Orangeburg County. So, that
18 would be the ruling of the court.

19 The question, here is the only question that remains
20 for me and that's why I needed to see the case hopefully
21 that you have, and that is inevitable discovery. I am not
22 troubled by the pants; I am not troubled by the boots. In
23 fact I am not, but tell me about the receipt.

24 MR. JEFFRIES: Your Honor, I don't know if you're
25 impressed at all.

1 THE COURT: Might be.

2 MR. JEFFRIES: And I don't want to misrepresent
3 anything because it is our contention that they took that
4 receipt before the search warrant was ever ---

5 THE COURT: I do know that.

6 MR. JEFFRIES: However, it is listed in the return as
7 items collected.

8 THE COURT: Yes.

9 MR. JEFFRIES: As a result of the search warrant.

10 THE COURT: Yes.

11 MR. JEFFRIES: I don't know how the court would
12 observe that and recognize that, so I'd have -- you know,
13 that'd be my first issue, my first question. Does that
14 receipt come in as a part of the search warrant execution?

15 THE COURT: I don't know. That's what I'm asking you.
16 Does it?

17 MR. JEFFRIES: And I ---

18 THE COURT: Let me tell you this. I must share with
19 you all there is dicta in a recent United States Supreme
20 Court -- I apologize to you that I do not have the cite
21 because that does not help you. However, I must tell you
22 that there is dicta where the United States Supreme Court
23 has opined that the exclusionary rule very well may be
24 passe.

25 MR. JEFFRIES: Your Honor, I will be glad to get you

1 those cases, some cases on inevitable discovery. I don't
2 have any in this packet. It shouldn't take any time to
3 research. And obviously the logic behind that is that they
4 recovered this item; they observed this item prior to
5 executing the search warrant. All things being equal and
6 undisturbed, the logic there is that it's there when they
7 come back to execute the search warrant. There's
8 absolutely no reason why they wouldn't recover it. They
9 recognize it as having evidentiary value. That's why they
10 take it. So, there's no reason to believe it wouldn't be
11 there after they get the search warrant and parts of the
12 search for a return, and it is listed in the return.

13 THE COURT: Let me ask you this question. Do you have
14 to talk about the receipt in your opening?

15 MS. FRYAR: No, ma'am.

16 THE COURT: Let's not. I'd like to see the case law,
17 noting the exception thereto of the defendant if I so rule
18 that the receipt comes in, okay? I just want to put that.
19 I'm scared I'll forget to put that on the record. In other
20 words, if I allow that, and note the exception of the
21 defense that I have not excluded all items taken from the
22 house pursuant to the search warrant, okay? All right?

23 MR. JEFFRIES: Thank you, Your Honor.

24 THE COURT: Very well. We've got to have an
25 arraignment, right? Okay, and I note the time. Y'all have

1 got to get a little something to eat. Talk to me. Other
2 motions by the state?

3 MR. JEFFRIES: Your Honor, there is one other issue.

4 THE COURT: Okay.

5 MR. JEFFRIES: I'm not sure if it's a motion.

6 THE COURT: All right.

7 MR. JEFFRIES: But I would like it resolved.

8 THE COURT: Okay.

9 MR. JEFFRIES: You kind of heard a little bit about
10 the arrest. Well, the detainment of the defendant Phillip
11 Spears up in Charlotte.

12 THE COURT: Yes.

13 MR. JEFFRIES: The way it plays out is they go up
14 there to find him one night. They don't find him. They're
15 just in the general vicinity. They go back the following
16 day. They do the cell phone research. They locate him at
17 this house. You've heard about his arrest. He is arrested
18 by Charlotte Mecklenburg County deputies. They take
19 possession of him because he has charges up there. They
20 take possession of him for malicious injury to personal
21 property, something, something else.

22 Now, obviously we don't want to go into the fact that
23 he was in any way in trouble or was in trouble up there in
24 Charlotte. However, I would like the jury to understand
25 that he was taken into custody, and it may come out

1 sometime during this trial. He had been actually arrested
2 on these charges until some time much later, and that's
3 just because they had possession of him. Orangeburg or
4 Calhoun County has a hold on him based on this armed
5 robbery warrant. But the warrant isn't served on him
6 because he has to be brought back to the jurisdiction. I
7 believe there was some question ---

8 THE COURT: Extradited.

9 MR. JEFFRIES: --- extradited, whether not he waived
10 it. At some point he's released from Mecklenburg when he
11 shouldn't be, and that's why they had to go back up and
12 re-arrest him. You heard that he was -- you know, they
13 arrested him twice, SLED did, and that's because he was let
14 out of Mecklenburg County jail without our warrants being
15 served on him. So, I just wanted it to be clear that he
16 was taken into custody then.

17 And I think if jury understands that he was taken into
18 custody then by Charlotte Mecklenburg, I think the
19 implication would be that he was taken in because of these
20 charges. We have no intention of going into these
21 Charlotte charges, but I don't want the defense to come
22 bring up the fact that he wasn't arrested on these charges.
23 Then there's a question of why wasn't he arrested? Why
24 wasn't he brought back? Is there a problem with the case?

25 THE COURT: I understand.

1 MR. JEFFRIES: When, in fact, he was for all
2 practical, practical purposes held at the jail. Based on
3 these charges, a hold was put on him.

4 THE COURT: Okay. You go ahead. You go ahead and
5 talk to Mr. Spears. He wanted to finish his thought.

6 (A PAUSE.)

7 THE COURT: Yes, sir.

8 MR. JOHNSON: Your Honor, for clarification, as
9 stated, the state actually went twice. The SLED agent
10 stated earlier, as he said, he went there: the first time
11 when they arrested him, and then he had to go back and
12 re-arrest him.

13 THE COURT: Yes.

14 MR. JOHNSON: So, it wasn't that he was arrested by
15 North Carolina by themselves without being aware of the
16 arrest warrant. He was actually held on two misdemeanor
17 charges. The State of South Carolina didn't go get him
18 after the misdemeanor charge, or the State of South
19 Carolina didn't go to get him because of the extradition
20 paperwork. He was released. Then the state went back and
21 arrested him the second time.

22 THE COURT: Okay.

23 MR. JOHNSON: So, it's our position that, that the
24 first arrest shouldn't even be mentioned at all. That if
25 the state wants to talk about the second arrest when he was

1 arrested then, that's fine. If -- so some reason I open
2 the door, then that's a different version. But first
3 arrest, the state didn't go pick him up. He was not
4 charged. The misdemeanor charges that he was for in North
5 Carolina had nothing to do with this one. They shouldn't
6 be mentioned in opening unless I opened that door. And I
7 haven't decided whether I'm going to open that door yet.

8 THE COURT: I understand. Well, this is what comes to
9 mind. What comes to mind, of course, is I've just heard
10 the testimony regarding the weapon, and circumstantially
11 it's the same weapon. And my sense is that's the only
12 reason the state has any interest in going into that
13 arrest.

14 It is my understanding, and y'all correct me if I'm
15 wrong, but it is my understanding the only reason that SLED
16 was involved in Mecklenburg was to find this gentleman as a
17 result of this armed robbery, and that that was the reason
18 he was there. That was the reason he was involved in the
19 arrest at all and that there was South Carolina
20 involvement.

21 And I agree with Mr. Jeffries. I would not be
22 inclined to allow Mr. Jeffries to mention at all that there
23 were Mecklenburg charges. That has no, that has no
24 relevance in these proceedings. I do think it's relevant,
25 though, that he originally was arrested, as I understand

1 it, with South Carolina involvement as a result of this
2 armed robbery.

3 MR. JEFFRIES: That's the state's position.

4 THE COURT: Yes.

5 MR. JOHNSON: Well, Your Honor, maybe I'm missing
6 something here. I don't -- if, if that's the point, if
7 they're really saying that they went and arrested him, I
8 guess that's -- I'm assuming that they need to do that to
9 show when they recovered the gun.

10 THE COURT: That's right. That's right. That's it.
11 As I understand, that is the only purpose of it. That's
12 the only purpose.

13 MR. JOHNSON: It is it my understanding that the court
14 has ruled they are allowed ---

15 THE COURT: Yes.

16 MR. JOHNSON: --- that they're ---

17 THE COURT: I'm not going to suppress that. I'm going
18 to allow that. I'm going to, based on the hearing that
19 I've already had, I am not going to suppress the gun unless
20 of course something -- I'm not going to do it *in limine*.
21 In other words, I am not going to suppress the evidence
22 regarding the weapon *in limine*. Now, they've got to, you
23 know, they've got to lay the foundation; it's got to be
24 consistent. In other words, I'm not going to say it comes
25 in because I don't know what's going to happen in the

1 trial.

2 MR. JOHNSON: Then my next question is this. Are they
3 allowed to mention the gun at all because they probably
4 would not get to that part until after opening when they
5 get into the substance of the case.

6 THE COURT: Yes, I think they can, and the reason is
7 is that based upon what I have heard, I believe that it
8 will come in to evidence if what they tell me is correct.

9 It's just I'm not in the business of telling a defense
10 lawyer that if something goes different in the trial that
11 they can't move at that point to exclude. Say they can't
12 lay the foundation. Say all of a sudden it's a pink and
13 purple gun. You know, it's not what it indicates it's
14 going to be.

15 MR. JOHNSON: I understand.

16 THE COURT: Then you've got a couple of them. Then
17 you've got a couple of motions. You know what I mean?

18 MR. JOHNSON: I understand.

19 THE COURT: But ---

20 MR. JOHNSON: There is, there is one other issue.

21 THE COURT: Having gotten where we are, though, I'm
22 not going to keep them from mentioning it in opening.
23 Should something else happen and it not come in, that's a
24 different circumstance. You see what I'm saying?

25 MR. JOHNSON: I understand.

1 THE COURT: And additionally, I don't want them
2 talking about any additional charges involving, involving
3 Mr. Spears at this juncture. If something should happen
4 differently in the trial and some sort door gets opened, or
5 in fairness it ought to come in for some other reason -- I
6 can't think of anything other than the door being opened --
7 then that, that would also be a different circumstance.

8 MR. JOHNSON: Thank you Your Honor.

9 THE COURT: Does that make sense?

10 MR. JOHNSON: Yes.

11 THE COURT: Okay. All right.

12 MR. JEFFRIES: That's all we have.

13 THE COURT: Yes, sir, Mr. Brown.

14 MR. BROWN: I have some -- we have about maybe ten
15 more motions all on 403.

16 THE COURT: Okay, go ahead.

17 MR. BROWN: All on Rule 403, the first to be the
18 motion to set -- suppress the video based, well, based on
19 Rule 403, the Bi-lo video at the Coinstar. I think there's
20 a video the state has.

21 MS. HINDS: It's a surveillance tape.

22 MR. BROWN: A surveillance tape.

23 THE COURT: And the basis is?

24 MR. BROWN: 403, prejudicial nature of it would
25 outweigh the probative because of the lack of clarity of

1 it. Maybe we do have to watch the video, but just, it
2 would allow the jury to draw conclusions, and we stipulate
3 the evidence is not there due to the clarity in viewing and
4 watching the tape.

5 THE COURT: Okay.

6 MS. HINDS: Everybody agrees you can't really
7 identify, you can't look at it and say that's Mr. Bantan.

8 THE COURT: Okay, all right. I don't know. Have to
9 see it.

10 MR. BROWN: Okay, and then a motion to suppress the
11 Coinstar receipt based on there's no evidentiary link
12 between the Coinstar receipt and the coins that are
13 allegedly taken from the Wagon Wheel. It doesn't say on
14 the receipt where these coins are from, and that it was
15 purely prejudicial. There's no real evidentiary link
16 between the two.

17 THE COURT: Okay, here is what is very difficult.
18 Assuming *arguendo* that the receipt would come in, then I do
19 think there's a circumstantial link, and I would
20 respectfully deny your motion. But I'm sort of -- let me
21 -- but I'm comfortable letting you know where you're coming
22 from because I've had a minute to glance at Nicks vs.
23 Williams, which is the United States Supreme Court
24 decision, 467 U.S. 431, that talks about ultimate or
25 inevitable discovery, but I still want to read it.

1 Is that, that's the case we were talking about?

2 MR. JEFFRIES: I've got it here the Criminal Law
3 Procedures Handbook.

4 THE COURT: Okay.

5 MR. JEFFRIES: Oh, yeah, Nicks vs. Williams, yes.

6 MR. BROWN: Your Honor, we'd move to suppress the --
7 apparently there was a shotgun and bullets located in Mr.
8 Bantan's trailer in the closet, but there's no real
9 probative value. There's no accusation of a shotgun being
10 used, so we'd move to suppress that. I don't think we ---

11 THE COURT: Is that a problem?

12 MS. FRYAR: The shotgun is not a problem, Your Honor,
13 but we would like to enter the four boxes of 40 caliber
14 bullets just to show there's -- excuse me, three boxes of
15 40 caliber bullets just to show there's a bunch of bullets
16 and no gun. We think that that's information that the jury
17 would like to have. And the kind of gun it would match is
18 going to be the kind of gun that our victims will describe.

19 THE COURT: And you're going to have an expert that
20 would share that information?

21 MS. FRYAR: 40 caliber semiautomatic handgun, we'll
22 have an officer testify to that. Do you understand? I'm
23 sorry.

24 THE COURT: I do.

25 MS. FRYAR: I don't understand guns real well quite

1 frankly, Your Honor.

2 THE COURT: I do.

3 MS. FRYAR: But I know the bullets couldn't fit the
4 shotgun, but it could fit a handgun or semiautomatic
5 weapon.

6 THE COURT: Shotgun is out. Don't mention bullets in
7 your opening.

8 MS. FRYAR: Yes, ma'am.

9 THE COURT: Okay, and we'll get to that.

10 MR. BROWN: We also moved to suppress the boots.
11 These are Timberland boots; they're fairly common boots.

12 THE COURT: Goes to the weight, not the admissibility.
13 Thank you.

14 MR. BROWN: Move, motion to suppress the Newports.
15 They can't link the Newports to the store. They say that
16 apparently when these two ran out of the store, they
17 grabbed a bunch of Newports cigarettes, and can't link them
18 to the store. One, they don't show -- have something
19 showing to link these Newports to the store. Again ---

20 THE COURT: Goes to the weight and not the
21 admissibility. Yes, sir.

22 MR. BROWN: Black hat, the same basis. The blue cap,
23 same basis.

24 THE COURT: Blue New York a Yankees cap, in other
25 words, you would not want that to be admitted? It goes to

1 the weight rather than the admissibility.

2 MR. BROWN: Okay, and I think this is the -- they
3 found pennies, motion to suppress those pennies, and
4 there's no link to the store. Prejudice outweighs the
5 probative.

6 THE COURT: The pennies? You know, let me say this.
7 I would not do that in *limine* pretrial for this reason. I
8 know there was a big box of change. We didn't talk about
9 the specific kind of change. Some people keep pennies and
10 some people don't keep pennies. So ---

11 MS. HINDS: My understanding was there was a roll of
12 pennies that was found, and they actually showed it to Mr.
13 Bourgeois, and he said mine were marked and that one
14 wasn't, and so he didn't think it was his.

15 THE COURT: I got you. Don't mention it in opening,
16 and please lay the foundation where the pennies might come
17 in.

18 MR. BROWN: If -- Your Honor, we have a motion in
19 *limine* as to the statement, I believe it was Natasha
20 Rivers, Ms. Rivers allegedly made, made in her statement.
21 She states: I thought I was dead. It would -- our
22 position would be that is an overly-inflammatory situation,
23 that she believed she's dead, and would inflame the
24 emotions of the jury. It would be overly prejudicial than
25 probative.

1 MR. JEFFRIES: Your Honor, if I could just speak to,
2 speak to that?

3 THE COURT: Tell me about that. She didn't testify to
4 that earlier. I haven't heard that.

5 MR. JEFFRIES: Well, I know I recall, I know she said
6 based on ---

7 ~~THE COURT: She said that -- she did not testify to~~
8 ~~that.~~

9 MR. JEFFRIES: I don't think she testified to that
10 today.

11 THE COURT: I didn't hear that statement.

12 MR. JEFFRIES: And what that goes to is her degree of
13 certainty the person who was over her at that time because
14 her testimony would be, or her version is that when she --
15 when this individual took his mask off, she thought that
16 was it. So, that also goes to, well, were you looking at
17 him when he takes his mask off? And so yes because when he
18 took that mask off, I thought that was it. What reason
19 does he have for letting me live after taking the mask off?
20 So, it goes to her degree of certainty in her
21 identification. That's why it's relevant. That's why I
22 think we're talking about it.

23 (COUNSELORS CONFER.)

24 THE COURT: I can't, I would not exclude that
25 statement for this reason. Identification is very much a

1 part of this case. When the gentleman comes in and as I
2 understand it, it was uncontroverted that he comes into the
3 store with a ski mask on. And I know that Ms. Rivers is
4 testifying that he took it, that at some point he takes it
5 off. And I think it goes to her level of attention, and I
6 think that it says to the jury her state of mind as she is
7 watching him. I think it is relevant on the issue of
8 identification. So, I would not exclude. I'll allow it.

9 MR. BROWN: Thank you, Your Honor. We also have,
10 there are phone records that I believe the state intends to
11 put forth that they allege that Mr. Spears was calling the
12 phone number of Mr. Bantan. We would move to suppress
13 those because under Rule 403 it would be speculative,
14 speculative because we really don't know what the
15 discussion was. We don't have any idea what was discussed
16 in those phone calls.

17 MS. HINDS: Your Honor, some of the phone calls ---

18 THE COURT: And they are between? Who are they
19 between?

20 MS. HINDS: The phone calls were from Kim Cherry's
21 phone from, from North Carolina to a phone call or a phone
22 from a family member of Mr. Bantan's. But we can't -- the
23 phone records can't even show -- there's a couple calls
24 that are, like, a minute. You, you can't even tell if they
25 actually went through. If anybody picked up, in other

1 words. But even the ones that did go through, our argument
2 would be that we don't know who called who. We don't know
3 if Ms. Cherry was calling somebody else in that household
4 or...

5 THE COURT: And Ms. Cherry, as I understand it, now
6 correct me if I'm wrong. I'm still on a learning curve.

7 ~~Ms. Cherry is the house where ---~~

8 MS. HINDS: Mr. Spears.

9 THE COURT: --- Mr. Spears was located in North
10 Carolina?

11 MS. HINDS: Correct.

12 THE COURT: And that somebody said that they thought
13 he lived there or stored clothing there. That's right,
14 that was the SLED officer that said he saw clothing in that
15 residence. And this would be a phone call that was placed
16 from that residence, the residence of Ms. Cherry, to the
17 household where Mr. Bantan was located. Is that right?

18 MS. HINDS: Not ---

19 MR. JEFFRIES: It's not, it's not Ms. Cherry's home
20 phone. It's a cell phone.

21 THE COURT: Whose cell phone?

22 MR. JEFFRIES: It's Ms. Cherry's.

23 THE COURT: Ms. Cherry's cell phone?

24 MR. JEFFRIES: It's listed as hers.

25 THE COURT: Okay, and when ---

1 MS. HINDS: And it's, and it's, and it's to a
2 residence that is listed on his, his paperwork, so to
3 speak, but that is not where he was living at the time. He
4 was living in the trailer on Charlotte Circle.

5 THE COURT: Okay, so the phone call goes from Ms.
6 Cherry's cell phone where? To where? Does it go to
7 another cell phone, or does it go ---

8 MS. HINDS: No.

9 THE COURT: --- to a residence?

10 MS. HINDS: No. It goes to a landline.

11 THE COURT: A landline, and who owns the landline?

12 MS. HINDS: It's his mother's house is actually where
13 it goes to.

14 THE COURT: It goes to Mr. Bantan's mother's house,
15 and what's the date of the phone call?

16 MR. JEFFRIES: The date of the, the date of the -- the
17 following, the following two days after the armed robbery.
18 So, November 7th and November 8th.

19 THE COURT: And when was he, when was he -- Mr.
20 Spears, he -- arrested at the home of Ms. Cherry? What was
21 that date?

22 MR. JEFFRIES: The next day after he robbed the Wagon
23 Wheel. Not ---

24 MR. JOHNSON: He was arrested three days after the
25 robbery. That was Mr. Spears.

1 MR. JEFFRIES: But obviously we want to use it to
2 connect the two parties to show they were communicating, to
3 identify ---

4 MS. HINDS: Well, they couldn't be communicating
5 because my guy was in jail.

6 MR. JEFFRIES: I'm just trying to show he's calling
7 the house, and we ---

8 MR. JOHNSON: Your Honor, I ---

9 MR. JEFFRIES: --- know he was arrested. Why does he
10 have a reason to know? It's all circumstantial evidence.

11 MR. JOHNSON: And is it ---

12 MR. JEFFRIES: Is it ---

13 THE COURT: Don't talk about that in your opening.
14 Let me think about that. Just let me know.

15 Yes?

16 MR. JOHNSON: My question, Your Honor, is they have
17 some other phone calls and they're going to be attempting
18 to do the same thing, and I would like for that not to be
19 able to ---

20 THE COURT: You got more phone calls?

21 MR. JOHNSON: They have more phone calls.

22 THE COURT: Okay. Well, right now I am dealing with
23 Ms. Cherry's phone to Ms. Mood's, Reverend Mood's, Mood's.

24 No?

25 MS. HINDS: No.

1 THE COURT: That's not Mom. That's right. I know
2 that, Ms. Bantan. I know Momma's Ms. Bantan. I've met Ms.
3 Bantan. Okay, let me think about the one. Let me think
4 about that one.

5 MR. BROWN: There's a phone recovered at the scene.
6 Move to suppress the phone. Again, it's just speculation
7 as to whose it is or -- Your Honor, totally under Rule 403.

8 THE COURT: It is -- all right, now, did you all talk
9 to me about this circumstance in chambers when we were
10 having a chambers conversation?

11 MR. BROWN: We talked about it at some point..

12 MR. JOHNSON: I think we did.

13 MR. BROWN: I can't remember.

14 THE COURT: This is the one that there was a phone
15 that was dropped by one of the two people in the store and
16 somebody -- I love the term -- chicken winged it, one of
17 the folks on the floor?

18 MR. JOHNSON: The phone, the phone, the state is
19 alleging that the phone came from defendant. There's no
20 one that saw it drop.

21 THE COURT: But dropped from above?

22 MR. JOHNSON: Dropped from somewhere.

23 THE COURT: Let me tell you; let me just tell you. If
24 it's testified to by one of these victims who was laying on
25 the floor while this is ongoing that it came from above --

1 because their heads are down, because the two folks that
2 are having them on the floor -- if something comes from up
3 above and it's a phone and they chicken wing it, it will be
4 coming in.

5 MR. BROWN: Your Honor, I just have two more that I
6 think will be easy.

7 THE COURT: Sure.

8 MR. BROWN: I think we both agree on these. I've got
9 a motion in limine to suppress any mentioning, and we've
10 talked about this, the Cameron Bank issue.

11 THE COURT: Yes. Oh, yes, yes. You guys have got to
12 open that door.

13 MR. BROWN: Right, and then it's to suppress any
14 mention of drugs being found in the trailer.

15 THE COURT: And they have already agreed to that in
16 camera -- I mean, when we talked in chambers.

17 MR. JOHNSON: I think this is the last issue, Your
18 Honor, the question concerning court procedure. I'm under
19 the impression we're having a two co-defendant trial. That
20 each defendant is considered separately. Is that correct?

21 THE COURT: Yes, and I'm so glad you mentioned that.
22 Go ahead. Go ahead.

23 MR. JOHNSON: And, therefore, if I do not put a
24 defense, am I then allowed to have the last argument if
25 they put up some type of defense?

1 THE COURT: There is some case law on that, and I
2 don't remember what it said. But I think you do, but I'm
3 not sure. Let me look at that, okay?

4 MR. JOHNSON: Okay.

5 THE COURT: Let me tell you. I make some preliminary
6 remarks to the jury, and clearly in the concluding charge I
7 have a charge about multiple indictments and multiple
8 defendants. I want you to look at it. I certainly want
9 counsel for Mr. Bantan to look at it because I don't
10 normally put that in my opening charge, but I think I would
11 like to put it in in this case. And what it does is it
12 just says you've got to look at these indictments
13 separately and these people separately, okay?

14 MR. JOHNSON: Thank you, Your Honor.

15 THE COURT: And I'm scared to death I'm not going to
16 remember, but approach if I forget to say that Mr. Spears,
17 you may see Mr. Spears straining to see the witnesses, and
18 it's because of the configuration. But please understand
19 that, you know, he's agreed to try to, because of the
20 configuration, to try to sort of crane his neck to see the
21 witnesses, which of course he is entitled to do himself.
22 So, okay, I will do that.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Anything further from you, Mr. Johnson?

25 MR. JOHNSON: I have nothing further.

1 THE COURT: One final pass. From the state?

2 MR. JEFFRIES: Nothing from the state.

3 THE COURT: Except you got an arraignment, got to have
4 an arraignment. And from Ms. Hinds?

5 MS. HINDS: No, ma'am.

6 THE COURT: On behalf of Mr. Bantan, okay.

7 Arraignment, right?

8 MS. FRYAR: Yes, ma'am.

9 THE COURT: Come on. Don't you have to do that?
10 Somebody needed to be arraigned, didn't they?

11 MS. FRYAR: Your Honor, my understanding of
12 arraignment procedure is that you simply ask the defendant,
13 tell them what they've been charged with, then ask them if
14 they want to -- if they plead guilty or not, and if they
15 want a jury trial or how they want to be tried.

16 THE COURT: I thought one of these gentleman had been
17 and one had not been. Help me. There was a little, there
18 was some ---

19 MR. JEFFRIES: We didn't have it.

20 MS. FRYAR: I know that you set bond on Mr. Bantan,
21 but I, I don't believe you have formally arraigned anyone.

22 THE COURT: Okay.

23 MS. FRYAR: Usually that is done at a bond hearing.

24 THE COURT: No, I didn't.

25 MS. FRYAR: And I'll just ask -- I believe there's

1 case law that says they have to be arraigned.

2 THE COURT: All right. Counsel, now the gentleman who
3 is talking to Mr. Spears is your investigator?

4 MR. JOHNSON: No. That's theirs.

5 THE COURT: Your investigator, but you know he's
6 talking to him?

7 MR. JOHNSON: Yes.

8 THE COURT: As long as you know, I'm okay.

9 Gentlemen, if you would stand for me, please. Now,
10 Mr. Bantan, I want you to do this. Of course I want you to
11 take advantage of your lawyers being here. You have been
12 indicted for three charges: armed robbery, kidnapping, and
13 use of a weapon, knife or gun, in the commission of a
14 violent crime. Do you wish for me to read those
15 indictments for you? I'm happy to do that.

16 MR. BANTAN: No.

17 THE COURT: All right, you waive that?

18 MR. BANTAN: Yes.

19 THE COURT: All right, and you have seen them and I
20 know Mr. Bantan has seen them. Is that right, Ms. Hinds
21 and Mr. Brown?

22 MS. HINDS: Yes, ma'am.

23 THE COURT: Very well. And, Mr. Bantan, do you plead
24 guilty or not guilty to each of those indictments?

25 MR. BANTAN: Not guilty.

1 THE COURT: All right, sir, and how you wish to be
2 tried? By a jury of your peers?

3 MR. BANTAN: Yes.

4 THE COURT: Right?

5 MR. BANTAN: That's correct, ma'am.

6 THE COURT: All right, thank you. Thank you.

7 All right, does that suffice for Mr. Bantan?

8 MS. FRYAR: Yes, ma'am. I appreciate that.

9 THE COURT: Thank you so much, and of course to Mr.
10 Spears.

11 Mr. Spears, you have been indicted for armed robbery,
12 kidnapping, and use of a weapon, knife or gun, in the
13 commission of a violent crime. The violent crime would be
14 armed robbery, of course, and the kidnapping. I ask if you
15 first of all, you understand that?

16 MR. SPEARS: Yes.

17 THE COURT: Understanding that then, Mr. Spears, do
18 you wish for me to read you the indictments?

19 MR. SPEARS: No.

20 THE COURT: All right, sir, and tell me how you plead
21 to each of the indictments, guilty or not guilty?

22 MR. SPEARS: Not guilty.

23 THE COURT: All right, sir, and how do you wish to be
24 tried? By jury?

25 MR. SPEARS: By jury.

1 THE COURT: Of your peers?

2 MR. SPEARS: Yes.

3 THE COURT: Very well. Anything further in that
4 regard?

5 MR. JOHNSON: Nothing further.

6 THE COURT: All right, and by the state in that
7 regard? Anything further?

8 MS. FRYAR: No, Your Honor.

9 THE COURT: Thank you all so much.

10 All right, now here's what we're going to do. I'm
11 looking. Oh, Mr. Hasty, would you please tell the jury we
12 have just concluded all of our matters? That no one here
13 has had any nourishment. If they would just give us a few
14 minutes to have a little something?

15 CLERK OF COURT: Okay.

16 (A PAUSE.)

17 THE COURT: Counsel, y'all come on back in chambers.
18 Mr. Hasty again has been so lovely helping us to have a
19 little sustenance. You, too, Madame Court Reporter. All
20 right, thank you. We're going to have to take fifteen
21 minutes.

22 (OFF THE RECORD.)

23 THE COURT: Anything from the state before we bring
24 our jury out?

25 MS. FRYAR: No, Your Honor.

1 THE COURT: Anything from Mr. Bantan before we bring
2 our jury out?

3 MS. HINDS: No, ma'am.

4 THE COURT: All right, and from Mr. Spears?

5 MS. HINDS: Excuse me. Potentially, it's come to my
6 attention.

7 THE COURT: Sure.

8 MS. HINDS: There might be a couple of more witnesses,
9 but I don't have full names. I've sent somebody out to go
10 find them.

11 THE COURT: Okay.

12 MS. HINDS: Somebody by the name of Alicia, Kenny,
13 Shanick, and Renard Candler is the only one I've got the
14 full name on.

15 THE COURT: Okay.

16 MS. FRYAR: Can I ask a question?

17 THE COURT: Just keep us posted.

18 MR. JOHNSON: And, Your Honor, the only other thing is
19 that I thought about it. I have not received any reports
20 as far as the criminal status of any of the witnesses, any
21 reports ---

22 THE COURT: Any records of proposed witnesses?

23 MR. JOHNSON: Criminal history of that type.

24 THE COURT: I understand.

25 (A PAUSE.)

1 MS. FRYAR: I apologize that I have not provided them
2 to Mr. Johnson. As to Ms. Tanesha Adams, one of our
3 witnesses, she has no record. As to Ms. Natasha Rivers,
4 she has no record. As Iskier Prezzie, he has a conviction,
5 Your Honor, November 14, 1996, for the crime of criminal
6 domestic violence in the first-degree, which we would say
7 is inadmissible. It happened ten years ago. That's all on
8 him. We have the record of Mr. James Bourgeois, who
9 actually has no record that I'm aware of.

10 And as far as Mr. Cleveland Williams is concerned,
11 Your Honor, the only issue to appear on the rap sheets --
12 let me just make sure on Mr. Williams. Pardon me. Your
13 Honor, on June 19, 1996, Mr. Williams was convicted of the
14 offense of resisting arrest, and that was June of 1996 and
15 that was over ten years ago.

16 MR. JOHNSON: Your Honor, just for my records, I'd ask
17 that the state furnish me a copy of it.

18 THE COURT: Sure.

19 MR. JOHNSON: Of all of it.

20 THE COURT: Very well. Yes, you should have a copy of
21 it; I agree. All right, anything further from anyone
22 before we bring the jury out? Okay, let's have the jury.

23 (THE JURY ENTERS AT 3:20 P.M.)

24 THE COURT: Good afternoon, ladies and gentlemen, and
25 I want to again thank you for your patience as we have

1 concluded the matters which we needed to conclude. We are
2 now ready, ladies and gentlemen, to begin this matter. At
3 this time, I am going to call upon Mr. Hasty, our Clerk of
4 Court, to please swear you in as the jury in this case. If
5 you would, please stand and raise your rights hands.

6 (THE JURY IS SWORN.)

7 THE COURT: Very well. Ladies and gentlemen, do we
8 have any members of our jury who failed to take the oath?
9 If so, would you please stand at this time? If you failed
10 to take the oath.

11 JUROR: Oh.

12 THE COURT: Very well, just stand and let me know, and
13 I find no one standing.

14 Ladies and gentlemen, we are about to try the case of
15 The State of South Carolina vs. Mr. Bantan and The State of
16 South Carolina vs. Mr. Spears. They are the defendants in
17 this case, ladies and gentlemen. What I will now say is
18 intended to serve as an introduction to the trial of this
19 case. These remarks are not intended to be a charge on the
20 law or an instruction of the law applicable to this case.
21 I will do that; I will instruct you on the law applicable
22 to this case at the end of the trial before you retire to
23 consider your verdict. This is merely an explanation of
24 the procedure that we will follow so that you may better
25 understand what may be happening.

1 Ladies and gentlemen, I want to address with you,
2 first of all, the taking of notes because almost always a
3 jury wonders about the taking of notes. Ladies and
4 gentlemen, there is a debate about the taking of notes, and
5 I'm going to ask that you not take notes in this case. But
6 I want you to understand why.

7 Ladies and gentlemen, when the witnesses testify from
8 this witness stand, that is a very dynamic matter. And the
9 concern about the taking of notes is that there is a worry
10 that you can miss something that's coming from the witness
11 stand if you're taking a note. And there's another concern
12 about the taking of notes, and that is that during
13 deliberations if one juror has a note, another juror
14 doesn't have a note, that there can be an undue amount of
15 influence placed upon the note. So, ladies and gentlemen,
16 I am going to ask you to pay the closest of attentions and
17 not take notes, but trust your memory, your collective
18 memory in these matters.

19 Now, ladies and gentlemen, I charge you, I instruct
20 you as you now know that there are two defendants in this
21 case, Mr. Bantan and Mr. Spears. And each of these
22 gentlemen is charged with armed robbery, kidnapping, and
23 possession of a firearm or knife during the commission of a
24 crime of violence. The case of each defendant and the
25 evidence and the law concerning that defendant should be

1 considered separately and individually. Your verdict,
2 ladies and gentlemen, certainly does not have to be the
3 same for both defendants. The fact that you may find one
4 defendant guilty or not guilty should not control your
5 verdict as to the other defendant.

6 When more than one person is charged with the crime,
7 the warrant -- if the evidence warrants it, you may convict
8 one and acquit the other, you may acquit both, or you may
9 convict both. It will depend upon your view of the
10 testimony and the evidence. You must take each defendant
11 and consider the evidence as to that defendant, and of
12 course my instructions to you on the law. You will then
13 write a separate verdict of guilty or not guilty for each
14 individual defendant on each of the indictments.

15 Now, ladies and gentlemen, I will explain the elements
16 of each of these offenses to you later, but I do want to
17 explain to you again what an indictment is and is not. An
18 indictment is simply the charge by which a case is brought
19 into court, and it is not in any sense evidence of any of
20 the allegations it contains. Each of these defendants has
21 pled not guilty to each indictment against him. The state,
22 therefore, has the burden of proving each of the elements
23 of each of the indictments beyond a reasonable doubt. And
24 it will be your duty, ladies and gentlemen, to decide
25 whether the state has met that burden. Your purpose as

1 jurors is to find and to determine the facts. .

2 Now, ladies and gentlemen, if at any time I make any
3 comment which you think is a comment regarding the facts,
4 you must disregard it because you see, ladies and
5 gentlemen, our law does not allow me to have an opinion or
6 make any comment on the facts. And I can assure you I have
7 no opinion regarding the facts, and I make no comment
8 regarding them. That is solely within your purview.

9 You are to determine the facts from the testimony that
10 you hear and the other evidence which is introduced into
11 court. It is up to you to decide the inference which you
12 feel may properly be drawn from the evidence. It is
13 especially important that you perform your duty of
14 determining the facts diligently and consciously because,
15 ladies and gentlemen, under our law there is ordinarily no
16 way to correct an erroneous determination of the facts by a
17 jury.

18 On the other hand and with equal emphasis, the same
19 law that makes you the judges of the facts as I've just
20 explained make me the judge of the law. The law as given
21 to you by the court is the only law with which you would
22 consider. You must accept and follow the law as given to
23 you by the court even though you may disagree with it. I
24 cannot tell you what the facts are, and you cannot disagree
25 with me about the law, what it is or should be. Your job

1 is to take the law as I give it to you and apply it to
2 those facts as you find them to be from the testimony of
3 the witnesses and any other evidence that is introduced.
4 After doing that, you will render your verdict, a true and
5 just verdict, under the solemn oath that you just took as
6 jurors.

7 Now, ladies and gentlemen, until I advise you to begin
8 your deliberations, you must not discuss the case with
9 anyone, including your fellow jurors, friends, family
10 members, and anyone involved in the case. After the case
11 is submitted to you, you must discuss it only in the jury
12 room with your fellow jurors. The attorneys and the folks
13 in this case have been advised that they are not to talk to
14 you at all. So, if you see anyone around the courthouse or
15 in the community and they do not even say hello, please
16 understand they are not being rude. They are simply
17 following my instructions.

18 And during this trial do not read, listen to, or watch
19 any news reports about this case, and this includes
20 anything that might be in the newspapers, on the Internet,
21 on the radio, or the television. You must not consider
22 anything that you may have read or heard about the case
23 outside the courtroom, whether before or even during the
24 trial. It is important that you keep an open mind and not
25 decide any issue in this case until all the evidence has

1 been presented, the parties have made their closing,
2 arguments, and I have instructed you on the law applicable
3 to this case.

4 It is your solemn responsibility to determine whether
5 each of these defendants is guilty or not guilty. And your
6 verdict must be based solely on the evidence as it is
7 presented to you in this trial and on the law as I instruct
8 you during and at the close of the trial.

9 Now, in just a moment the solicitor will make what is
10 called an opening statement in which the solicitor will
11 explain to you what he or she thinks the issues are in this
12 case. Ladies and gentlemen, each of these defendants may
13 have their attorney make an opening statement to you,
14 although neither is required to do so, ladies and
15 gentlemen. What the attorneys tell you during their
16 opening statements, while it is important, I urge you give
17 them your undivided attention, but what the attorneys say
18 is not evidence. The evidence comes from the sworn
19 witnesses in this case and any exhibits which are admitted
20 into evidence.

21 Now, no doubt, ladies and gentlemen, from time to time
22 in this trial you are going to hear these attorneys say
23 something like objection, Your Honor. May we approach?
24 Or, Your Honor, we have a matter of law to take up outside
25 the presence of the jury. I want you to understand what

1 that is all about.

2 Ladies and gentlemen, you are learning that a trial is
3 a structured activity, and there are certain rules which
4 all parties to a proceeding must obey when presenting
5 evidence, and they are called -- imagine -- the Rules of
6 Evidence. Ladies and gentlemen, our procedure to allow the
7 attorneys to call a possible violation of the Rules of
8 Evidence, to call the potential violation or possible
9 violation to my attention is called an objection. And
10 because that is the procedure that is afforded to our
11 lawyers in this case, you must not hold an attorney's
12 objection against his or her client. Nor should you
13 conclude from my ruling on the objection that I favor one
14 or more parties because, ladies and gentlemen, I can assure
15 you I do not. Just please understand that this is our
16 procedure that is afforded our lawyers in this case to
17 bring a possible violation of the rules of evidence to my
18 attention.

19 Now, ladies and gentlemen, sometimes when the lawyers
20 approach or I'll ask you to step to the jury room, I want
21 you to understand what is happening. Sometimes I need to
22 hear from the lawyers, a word or two, or sometimes a little
23 bit more information to allow me to rule on the objection.
24 Ladies and gentlemen, when I ask them to approach or I ask
25 you to step to your jury room, I want you to know what is